CLAIM SUMMARY / DETERMINATION

Claim Number:	N12058-0001
Claimant:	State of Texas
Type of Claimant:	STATE
Type of Claim:	Removal Costs
Claim Manager:	[redacted]
Amount Requested:	$385.97

FACTS:

On August 6, 2012, a spill of oil was found on the beach of Mustang Island State Park. A Texas General Land Office (TGLO) State On-Scene Coordinator (SOSC) responded and found black tar patties in the sand and washing ashore from the Gulf of Mexico, a navigable water of the U.S. Approximately 30 gallons of oil were discovered in the Texas coastal waters with no identified source. The SOSC coordinated the response with the CG Federal On-Scene Coordinator (FOSC). The SOSC assisted and monitored the cleanup performed by Miller Environmental, which was consistent with the National Contingency Plan.

THE CLAIM:

On September 28, 2012, the Texas General Land Office (TGLO or Claimant) presented a claim to the National Pollution Funds Center (NPFC) for its uncompsnated removal costs in the amount of $385.97 associated with their response to the tar ball incident.

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 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 CG FOSC federalized the incident response. The SOSC coordinated their response with the FOSC.
2. The incident involved the report of a discharge or substantial threat of a 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 period 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 the incident is an OPA incident.

B. *Analysis:*

The Claims Manager reviewed the documentation provided by the Claimant in support of the uncompensated costs as claimed. The Claims Manager focused on: (1) whether an OPA-incident gave rise to the claim (i.e. whether there was a discharge or substantial threat of the discharge of oil into a navigable water of the U.S.) (2) whether the actions taken were compensable "removal actions" under OPA and its regulations at 33 CFR 136 (e.g., actions to prevent, minimize, mitigate the effects of the incident); (3) whether the costs were incurred as a result of these actions; (4) whether the actions taken were determined by the FOSC, to be consistent with the NCP or directed by the FOSC, and (5) whether the costs were adequately documented and reasonable.

Claimant seeks reimbursement of costs related to its personnel and vehicle expenses incurred during the incident response. NPFC hereby determines that the actions of the TGLO were necessary and reasonable for the size and magnitude of this OPA incident response. All costs claimed are for charges incurred 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.

<u>AMOUNT</u>: **$385.97**

[redacted]

Claim Supervisor: [redacted]

Date of Supervisor's review: ***1010/12***

Supervisor Action: ***Approved***

Supervisor's Comments: