

CLAIM SUMMARY / DETERMINATION

Claim Number:	J13014-0001
Claimant:	Alaska Chadux Corporation
Type of Claimant:	OSRO
Type of Claim:	Removal Costs
Claim Manager:	[REDACTED]
Amount Requested:	\$955,485.84

FACTS:

Oil Spill Incident:

On June 30, 2013 at approximately 0700, Sector Anchorage received a report that the 78' F/V LONE STAR had partially sank approximately 3.5 miles north of the mouth of Igushik River, which flows southward from Amanka Lake into the Nushaguak Bay arm of Bristol Bay. The entire river is located within Togiak National Wildlife Refuge and flows through the village of Manoktak, which is known for fishing.

The Lone Star's crew reported to the Coast Guard that the anchor line struck the vessel's transducer while they were anchoring the vessel. While at anchor, the tides swung the vessel around and ripped the transducer and cooling lines out, creating a hole in the steel hull. The vessel took on water, turned onto its side and overturned in 18 feet of water. A good Samaritan vessel, F/V TRADITION, safely recovered all 4 people on board.¹

During an over flight during mid-morning on June 30, 2013, a sheen approximately 300 feet by 20 feet in size was observed discharging from the vessel. At risk was an estimated 14,000 gallons of diesel fuel, 250 gallons of unleaded gasoline, 150 gallons of hydraulic oil, and 150 gallons of lubricating oils located on the vessel at the time of sinking. Sheen from the sunken vessel caused the Alaska Department of Fish and Game (ADF&G) to close the local set-net fishery until the pollution threat was mitigated.

Responsible Party

[REDACTED] own the F/V LONE STAR and are the responsible parties. The RP's authorized representative is The Meredith Management Group, Inc.² The RPs' legal counsel is Mr. [REDACTED] of Pritchett & Jacobson, P.S.³

¹ ICS 209 – CG, DATED 7/17/2013, Prepared by: LT Gangel SR (acting).

² Mr. [REDACTED], Regional Response Manager, Captain [REDACTED] President, and Mr. [REDACTED] VP Operations.

³ Pritchett & Jacobson, P.S. letter to the NPFC dated November 6, 2013.

Claim

The Claimant, Alaska Chadux Corporation (Chadux) made presentment to the RPs on October 2, 2013 via a letter to Meredith Management Group, Inc. requesting that the RP pay the final balance due of \$928,004.33 for removal costs and requested an immediate progress payment of (80%) \$742,403.46 of the balance owed while the final invoice was being reviewed.⁴

The RP denied payment⁵ via a letter stating that on behalf of the Burrece's, they respectfully deny the claim of Alaska Chadux Corporation as set forth in their letter of October 2, 2013 and in any invoices referenced in that letter. The RP's insurance policy limit of \$1,000,000 was exhausted by the expenses associated with the incident.⁶ The insurer is Great American Insurance Group.

On October 25, 2013, Chadux submitted a removal cost claim to the National Pollution Funds Center (NPFC) for reimbursement of their uncompensated removal costs in the original amount of \$928,004.33. On October 25, 2013, the NPFC sent an RP notification letter to Burrece Fisheries, Inc. On October 30, 2013, Mr. ██████████ Counsel for the RP, sent a letter to the NPFC advising that Mr. and Mrs. ██████████ will be submitting a formal claim for limitation of liability under the Oil Pollution Act in the near future, once supporting documentation has been gathered.⁷

On January 9, 2014, Chadux increased its sum certain to \$928,904.59 due to formula errors that the NPFC found in Chadux's spreadsheets, during adjudication, which caused their sum certain to be miscalculated.⁸ The sum certain was increased a second time to \$955,485.84⁹ when the claims manager discovered data missing from the Summary page under the Personnel header in invoice R13-030. The sum certain is comprised of two invoices, invoice R13-018 and invoice R13-030. Chadux's costs include; Personnel, Equipment, Transportation, and Consumables. Each cost category is presented under separate tabs on each invoice and will be discussed under the Analysis section of the Determination.

