CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: J05003-0023
Claimant	: IMC Shipping Co. Pte. Ltd., Ayu Navigation Sdn Bhd, and The Swedish Club
Type of Claimant	: Corporate (US)
Type of Claim	: Limit of Liability
Claim Manager	: [redacted]
Amount Requested	: $6,289,681.99

I. INCIDENT

The M/V SELENDANG AYU (the vessel) was on a voyage from Seattle to China when, on the morning of December 6, 2004[1] while operating in adverse weather conditions, the crew shut down the main engine as a result of a casualty to the No. 3 cylinder. The vessel drifted toward Unalaska Island and eventually grounded on December 8 on a rocky shelf on the north shore of Unalaska Island, northeast of Spray Cape. The grounding ruptured the vessel's bottom tanks, releasing approximately 330,000 gallons[2] of bunkers into the waters off Unalaska Island.

II. CLAIMANT AND CLAIM

The Claimants are the OPA responsible parties and their insurers. Ayu Navigation Sdn Bhd was the owner of the vessel and IMC Shipping Co. Pte. Ltd. was the operator of the vessel. Sveriges Angfartygs Assurans Forenging (The Swedish Club), members of the International Group of Protection and Indemnity Clubs ("International Group"), and the International Group's re-insurers were their subrogated underwriters.

III. PROCEDURAL BACKGROUND:

Pursuant to 33 U.S.C. § 2708(a)(2) Claimant presented a claim to the Oil Spill Liability Trust Fund (OSLTF or the Fund) seeking a limit on its liability for the incident. At the time of the incident the applicable limit per ton was $600; the gross tonnage for the *Selendang* was 39,755 gross ton; therefore, its limit on liability, if granted, was $23,853,000.00. The Claims Adjudication Division conducted an analysis of evidence and facts and determined that IMC Shipping Co. Pte. Ltd, et al demonstrated entitlement to its limit of liability on 27 January 2012.

IV. REMOVAL COST CLAIM

Claimant asserts that it incurred approximately $148,651,185.13 in removal costs and hired 153 vendors to conduct the removal actions. The removal actions at the site ended on or about 23 June 2006, per a Pollution Report (PolRep) #110 dated 27 June 2006 issued by the FOSC for this incident. As required by 33 CFR 136.203, the RP worked closely with the FOSC throughout the response; MSO Anchorage provided FOSC coordination.

Based on the magnitude of the costs associated with this response, the NPFC anticipated that adjudication of this claim will be lengthy. Claimant and the NPFC agreed to adjudicate the costs on a phased basis. The NPFC separated the claim into smaller claims, based on vendors. Each

[1] *See,* Claimant Submission, Attachment 24, Government's Videotape Deposition of [redacted] Vol. I, 00074.
[2] *See,* Claimant's submission letter, page 3, paragraph 3.

smaller claim bears a separate claim number and after adjudication the NPFC will offer an amount for that claim. Claimant may accept the offer or request reconsideration pursuant to the Claims Regulations at 33 CFR Part 136.

V. TENTH REMOVAL COSTS CLAIM DETERMINATION[3]

The NPFC adjudicated this tenth claim (J05003-0023) in the amount of $6.289M. The RP, through its legal representative, provided 36 binders of invoices to document the $6.289M in removal costs claimed in this tenth determination package for costs associated with the response actions either in support of or performed by Alaska Chadux response contractor. This claim includes only the invoices paid by the RP to Chadux, who fulfilled the role of the primary response contractor performing cleanup actions. The NPFC claims manager reviewed each and every submitted invoice as well as every "daily" sheet submitted to substantiate the invoices. Additionally, the NPFC claims manager reviewed the payment record against the claimed costs for each invoice.

The review of the actual costs, invoices and dailies focused on (1) whether the actions were taken to prevent, minimize or 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.

Please see the table below for an itemization of the vendor invoices which make up this tenth payment claim determination. This determination is only deemed full and final for the identified vendor invoices listed below.

