

## CLAIM SUMMARY / DETERMINATION

<b>Claim Number:</b>	J13014-0002
<b>Claimant:</b>	Alaska Dept. of Environmental Conservation
<b>Type of Claimant:</b>	STATE
<b>Type of Claim:</b>	Removal Costs
<b>Claim Manager:</b>	[REDACTED]
<b>Amount Requested:</b>	\$18,439.42

### 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, where it 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. Good Samaritan F/V TRADITION safely recovered all 4 people on board.<sup>1</sup>

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 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:

The Responsible Party (RP) is Burrece Fisheries, Inc., owned and operated by Mr. [REDACTED] of Bellingham, Washington. The RP's authorized representative is The Meredith Management Co.<sup>2</sup> The RP's legal counsel is Mr. [REDACTED] of Pritchett & Jacobson, P.S.

#### Claimant:

Claimant is the State of Alaska, Department of Environmental Conservation, the state agency that responded and provided oversight for the incident response.

<sup>1</sup> ICS 209 – CG, DATED 7/17/2013, Prepared by: LT [REDACTED] SR (acting).

<sup>2</sup> Mr. [REDACTED] Regional Response Manager, Captain [REDACTED] President, and Mr. [REDACTED] VP Operations.

*Claim:*

Claimant seeks reimbursement of its uncompensated removal costs in the amount of \$18,439.42 for labor and travel related to the incident response. Claimant alleges that its claimed costs are reimbursable removal costs in accordance with OPA 90.

**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 or upon the navigable waters is liable for removal costs and damages 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 USC § 2701(31).

With certain exceptions all claims for removal costs or damages shall be presented first to the responsible party or guarantor. 33 USC § 2713(a).

If a claim is presented in accordance with subsection (a) of this section and the claim is not settled by any person by payment within 90 days after the date on which the claim was presented the claimant may elect to commence an action in court against the responsible party or guarantor or to present the claim to the Fund. 33 USC § 2713(c)(2).

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 (NCP) 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. A Federal On-Scene Coordinator (FOSC) directed the response to this event, and the State Representative acted as State On-Scene Coordinator (SOSC); as part of the ICS the actions undertaken by the Claimant were consistent with the National Contingency Plan (NCP). 33 U.S.C. §§ 2702(b)(1)(B) and 2712(a)(4);
2. The incident involved a discharge or substantial threat of discharge of oil to "navigable waters."
3. The Claimant is a state and is not required to present its claim to the responsible party before presenting it to the Fund. However, Claimant indicated that it did present its claim to the RP before coming to the Fund.
4. In accordance with 33 CFR § 136.105(e)(12), the claimant has certified that no suit has been filed in court for the claimed costs.
5. In accordance with 33 U.S.C. § 2712(h)(1), the claim was submitted within the six year period of limitations for removal costs.
6. The NPFC Claims Manager reviewed all documentation submitted with the claim and determined that certain costs are allowable under OPA and 33 CFR § 136.205.

#### **B. Analysis:**

NPFC CA reviewed the documentation provided. The review focused on: (1) whether a discharge or substantial threat of a discharge to a navigable waterway occurred; (2) 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 an 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.

In this case, the facts and evidence support a finding that an OPA-incident occurred. The record also supports a finding that most of the claimed costs are compensable under OPA. The CG Incident Action Plan and Pollution Reports list State of Alaska, ADEC personnel as part of the Incident Command System serving as SOSCs. By providing personnel to act as the State On-Scene Coordinator, the State incurred labor expenses for personnel time spent performing state incident oversight. The State also paid for the travel expenses of its SOSC to attend the spill on-scene. NPFC finds that all costs are compensable removal costs as they are defined by OPA with the exception of time spent dealing with the media. The NPFC denies \$322.77 for three hours spent on July 1, 2013, handling press updates and providing photos to television stations; and denies \$99.77 for an hour spent on a television news interview on July 9, 2013. The total of these costs is \$422.54. They are not oil spill removal actions as defined by OPA and must be denied.

Therefore, the NPFC determines that \$18,016.88 is the compensable amount of the claim and offers this amount to the Claimant.

Claim Supervisor:

Date of Supervisor's review: *5/5/14*

Supervisor Action: *Approved*

Supervisor's Comments: