

CLAIM SUMMARY / DETERMINATION ON RECONSIDERATION FORM

Date	: 7/8/2011
Claim Number	: H07005-001
Claimant	: Xiamen Ocean Shipping Co. et al
Type of Claimant	: Foreign
Type of Claim	: Affirmative Defense
Claim Manager	: Eric Bunin
Amount Requested	: \$8,000,000.00

BACKGROUND

On reconsideration of its claim Claimants continue to assert that the M/V TONG CHENG (the vessel), a general cargo vessel flagged under the laws of the People's Republic of China (PRC), caused a substantial threat of a discharge of oil to the navigable waters, adjoining shorelines or the exclusive economic zone of the United States and is entitled to a complete defense to liability and not liable for removal costs and damages resulting from the incident.

Facts:

The vessel loaded cargo at the ports of Xingang and Dalian, China, and departed Pusan, Korea, on December 23, 2006. It was scheduled to cross the Pacific Ocean, pass through the Panama Canal and discharge its cargo in Havana, Cuba. Cargo included 13 containers shipped by the PRC Ministry of National Defence to the Republic of Cuba's Ministry of Revolutionary Armed Forces. The packing list indicated that the cargo included clothes, headboard cabinets, and sewing threads; however there were discrepancies between the cargo and the manifests for that cargo. Two containers shipped by China North Industries Corp. to Tecno Import in Havana, Cuba, contained ammunition for 130-mm type 59 weapons. Other cargo included non-containerized diesel engines, spare parts, and 29 mini-buses.

Between December 25 and 26 the vessel encountered a period of moderate to severe weather with winds gusting to Beaufort scale force 7 with heavy rolling and confused seas. Some of the deck cargo was damaged from the heavy seas. On January 6, 2007, when the vessel was 1700-1800 nautical miles southwest of Hawaii¹, bilge soundings taken by the vessel's carpenter revealed the presence of sea water in the No. 2 starboard hold bilge. The starboard bilge was pumped out; subsequently the crew discovered that seawater was entering the bilge via three cracks in the middle of the port side No. 2 hold close to the tank top near the double bottom.² The cracks were approximately 21 feet below the water line; two of the cracks were on the welding seam on the shell plating and one was located at the connection of the tank top of the No. 2 hold and the shell plating.³

The crew attempted to brace waterproof rubber against the cracks and secure them with pressure plates. The plates temporarily reduced the ingress of seawater into the hold but by January 9, 2007, the water levels in the No. 2 bilge had substantially increased and the bilge pumps could not control the flooding. On this date the Master informed the Designated Person Ashore (DPA)

¹ November 20, 2008 letter from Chalos, O'Connor & Duffy, page 3.

² Technical Analysis Report, Wang Fengchen and Hong Biguang, dated June 2007, page 12.

³ Id.

that he was going to deviate to Honolulu, Hawaii, seeking a port of refuge.⁴ On January 13, 2007, the vessel's agent notified the U.S. Coast Guard that the No. 2 hold was flooding and the vessel was at risk to sink. The Master requested permission to enter U.S. waters under "force majeure." On January 17, 2007, the vessel submitted information for a certificate of financial responsibility (COFR) to the National Pollution Funds Center. A COFR is required when a vessel uses any place subject to the jurisdiction of the United States.⁵

On January 21, 2007, the Captain of the Port, Honolulu (COTP) determined that the vessel posed a substantial threat of a discharge and granted the Master's request to enter the Port of Honolulu to effect emergency repairs, subject to the application of reasonable measures to mitigate environmental and navigational consequences to the United States arising from damage to the ship.⁶ "Given the damage suffered to the Tong Cheng, the U.S. government understands that the temporary repairs will have to be effected in the United States. Thereafter, the vessel will proceed to China for more thorough repairs or other disposition."⁷ Due to heightened security in ports, waterways and coastal security, the vessel was ordered to maintain a distance of at least 12 nautical miles off the Island of Oahu enroute to a rendezvous position.⁸ The Coast Guard ordered the vessel to continue to remain offshore until January 22, 2007, when underwater inspections were completed and a temporary patch was placed on the hull. At this time the Coast Guard allowed the vessel to move to Anchorage B off Oahu for dewatering, discharging the cargo and making temporary repairs. On January 26, 2007, the vessel was moved to Kalaeloa Barber's Point, Honolulu, to complete more extensive temporary repairs. It remained at Honolulu until March 17, 2007, when it departed for China.

CLAIM AND THE CLAIMANTS

Claimants:

Claimants are the vessel owner, Xiamen Ocean Shipping Company, bareboat charterer, Lianyungang Cosfar Shipping International Co. Ltd., and the insurer, Steamship Mutual Underwriting Association Limited.⁹ Claimants' authorized legal representatives, Chalos, O'Connor & Duffy, presented the claim to the National Pollution Funds Center (NPFC) on December 4, 2008.

Claim History:

Claimants presented a claim to the NPFC in December 2008 seeking entitlement to a sole fault third party defense to liability, arguing that: (1) the vessel posed a substantial threat of discharge to navigable waters or the exclusive economic zone (EEZ) of the United States, (2) they established by a preponderance of the evidence that the discharge was caused solely by a third

⁴ On January 9, 2007, the vessel was approximately 1,344 miles from Honolulu, Hawaii. The vessel's deviation route began approximately 265 nautical miles southwest of the Johnston Atoll EEZ as it turned toward Hawaii.

⁵ 33 U.S.C. § 2716(a) provides that the responsible party for any vessel over 300 gross tons using any place subject to the jurisdiction of the United States shall establish and maintain evidence of financial responsibility sufficient to meet the maximum amount of liability to which the responsible party may be subjected to under section 2704(a) or (d) of this title.

⁶ U.S. Coast Guard letter dated January 21, 2007, to Nenad Krek, attorney representing the M/V TONG CHENG. Additionally, the letter ordered that all cargo originally bound for Cuba must be returned to China.

⁷ Id.

⁸ COTP Order 07-10 dated January 22, 2007.

⁹ The claim is also presented on behalf of the vessel; however, it cannot be a claimant under the OPA definition of a "claimant." 33 U.S.C. § 2701(27).

party, and (3) they are entitled to reimbursement of uncompensated removal costs resulting from the substantial threat. Claimants estimate their uncompensated removal costs at \$8 million.

The NPFC denied the original claim on October 1, 2010 on the grounds that the Claimants failed to establish by a preponderance of the evidence that a third party was solely responsible for the damage to the hull and thus the cause of the substantial threat of a discharge of oil. The NPFC determined that the Technical Analysis Report submitted by the Claimants speculated that the damage to the hull was caused by a collision with an object floating below the surface of the water but this report did not establish that a third party was solely liable for the substantial threat of a discharge. Further, the NPFC determined that the flooding of the hold and the Master's decision to deviate to the Port of Honolulu occurred 1700 – 1800 nautical miles from Hawaii, more than 1500 nautical miles from the EEZ of the United States, and the vessel did not pose a substantial threat to navigable waters, the shorelines or the EEZ of the United States at that time. Finally, the acts of the Master and the Crew contributed to causing the substantial threat of a discharge to U.S. waters because OPA liability was triggered when they entered the United States EEZ seeking a port of refuge and brought the substantial threat of a discharge to U.S. waters.

Claimants timely requested reconsideration of the denial of the claim on October 28, 2010. They requested two extensions of time to provide additional documentation to support the request for reconsideration. The NPFC granted Claimants until January 31, 2011 to submit the documentation.

APPLICABLE LAW

OPA provides that a responsible party for a vessel or facility from which oil is discharged or poses a substantial threat of a discharge of oil, into or upon the **navigable waters**¹⁰ or **adjoining shorelines** or the **exclusive economic zone**¹¹ is liable for the removal costs and damages resulting from such incident. 33 U.S.C. § 2702(a).

“Incident” means “any occurrence or series of occurrences having the same origin, involving one or more vessels, facilities, or any combination thereof, resulting in the discharge or substantial threat of a discharge. 33 U.S.C. § 2701(14).

A responsible party is not liable for removal costs or damages under section 2702(a) if he establishes, by a preponderance of the evidence, that the discharge or substantial threat of a discharge of oil and the resulting damages or removal costs were caused solely by an act or omission of a third party... if the responsible party establishes, by a preponderance of the evidence, that the responsible party exercised due care with respect to the oil concerned, taking into consideration the characteristics of the oil and in light of all relevant facts and circumstances and took precautions against foreseeable acts or omissions of any such third party

¹⁰ “Navigable waters” means “the waters of the United States, including the territorial sea.” 33 U.S.C. § 2701(21). “Territorial seas” means “the belt of the seas measured from the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters, and extending seaward a distance of three miles.” 33 U.S.C. 2701(35).

¹¹ The “exclusive economic zone” means “the zone established by Presidential Proclamation Numbered 5030, dated March 10, 1983, ...” 33 U.S.C. 2701(8). Proclamation 5030 “proclaim[s] the sovereign rights and jurisdiction of the United States ... within an Exclusive Economic Zone and provides that the EEZ “is a contiguous to the territorial sea ... [and] extends to a distance 200 nautical miles from the baseline from which the breadth of the territorial sea is measures.” 48 FR 10605, Pres. Proc. No. 5030, 1983 WL 506851.

and the foreseeable consequences of those acts or omissions 33 U.S.C. § 2703(a)(3)(A) and (B). Section (a) does not apply with respect to the responsible party who fails or refuses to report the incident as required by law if the responsible party knows or has reason to know of the incident. 33 U.S.C. § 2703(c)(1).

The Oil Spill Liability Trust Fund (OSLTF) shall be available to the President for the payment of claims for uncompensated removal costs determined to be consistent with the NCP or uncompensated damages. 33 U.S.C. § 2712(a)(4).

The responsible party for a vessel or facility from which oil is discharged, or which poses a substantial threat of a discharge of oil, may assert a claim for removal costs and damages under section 2713 of this title only if the responsible party demonstrates that (1) the responsible party is entitled to a defense to liability under section 2703 of this title. 33 U.S.C. § 2708(a)(1).

NPFC ANALYSIS

Claimants' Argument on Reconsideration for Entitlement to a Defense to Liability:

On reconsideration Claimants continue to assert that they have established by a preponderance of the evidence that the damage to the hull - collision with a manmade submerged/partially submerged container that had probably fallen from an unknown vessel at some unknown time - was caused solely by a third party and thus they are not liable for the removal costs resulting from the substantial threat of a discharge of oil that resulted when the vessel was forced to seek a port of refuge in the Port of Honolulu.

They argue specifically that: (1) they met the preponderance of evidence standard for entitlement to a sole fault third party defense by direct and/or circumstantial evidence; (2) the NPFC interpretation of Claimants' burden of proof is incorrect; (3) the NPFC hypothesis for the cause of the cracked hull is not supported by credible evidence; (4) the Master and Crew were not a proximate cause of the incident, and (5) an OPA incident existed before the M/V TONG CHENG was compelled to deviate to a port of refuge.

The Claimants' arguments are discussed within the NPFC analysis below.

The NPFC performed a *de novo* review of the entire claim submission upon reconsideration. The initial determination to deny the claim is incorporated into the administrative record for this claim.

1. The Claimants have not established by a preponderance of the evidence that the substantial threat of a discharge was caused solely by a third party.

Claimants argue that a "preponderance of the evidence" simply means "more likely than not" that something occurred and that the evidence can be direct or circumstantial. They assert that their evidence, (a hull expert's report opining that a manmade object, possibly a fully submerged container or a heavily reinforced packing case, hit the hull, causing cracks in the hull that led to the flooding in the No. 2 hold of the vessel), meets the preponderance of evidence standard. They add that while some of their evidence is circumstantial, (the object *could have been* a container or packing case), the scoring and dents on the hull are direct evidence reflecting that such an object did make contact with the vessel. They acknowledge that they do not know exactly what

kind of object hit the vessel, when the object hit the vessel or who the owner of that object might be; however, they assert that the preponderance of evidence standard does not require such specificity.

Claimants argue that the NPFC is incorrect in its interpretation of the Claimants' burden because the NPFC requires that they must show precisely when the contact between the vessel and the unknown object occurred, identify the object that struck the vessel and the object's owner, i.e., the third party.¹² To support their premise that such specificity has not been required by NPFC in the past Claimants cite to Gatlin Oil Co. v. United States, 169 F. 3d 207 (4th Cir. 1999).¹³ In Gatlin, initially a claims case adjudicated by the NPFC and appealed through the federal courts, the NPFC determined that Gatlin Oil had established entitlement to a sole fault third party defense even though the third party was an unidentified vandal.

Gatlin can be distinguished because the facts of that case established that the cause of the discharge was vandalism. The identity of the vandal was not necessary because the cause was known. This case could be similar if the facts established that a container hit the vessel and was the cause of the substantial threat but such facts have not been established. Claimants have not established a link between a container colliding with the hull and the substantial threat of a discharge.