Invoice #	Binder #	Amount Claimed	NPFC Approved	NPFC Denied
Equip. Purchase	13	$72,500.00	$72,185.00	$315.00
R04-006	14	$15,000.00	$15,000.00	$0.00
R04-007	14	$258,341.40	$257,775.95	$565.45
R05-001	14	$17,683.00	$17,683.00	$0.00

[3] The NPFC adjudicated the first removal cost claim, Claim Number J05003-001, in the amount of $24,500,453.89. The NPFC deducted the statutory limit on liability of $23,853,000.00 and offered $546,484.54 as full and final compensation on or about May 21, 2012. Claimants accepted the offer on June 7, 2012. The NPFC adjudicated the second removal claim, Claim Number J05003-003, and offered $ 2,168,445.20 to the Claimants on June26, 2012. Claimants accepted the offer on August 6, 2012. The NPFC adjudicated the third removal claim, Claim Number J05003-0004, and offered $3,668,595.70 to the Claimants on July 3, 2012. Claimants accepted the offer on August 6, 2012. The NPFC adjudicated the fourth removal claim, Claim Number J05003-0015, and offered $23,103,264.96 to the Claimants on August 20, 2012. Claimants accepted the offer on September 11, 2012. The NPFC adjudicated the fifth removal claim, Claim Number J05003-0016, and offered $15,611,776.98 to the Claimants on October 17, 2012. Claimants accepted the offer on December 6, 2012. The NPFC adjudicated the sixth removal claim, Claim Number J05003-0017, and offered $9,565,222.57 to the Claimants on November 20, 2012. Claimants accepted the offer on November 28, 2012. The NPFC adjudicated the seventh removal claim, Claim Number J05003-0018, and offered $8,230,390.17 to the Claimants on December 13, 2012. Claimants accepted the offer on December 17, 2012. The NPFC adjudicated the eighth removal claim, Claim Number J05003-0019, and offered $5,004,635.21 to the Claimants on February 19, 2013. Claimants accepted offer on February 27, 2013. The NPFC adjudicated the ninth removal claim, Claim Number J05003-0022, and offered $2,166,024.24 to the Claimants on March 21, 2013. Claimants have not yet accepted the offer at the time of the writing of this determination.

R05-002	14	$108,270.00	$108,270.00	$0.00
R05-003	14	$157,143.00	$157,142.90	$.10
R05-006	14	$162,923.95	$162,923.95	$0.00
R05-007	14	$8,625.00	$8,625.00	$0.00
R04-009	14	$503,856.00	$503,856.00	$0.00
R05-019	14	$169,988.00	$169,988.00	$0.00
R04-008	15-17	$645,407.43	$567,198.57	$78,208.86
R05-004	18-19	$339,548.67	$327,480.80	$12,067.87
R05-005	20-21	$303,375.04	$291,873.73	$11,501.31
R05-009	22	$300,487.25	$286,967.09	$13,520.16
R05-012	23	$348,151.96	$346,158.40	$1,993.56
R05-013	24	$37,261.85	$37,261.85	$0.00
R05-014	25	$297,361.35	$292,998.82	$4,362.53
R05-016	26	$299,792.51	$292,566.78	$7,225.73
R05-017	27	$316,786.14	$307,462.82	$9,323.32
R05-018	28	$212,216.96	$194,616.64	$17,600.32
R05-020	29	$38,410.71	$38,368.46	$42.25
R05-021	30	$356,366.82	$256,268.55	$98.27
R05-023	31	$9,797.23	$9,663.65	$133.58
R05-024	32	$22,570.12	$22,543.12	$27.00
R05-025	33	$362,342.55	$362,244.28	$98.25
R05-026	34	$298,059.75	$297,978.25	$81.50
R05-027	35	$109,007.65	$108,933.89	$73.76
R05-028	36	$108,740.38	$108,665.88	$74.50
R05-029	37	$95,850.14	$95,782.90	$67.24
R05-030	38	$31,502.85	$31,204.66	$298.16
R05-008	39	$132,377.66	$121,441.38	$10,936.28
R05-031	40	$7,147.04	$6,760.08	$386.96
R05-032	41	$14,792.50	$14,730.65	$61.85
R05-033	42	$40,840.66	$40,711.06	$129.60
R05-035	43	$21,783.54	$21,753.54	$30.00
R05-036	44	$4,542.85	$4,502.09	$40.76
R05-037	45	$7,072.12	$7,025.37	$46.75
R05-038	46	$9,055.65	$9,013.15	$42.50
R05-039	47	$7,344.46	$7,309.22	$35.24
R05-045	48	$37,407.69	$37,368.94	$38.75
GMS audit adj	13	($49.89)		($49.89)
Total		**$6,289,681.99**	**$6,120,304.42**	**$169,377.55**