Description of Removal Activities

The Coast Guard contracted with Magone Marine Services, Inc. to remove the petroleum products off the sunken vessel and with Chadux,^{10 11} to respond to the spill under Basic Ordering Agreements (BOA). However, on July 2, 2013, Chadux secured a contract¹² with the Responsible Parties, ██████████ and their insurance company, Great American Insurance, Co. (Great American) to conduct response activities.

⁴ See letter to Mr. ██████████ from Chadux, dated October 2, 2013.

⁵ See ██████████ letter dated 2013 10 11 to Mr. ██████████ General Manager, Alaska Chadux Corporation.

⁶ See Great American Insurance Group letter dated 2013 09 19.

⁷ See letter to ██████████ Claims Manager dated 2013 10 30.

⁸ See letter to NPFC dated 2014 01 09 requesting a sum certain change.

⁹ See sum certain request email dated 2014 03 05.

¹⁰ Tab 6 in claim file, BOA/Contract # DTCTG89-99-A-68F954, signed and dated June 30, 2013.

¹¹ Tab 5 in claim file, Purchase Order issued to Alaska Chadux Corp, effective July 2, 2013.

¹² Tab 4 in claim file, Standard Response Action Contract (Non-Member Form), signed and dated July 2, 2013.

Chadux's duties as originally identified when hired by the United States Coast Guard under the BOA was to provide support to the lightering and salvage operations in conjunction with providing pollution mitigation. These duties continued under the contract with the Responsible Parties. Chadux supplemented the vessel-based recovery systems with a shore-based collection system. Chadux also handled field staffing and provided transport of all response personnel to and from the remote spill location. Chadux provided absorbent materials, skimming operations and containment boom equipped with navigational lighting as identified in the Unified Command's Incident Action Plans.

Access to the spill site was an issue for the responders due to its remote location and weather conditions; it was accessible only by vessel or helicopter. Chadux chartered two vessels, F/V BROWN DOG¹³ and F/V BULLSEYE¹⁴ to support the response activities. Each vessel had one operator and a Chadux supervisor on board. The F/V BULLSEYE had one crew member and a Chadux supervisor on board. Three responders were required to deploy the VOSS skimming systems on board each boat.

Chadux also hired a helicopter to transport all response personnel and supplies. The helicopter also provided an emergency evacuation outlet. The helicopter was necessary to provide expedited transportation to the field from Dillingham.

On each slack tide, when the divers were working, the response vessels would deploy the 70 meters of fast water boom down current of the spill site and then stand by with the VOSS systems ready to recover spilled product.

While Chadux personnel did work with the RP to develop a response strategy, ultimately Chadux's role in the incident was signed off and approved by the Unified Command in the Incident Action Plans (IAPs). IAP's and POLREPs¹⁵ can be found in the claim file. The July 15 IAP represents the first documentation of the two vessel response system.

APPLICABLE LAW:

Under OPA 90, at 33 USC § 2702(a), each responsible party for a vessel or facility from which oil is discharged, or which poses a substantial threat of a discharge of oil, into navigable waters and adjoining shorelines, as described in Section 2702(b) of OPA 90 is liable for removal costs and damages. 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".

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).

¹³ See Vessel Hire Contract signed and dated on July 4 and 5, 2013.

¹⁴ See Vessel Hire Contract signed and dated on July 9 and 10, 2013.

¹⁵ See POLREPs one through five/Final

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.

With certain exceptions all claims for removal costs or damages shall be presented first to the responsible party or guarantor of the source. 33 U.S.C. 2713(a). If the claim is not settled by any person by payment within 90 days after the date upon which it was presented the claimant may elect to commence an action in court or to present the claim to the Fund. 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. Findings of Facts

1. FOSC coordination was made by USCG Sector Anchorage, who determined that the removal actions were consistent with the NCP.
2. The incident involved 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)(1);
5. Claimant properly presented the claim to the responsible party, who denied payment.
6. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined that the majority of removal costs presented were for actions in accordance with the NCP and that costs for these actions were indeed reasonable and allowable under OPA and 33 CFR § 136.205 as set forth below.

B. Analysis

The NPFC Claims Manager 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 costs were adequately documented and reasonable.