Further, the NPFC determined in Gatlin that Gatlin had exercised due care by installing adequate security measures and had taken precautions against the foreseeable acts or omissions of a vandal. There must be enough evidence as to the existence of a third party and causation in order for the NPFC to determine whether the responsible party took precautions against foreseeable acts or omissions of any such third party and the foreseeable consequences of those acts or omissions. Claimants' argument that a container might have hit the vessel and caused the hull damage is speculative because they have not provided sufficient evidence to link the damage caused by an alleged container to the hull damage that subsequently resulted in the flooding of the No. 2 hold.¹⁴ Stated another way, Claimants' facts do not establish, by a preponderance of the evidence that a collision with a container caused the hull damage and subsequently the substantial threat of a discharge.

Because of a lack of specificity of demonstrated facts, i.e., that a container might have caused the damage to the hull, the NPFC cannot determine whether the Claimants exercised due care with regard to the oil or took precautions against foreseeable acts or omissions of a third party.¹⁵ U.S.

¹² Claimants also argue on reconsideration that the NPFC's hypothesis that the hull damage was caused by the vessel's life raft is speculative and not supported by credible evidence. Claimants provided new information on reconsideration that the life raft was a rubber inflatable raft. Based on this information the NPFC agrees that the raft did not cause the damage to the hull.

¹³ Claimants also cite to a NPFC claims determination in the M/T ATHOS I limitation of liability claim. This determination is not dispositive because the theory for reimbursement and the criteria for establishing entitlement to a limitation of liability are different from a sole fault third party defense. In a limitation of liability action the pertinent issue is whether the incident was proximately caused by the gross negligence or willful misconduct of the responsible party or a violation of an applicable federal safety, construction or operating regulation. 33 U.S.C. 2704(c)(1). If a responsible party establishes entitlement to a limitation of liability the total of its liability shall not exceed its statutory limits, which are based on the gross tonnage of the vessel.

¹⁴ In his report Mr. Granger opined that the damage [to the hull] was caused by contact with a man-made object: "possibly a fully submerged container or a heavily re-enforced packing case." A second opinion in the Technical Analysis Survey states that "[A]ccording to three cracks on the port side plating of the No. 2 hold, they *might* have been caused by a contact/collision with an unknown semi-submerged/floating hard object."

¹⁵ For instance exhibiting due care for avoiding submerged containers at sea might include a crew member on watch for such objects.

v. Poly-Carb, Inc., 951 F. Supp. 1518, 1531 (D. Nev. 1996) (Because it is unknown what exactly was spilled the court could not determine what “care” is “due” for such a material or what steps were necessary.) Without more evidence to establish how or when the hull was damaged it is not possible for Claimants to establish entitlement to the third party defense because it is unknown what due care would be required or what precautions would be needed to be taken against foreseeable acts or omissions.

Other evidence in the record defeats Claimants’ preponderance of the evidence argument. There is conflicting evidence in the record as to *when* any alleged object hit the vessel. The Master of the vessel, Zhang Jianbing, stated that “Nothing out of the ordinary occurred during the voyage until January 6, 2007. There was no report or indication that the vessel made contact with any object during the voyage.”¹⁶ The vessel’s carpenter, Dong Mengmin, stated, “During the current voyage from the Chinese ports and Pusan to Panama nothing out of the ordinary occurred until January 6, 2007.”¹⁷

Claimants’ expert, Mr. Granger, on the other hand, states in his report a specific time frame for the object hitting the vessel. It is his opinion that the flooding of the No. 2 cargo hold was the direct result of the TONG CHENG having made a port side contact with a fully submerged, and unidentified object during a transpacific voyage between **“16:00 hours, ship’s time on the 5th January, 2007 and 08:00 hours ship’s time on the 6th January**, which resulted in fracturing of the port side shell plating and subsequent uncontrollable flooding of the No. 2 cargo hold.”¹⁸ This information conflicts with the Master and carpenter statements, which are more credible because they were on board the vessel during the flooding and their statements were made under oath two months after the flooding of the cargo hold. Mr. Granger’s report is dated more than one and half years after the flooding.

Other evidence in the record suggests that a temporary patch may have been placed inside the No. 2 hold on the port side of the vessel *prior* to the cargo loadings in Pusan, Korea, or Xingang or Dalian, China. This temporary patch was discovered inside the hold after the cargo and debris were removed from the damaged area while the vessel was in Hawaii for repairs. Coast Guard personnel opined that this patch would have to have been put in place prior to the cargo being loaded in this portion of the hold and prior to any significant flooding in the hold because it involved welding and it is right at the bottom of the hold and the top of the ballast tank.¹⁹ Thus, the damage to the hull could have occurred earlier than the January 5-6, 2007 timeframe.²⁰ If a temporary patch had been placed inside the hold prior to loading the cargo, the Master and/or crew knew or should have known about the patch and any damage to the hull could not have been the sole fault of an unknown third party.