Claimant's sum certain for this claim is $6,289,681.99.

The NPFC has determined that $169,377.55 is not compensable from the OSLTF and will offer the Claimants $6,120,304.42. As noted above, the NPFC deducted the RP's statutory limit on liability from the amount determined to be compensable under claim # J05003-001. Thus, $6,120,304.42 is payable from the Oil Spill Liability Trust Fund.

VI. 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". 33 U.S.C. § 2701(31).

The responsible party for a vessel or facility from which oil is discharged, or which poses a substantial threat of discharge of oil, may assert a claim for removal costs and damages under section 2713 only if the responsible party demonstrates that it is entitled to a defense to liability under section 2703 or to a limitation of liability under section 2704. 33 USC § 2708(a)(1) and (2).

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].

VII. DETERMINATION OF LOSS:

A. *Findings of Fact:*

1. MSO Anchorage, as the FOSC for this incident, determined that the actions undertaken by the State of Alaska were performed jointly with the FOSC and are deemed consistent with the NCP. 33 U.S.C. §§ 2702(b)(1)(B) and 2712(a)(4);
2. The incident involved the discharge of "oil" as defined in OPA 90, 33 U.S.C. § 2701(23), to navigable waters;
3. A Responsible Party was identified. 33 U.S.C. § 2701(32).
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 reviewed all documentation submitted with the claim and determined which removal costs were incurred for removal actions in accordance with the NCP and whether the costs for these actions were reasonable and allowable under OPA and 33 CFR § 136.205. The Claims Manager also identified denied costs and the grounds for denial.

B. *Analysis:*

NPFC CA reviewed the actual cost invoices and dailies to confirm that the Claimant had obtained all rights, claims and causes of actions for the 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 NPFC has determined that the majority of costs incurred by the Claimant in this tenth claim determination were reasonable and necessary to mitigate the effects of the incident. Upon review of the information provided by the Claimant, the NPFC has determined that the payable costs were billed in accordance with the rate schedules and/or contracts/charter agreements in place at the time the services were rendered, unless otherwise indicated below, and were determined to be consistent with the NCP.

1- Equipment Purchase – NPFC denies $315.00 for (3) handheld radios that were purchased and damaged beyond repair while they were on rental;
2- Inv # R04-007 – NPFC denies $565.45 in damage repair costs;
3- Inv # R05-003 – NPFC denies $.10 which appears to be a rounding issue;
4- Inv #R04-008 – NPFC denies $78,208.86 which consists of long distance call charges not OPA compensable, clothing not authorized, and markup that reduced due to denied charges (see spreadsheet for itemization of items);
5- Inv # R05-004 – NPFC denies $12,067.87 which consists of unauthorized calling card, personnel costs paid by GMS in excess of what vendor invoiced, and markup redcued due todenied charges (see spreadsheet for itemization of itmes);
6- Inv # R05-005 – NPFC denies $11,501.31 which consists or unauthorized long distance charges, non OPA response purchase such as medicine, illegible receipt, items missing an underlying itrmized receipt and markup reduction due to denied costs (see spreadsheet for itemization of items);

