

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: 912076-0001
Claimant	: Helis Oil & Gas Company, LLC
Type of Claimant	: Corporate (US)
Type of Claim	: Removal Costs
Amount Requested	: \$110,810.76

FACTS:

On 1 April 2011, the MV Lia Jane, a vessel hired by Helis Oil and Gas Company, LLC (Helis or Claimant), was conducting trawling-type surveying operations for final site clearance after Helis' abandonment of the HI A-64 #1 well and flowline.¹ The vessel's trawl line became hung and, while the vessel's crew was trying to recover the nets from the obstruction, an oil sheen surfaced. The vessel cut loose the nets and moved away from the area. When the vessel returned later that day, it found that the sheen was gone and there were no signs of continued release.²

The U.S. Department of Interior Bureau of Ocean Energy Management, Regulation & Enforcement (BOEMRE) directed Helis' activities after the discharge. Claimant was ordered to conduct overflights to monitor for additional sheen until the source was identified. BOEMRE also ordered Helis to conduct an archaeological investigation of the object upon which the nets became hung. The object was found to be a sunken vessel (likely a shrimp boat) that was not historically significant.

CLAIMANT and CLAIM:

Claimant is an oil and natural gas well and pipeline owner and operator. Claimant operates wells and pipelines in the Gulf of Mexico. Claimant seeks reimbursement of costs incurred for the overflights and the costs related to the archaeological investigation. Claimant alleges that the RP is unknown.

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 NPFCA, 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".

¹Optional OSLTF Claim Form

²O'Brien's Response Management Facility Incident Report dated 4/1/2011

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:

A. Overview:

1. The CG FOSC was notified of incident, but did not direct Helis' activity. Email correspondence provided by Claimant shows limited CG involvement, which appears to demonstrate the CG consensus with BOEMRE that the flyovers were for pollution response;
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 argues that it is entitled to reimbursement of costs it expended in response to the sheen including overflights and the subsequent archaeological investigation. The overflights were to monitor for additional sheening. The archaeological investigation was for identifying the object upon which the trawling nets snagged and determining whether it had any historical significance.


NPFC finds that the costs expended to pay for overflights to monitor for subsequent sheening are OPA-removal costs. They were ordered by BOEMRE, but the evidence shows that the CG concurred with BOEMRE's orders for the overflights³ since they were for pollution response. Claimant provided a \$12,304.25 invoice from Evans Operating LLP for flyovers from April 5 through May 2, 2011. NPFC also obtained proof that the invoice was paid. Via email September 25, 2012, Evans Operating confirmed that the invoice was paid.

Regarding the archaeological investigation costs, Claimant submitted documentation stating that, "In accordance with BOEMRE directives, an archaeologically-directed diver investigation was conducted to determine the identity of this object(s) and conduct an assessment of its potential historical significance."⁴ The investigation had nothing to do with preventing, minimizing or mitigating the effects of an oil release. The investigation has nothing to do with the prevention, minimization or mitigation of an oil release, and oil-spill response is not contemplated as part of this assessment of historical significance. And the CG did not order the investigation as part of an oil spill removal action. NPFC finds that the archaeological investigation is not a removal cost under OPA and thus is not OPA compensable. Therefore, all costs claimed that were related to the archaeological investigation are denied. This total denied amount is the remaining claimed balance of \$98,506.51.

Conclusion

NPFC finds that Claimant is eligible for reimbursement of the removal costs in this claim which has been determined to be \$12,304.25. The remaining claimed balance is denied on the basis that the Claimant has failed to demonstrate that the archeological investigation is an OPA compensable removal cost nor was the activity ordered and/or directed by the United States Coast Guard in its capacity as the Federal On Scene Coordinator (FOSC).

AMOUNT: \$12,304.25

Claim Supervisor 

Date of Supervisor's review: 9/27/12

Supervisor Action: *Approved*

Supervisor's Comments:

³ See May 2011 email exchanges provided by Claimant.

⁴ Tesla Offshore, Archaeological Assessment report p. 1