It is just as conceivable that the hull damage could have been caused when the December 25, 2006, weather caused stresses in the hull area where a temporary patch might have been placed as by a container hitting the vessel on January 5-6, 2007. Thus, evidence in the administrative

¹⁶ Sworn Affidavit of Zhang Jianbing, executed March 5, 2007, Paragraph 8.

¹⁷ Sworn Affidavit of Dong Mengmin, executed March 5, 2007, Paragraph 5.

¹⁸ Survey Report No. 0702122, m.v. “TONG CHENG”, dated October 9, 2008, page 23.

¹⁹ E-mail traffic dated February 18, 2007. See also United States Coast Guard, Activity Summary Report, Note, February 17, 2007; and Note, February 23, 2007.

²⁰ Mr. Granger seems to refute this as he is quoted in the Claim Submittal dated November 20, 2008, saying “in our opinion that had the temporary repairs been present at the commencement of the voyage, or installed at one or other of the loading ports, any fracture would have propagated and resulted in the flooding of the hold at an earlier stage than that alleged.”

record leaves questions as to the cause of the hull damage and Claimants have not established by a preponderance of the evidence that the damage to the hull was caused by a sole fault third party.

The NPFC reviewed the evidence in the administrative record, including two reports submitted by the Claimants, two crew member affidavits and Coast Guard records and determines that the evidence submitted by the Claimants does not meet a preponderance of the evidence standard. The claims regulations provide that a claimant bears the burden of providing all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim. 33 CFR 136.105(a). The NPFC has the discretion and ambit of judicial review to determine whether evidence is credible and the latitude to draw permissible inferences from, and to make findings based on, the evidence in the record. Bean Dredging, LLC v. United States of America, CA No. 08-01508 (CKK), Memorandum Opinion, March 29, 2011 (citing Mail Order Assoc. of Am. v. U.S. Postal Serv., 2 F.3d 408, 421 (D.C. 1993)).

In this case the NPFC reviewed the evidence and finds that Claimants have not established by a preponderance of the evidence that the damage to the hull was caused solely by a third party.

2. The vessel caused the substantial threat of a discharge of oil when the Master sought refuge at the Port of Honolulu.

Claimants argue on reconsideration that the vessel was a substantial threat to waters protected by OPA 90 on January 9, 2007, when the crew informed the Master that the vessel's pumps were clogged and could not keep up with the flooding and the Master decided to seek a port of refuge at the Port of Honolulu. The vessel's deviation route took it through the Johnston Atoll EEZ, waters under the jurisdiction of the United States. Thus, claimants argue, the vessel posed an OPA substantial threat of discharge of oil because it could have sunk and may have discharged its approximate 431 metric tons of fuel into the EEZ of the Johnston Atoll.

According to Mr. Granger the hull damage occurred on January 5-6, 2007, when the vessel was on the high seas, at least 1700 nautical miles from Hawaii.²¹ At this time any substantial threat of a discharge posed by the vessel was on the high seas far from U.S. waters and is not covered by OPA. Any allegation that the U.S. waters would have been affected by the vessel's sinking and discharging of its oil into the Pacific Ocean 265 nautical miles from the Johnston Atoll EEZ as asserted by the Claimants is speculative.

Claimants argue that the Master and crew were not a proximate cause of the OPA incident because they made every reasonable and extraordinary effort to patch the cracks and pump out the hold. When these efforts were unsuccessful the Master sought the closest port of refuge, the Port of Honolulu.

The decision and acts by the Master and crew to deviate through the Johnston Atoll EEZ on or about January 9, 2007, and to bring the vessel into the Port of Honolulu, are the proximate causes of the substantial threat of a discharge of oil to U.S. waters.

Claimants argue that they were forced to seek a port of refuge and were not negligent and cannot be faulted for doing so. However, a lack of negligence is not dispositive in a sole fault third party defense. United States v. West of England Ship Owner's Mutual Protection & Indemnity

²¹ The NPFC does not accept this as a proven fact.