7- Inv # R05-009 – NPFC denies $13,520.16 which consists of payments made by GMS in excess of the amt billed by the vendor and markup reduction on denied costs;
8- Inv # R05-012 – NPFC denies $1,993.56 which is the result of a formula error and an undocumented overpayment of $30.04;
9- Inv # R05-014 – NPFC denies $4,362.53 which consists of payments made by GMS in excess of the amount billed by the vendor and aasociated markup reduction on denied costs;
10- Inv # R05-016 – NPFC denies $7,225.73 which consists of no signed daily for certain personnel, GMS paid more than the amount invoiced by the vendor and associated markup reduction due to denied costs;
11- Inv # R05-017 – NPFC denies $9,323.32 which consists of incorrect hours billed, GMS paid more than amount invoiced by the vendor and a reduction of markup on the denied items (see spreadsheet for itemization of items);
12- Inv # R05-018 – NPFC denies $17,600.32 which consists of personnel not on signed dailies, formula errors, GMS paid more than amount invoiced by vendor, and reduction of markup on denied items (see spreadsheet for itemization of denied items);
13- Inv # R05-020 – NPFC denies $42.25 in unauthorized copy charges;
14- Inv # R05-021 – NPFC denies $98.27 in unauthorized copy charges;
15- Inv # R05-023 – NPFC denies $133.58 which consists of unauthorized copy or long distance charges and items with no detailed underlying receipt and reduction of markup on denied costs (see spreadsheet for itemization of denied items);
16- Inv # R05-024 – NPFC denies $27.00 in unauthorized copy charges;
17- Inv # R05-025 – NPFC denies $98.25 in unauthorized copy charges;
18- Inv # R05-026 – NPFC denies $81.50 in unauthorized copy charges;
19- Inv # R05-027 – NPFC denies $73.76 in unauthorized copy charges;
20- Inv # R05-028 – NPFC denies $74.50 in unauthorized copy charges;
21- Inv # R05-029 – NPFC denies $67.24 in unauthorized copy charges;
22- Inv # R05-030 – NPFC denies $298.19 which consists of overpayment and unauthorized copy charges;
23- Inv # R05-008 – NPFC denies $10,936.28 which consists of third party invoicing for damage repairs and associated markup on denied repair costs;
24- Inv # R05-031 – NPFC denies $386.96 which consist of cold medicine, no underlying detailed receipts and reduction of markup on denied items;
25- Inv # R05-032 – NPFC denies $61.85 in unauthorized copy charges and a $.02 rounding issue;
26- Inv # R05-033 – NPFC denies $129.60 which consists of missing receipt and reduction of markup on denied item;
27- Inv # R05-035 – NPFC denies $30.00 in unauthorized copy charges;
28- Inv # R05-036 – NPFC denies $40.76 in unauthorized copy charges;
29- Inv # R05-037 – NPFC denies $46.75 in unauthorized copy charges;
30- Inv # R05-038 – NPFC denies $42.50 in unauthorized copy charges;
31- Inv # R05-039 – NPFC denies $35.24 in unauthorized copy chsrges;
32- Inv # R05-045 – NPFC denies $38.75 in unauthorized copy charges.

The NPFC will not itemize all the denied costs here in this Claim Summary Determination but rather will attach the spreadsheets created by the NPFC for each Chadux invoice where the Claimant can see each line item billed, claimed, paid, denied and reason for each denial. All denied costs fall within one of the six categories refrenced above.

OVERALL DENIED COSTS = $169,377.55

VIII. SUMMARY

All costs determined payable included in this determination have been reviewed and determined to be compensable as presented and in accordance with 33 USC §§ 2712(a)(4) and 2713 and the OSLTF claims adjudication regulations at 33 CFR Part 136.203 and 136.205. The costs determined to be payable are for uncompensated removal costs that are determined to be consistent with the National Contingency Plan.

The NPFC hereby determines that the NPFC offers, and the OSLTF is available to pay, **$6,120,304.42** as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # J05003-0023.

AMOUNT: $6,120,304.42

Claim Supervisor: [redacted]

Date of Supervisor's review: ***4/02/13***

Supervisor Action: ***Approved***