Invoices

Invoice R13-018

This invoice is for Personnel, Equipment, Consumables, and Transportation in the initial amount of \$621,759.40 from June 30, 2013 through July 31, 2013. However, during the adjudication of these costs the NPFC found some formula errors which resulted in a much different final total for this invoice. Not only were there formula errors but the Claimant left the Personnel daily totals off the Summary page which contributed to the wrong sum certain as well. The new sum certain for invoice R13-018 is \$649,083.52. This new total is without formula errors and includes the daily Personnel totals, which is a \$27,324.12 difference. The NPFC approved **\$636,653.45** for Invoice R13-018.

Formula Errors

July 13 Consumable Tab — the total for this day includes lines K27 through K37 however, Chadux’s total only includes lines K29 through K37. According to Chadux, the July 13 Consumable Tab should have totaled \$621.85 however the NPFC’s total, which includes lines K27 through K37 totals, 801.96. This error results in a \$180.11 difference under the consumable tab and caused a daily total difference. Chadux’s daily total, with a formula error, is \$18,712.71. The correct daily total is \$18,892.82.

July 14 Consumable Tab – the total for this day includes lines K27 through K37 however, Chadux’s total only includes lines K30 through K37. According to Chadux, the July 14 Consumable Tab should have totaled \$1,178.82 however the NPFC’s total, which includes lines K27 through K37 totals, \$1,379.46. This error results in a \$200.64 difference under the consumable tab and caused a daily total difference. Chadux’s daily total with a formula error is \$20,699.73. The correct daily total is \$20,900.37.

July 15 Consumable Tab – the total for this day includes lines K27 through K37 however, Chadux’s total only includes lines K30 through K37. According to Chadux, the July 15

Consumable Tab should have totaled \$515.04 however the NPFC's total, which includes lines K27 through K37 totals \$920.45. This error results in a \$405.41 difference under the consumable tab and caused a daily total difference. Chadux's daily total with a formula error is \$23,951.41. The correct daily total is \$24,356.82.

Missing Personnel Data from Summary Page

July 28 – July 31 2013, Chadux left the data out of the Summary page although they submitted invoices and created a daily tab for each of these days.

July 28 Personnel Tab – the NPFC approved \$7,682.29.

July 29 Personnel Tab – the NPFC approved \$6,118.00.

July 30 Personnel Tab – the NPFC approved \$6,287.05.

July 31 Personnel Tab – the NPFC approved \$5,260.68.

General Categories of Denied Costs:

Personnel

June 30 – July 5, 2013 – Chadux charged too much for a Warehouse employee, based on the Penco/Chadux Labor Rates. The NPFC has made adjustments accordingly.

Consumables

- 1) Personal items are not OPA compensable.
- 2) Costs were either approved or denied based on the dinner receipt.
- 3) Missing receipts.
- 4) Non-response related phone charges.
- 5) Costs not breakout out.
- 6) Costs for non response-related items.
- 7) ██████████'s lodging was denied because he does not work for Chadux; he works for the RP. These charges were unsubstantiated; see email dated January 6, 2014.
- 8) Non-OPA meal costs, i.e.,snacks/candy/chips.
- 9) 3-275 gallon tanks – This line item was for a vessel owned by Magone (DOUBLE EAGLE) that ██████████ requested to have on standby. ██████████ does not work for Chadux nor did Chadux have a contract to have the DOUBLE EAGLE on standby. See email from ██████████ dated, January 13, 2014.
- 10) July 20 – Claimant did not provide additional information to show why the room rate was more expensive for this day than the days prior to this date.

Transportation

1. Airfare was denied for ██████████ because he does not work for Chadux.
2. July 16, 2013 – There was no data on this daily tab to adjudicate however there was a total amount of \$516.80 with no backup documentation therefore it was denied. See email dated July 10, 2014.
3. 3-275 gallon tanks – This line item was for a vessel owned by Magone (Double Eagle) that ██████████ requested to have on standby. ██████████ does not work for

Chadux nor did Chadux have a contract to have the DOUBLE EAGLE on standby. See email from [REDACTED] dated, January 13, 2014.