Association, 872 F. 2d 1192, 1196 (5th Cir. 1989) (Ship owner's lack of negligence does not preclude liability under the FWPCA; liability is causation-based, not fault-based.) Even though the decision to bring the vessel to the Port of Honolulu may not have been negligent, that decision was the proximate cause of the substantial threat of a discharge of oil to U.S. waters.

The Captain of the Port of Honolulu (COTP) determined that the vessel posed a substantial threat of a discharge of oil on January 21, 2007, when he granted the vessel permission to enter the Port of Honolulu for temporary repairs. He understood that the vessel was in a critical condition and that temporary repairs had to be conducted in Honolulu. He understood that if the vessel sank and discharged oil it could cause environmental damage to the Hawaiian Islands coastline and its natural resources. Therefore, he agreed that the vessel could enter the Port of Honolulu on an emergency basis to make temporary repairs to the vessel.

Claimants argue that they were justified in seeking a port of refuge and should not be penalized for doing so. They posit that it is settled in admiralty law that "where the disaster occurs in the open ocean, away from port where repairs can be conveniently made, it often becomes necessary that the ship shall bear away to a port of refuge more or less distant from the usual course of her voyage and it is unquestionably correct to say that deviation in such a case is justifiable."²²

The NPFC does not disagree that the TONG CHENG was justified in seeking a port of refuge and it is not the NPFC's intent to penalize the vessel for doing so. However, the United States should not be penalized by absorbing removal costs and damages resulting from that vessel because the vessel sought and was granted a port of refuge.²³ The TONG CHENG was required to obtain a COFR when the COTP granted the vessel's request to enter the Port of Honolulu for repairs. The COFR is specifically required to show that vessel owners and operators have the financial ability to cover any removal costs or damages resulting from a discharge or substantial threat of a discharge of oil to U.S. navigable waters.

The Claimants have not demonstrated that they are entitled to a defense under section 2703; therefore, this claim is denied on reconsideration on the grounds that (1) the Claimants have not established by a preponderance of the evidence that a sole fault third party caused the hull damage that resulted in flooding, and (2) the substantial threat of a discharge was caused by the Claimant/RP when the vessel sought refuge at the Port of Honolulu.

The NPFC makes no determination regarding the validity of the amount of removal costs in this case. Before the NPFC can authorize payment from the OSLTF for any claim, the claimant must show that the claimed costs are compensable under OPA. In this case Claimants have not provided their uncompensated removal costs or damages to the NPFC. Because the NPFC has determined that the Claimants are not entitled to the sole fault third party defense under OPA, the

²² Claimant's citation to dicta in Hobson v. Lord, 92 U.S. 397, 408 (1876).

²³ Penalizing the United States in this case, by reimbursing Claimants' removal costs associated with the substantial threat of a discharge could discourage the United States and other port states from allowing disabled vessels into their ports for repairs. In 1999 the M/T ERICA, carrying 20,000 tons of fuel oil, suffered damage during severe weather. French authorities were reluctant to allow the vessel to enter a French port but did rescue the crew before the vessel broke apart and sank off the coast of Brittany, France. Approximately 10,000 tons of fuel discharged, killing 200,000 birds and blackening French beaches. Also, in 2002 the M/T PRESTIGE, carrying 77,000 tons of fuel oil, suffered a fracture in the side shell of its hull during severe weather off the coast of Spain. Fearing that the vessel would sink the captain sought a port of refuge from Spanish authorities. The Spanish authorities refused. The captain then sought refuge from both French and Portuguese authorities, who also refused. The vessel broke in two and sank off the coast of Spain causing massive pollution damage to 1,300 kilometers of Spanish, French and Portuguese coastlines.

NPFC has not considered whether the Claimants would be entitled to any amount claimed if the Claimants' right to

Claim Supervisor:

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

Supervisor Action: DENIAL ON RECONSIDERATION 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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5890
7/11/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Xiamen Ocean Shipping Co. et al
c/o Chalos, O'Connor & Duffy
366 Main Street
Port Washington, NY 11050-3120

RE: Claim Number: H07005-001

Dear Gentlemen:

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number H07005-001 involving the MV Tong Cheng. Compensation is denied for the reasons stated in the enclosed Claim Summary / Determination on Reconsideration Form.

Disposition of this reconsideration constitutes final agency action.

If you have any questions or would like to discuss the matter, you may contact me at the above address and phone number.

[REDACTED]
/ Thomas Morrison
Chief, Claims Adjudication Division
U.S. Coast Guard

ENCL: Determination Form