4. Shipping costs for the 275 gallon tanks owned by Magone.

Denied costs are not itemized in this Claim Summary Determination but are described in the attached cost summary spreadsheet created by the NPFC for both invoices. The spreadsheet reflects each item billed, claimed, paid, denied and the reason for approval or denial. All denied costs fall within the information referenced above.

Overall Denied Costs for Invoice R13-018 = \$12,430.07

Invoice R13-030

This invoice is for Personnel, Equipment, Consumables, and Transportation in the initial amount of \$306,244.93 from June 30, 2013 through August 29, 2013. However, during the adjudication of these costs the NPFC found some formula errors which results in a different final total for this invoice. The new sum certain for invoice R13-030 is \$306,402.32. This new total is without formula errors which is a \$137.50 difference. The NPFC approved **\$270,578.27** for Invoice R13-030.

Formula Errors

The Personnel Tab, for each day, is split between the Chadux Personnel and the Penco Personnel. The daily total for the day is derived between the Chadux Personnel costs, which is a subtotal. The second half of the tab is the billing for the Penco Personnel, which is a separate subtotal. Chadux then takes both subtotals, adds them together and generates the daily Personnel total for that given day. However, the NPFC found two separate formula errors with the Chadux Personnel portion on two separate tabs.

August 8 Personnel Tab – the total for Chadux Personnel for this day includes lines U9 through U19 however, Chadux's total only includes lines U9 through U18, creating a subtotal in the amount of \$2,498.95. The NPFC used lines U9 through U19 and generated a subtotal in the amount of \$2,556.45, which is a \$57.50 difference. This data affects the daily total amount. The correct daily total without the formula error is \$5,118.08.

August 13 Personnel Tab – the total for Chadux Personnel for this day includes lines U9 through U19 however, Chadux's total only includes lines U9 through U18, creating a subtotal in the amount of \$2,318.40. The NPFC used lines U9 through U19 and generated a subtotal in the amount of \$2,419.03, which is a \$100.63 difference. This data affects the daily total amount. The correct daily total without the formula error is \$3,304.53.

General Categories of Denied Costs:

Personnel

1. The NPFC approved on Invoice R13-018.
2. Denied Markup based on the denied amount.

Equipment

1. Denied because the cost could not be substantiated. See email dated, February 18, 2014.
2. The original portable shelter blew away. A replacement shelter is not OPA compensable.

Consumables

1. No itemized list provided.
2. No receipt or invoice provided.
3. Proof of payment was not provided.
4. The Fund does not pay for long distance calls.
5. The Fund does not pay for laundry.
6. Not oil related.
7. The Fund does not pay for calling cards.
8. Person does not work for Chadux.
9. The room is listed on the Chadux spreadsheet but not listed on the invoice.
10. The Bristol Inn invoice does not have a conference room listed for this day.
11. Room 213 is not on the invoice.
12. Not an OPA compensable meal.

Denied costs are not itemized in this Claim Summary Determination but are fully described in the attached in the cost summary spreadsheet created by the NPFC for both invoices. The spreadsheet reflects each item billed, claimed, paid, denied and the reason for the approval or denial. All denied costs fall within the information referenced above.

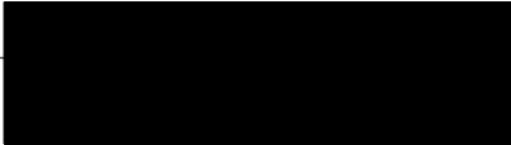
Overall Denied Costs for Invoice R13-030 = \$35,824.05

The NPFC performed a review of the costs presented for invoices R13-018 and R13-030 and has determined that the rates charged were in accordance with the established rate schedule¹⁶ and that the actions taken by all parties responding to the incident were determined by the USCG and the Unified Command to be consistent with the National Contingency Plan (NCP). On that basis, the Claims Manager determines that the NPFC will offer 907,231.72 for this claim as payable from the OSLTF.

¹⁶ See Chadux published rate schedule and Penco published rate schedule.

C. Determined Amount:

The NPFC hereby determines that the OSLTF will offer **\$907,231.72** as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim #J13014-0001. 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 Claimants.

Claim Supervisor: 

Date of Supervisor's review: *4/8/14*

Supervisor Action: *Approved*