

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: J09011-0002
Claimant	: Water Quality Insurance Syndicate
Type of Claimant	: Corporate
Type of Claim	: Limit of Liability
Amount Requested:	\$1,897,299.99

I. INTRODUCTION

This claim involves costs associated with the removal of oil and mitigation of a substantial threat of oil discharge when the offshore supply vessel MONARCH (MONARCH) sank in the Central Cook Inlet, Alaska. Ocean Marine Services, Inc. (OMSI) owned and operated the MONARCH and was therefore determined to be the responsible party under the Oil Pollution Act, 33 U.S.C.A. 2701 *et seq.* Water Quality Insurance Syndicate (WQIS or Claimant) insured the vessel and paid for oil pollution response costs. WQIS now brings this claim under reconsideration for uncompensated removal costs that exceed the vessel's statutory limit of liability.

II. INCIDENT AND REMOVAL ACTIVITY:

The offshore supply vessel MONARCH allided with the Granite Point Oil Platform in Central Cook Inlet, Alaska at 0545 on January 15, 2009, and discharged oil.¹ The vessel subsequently sank to the bottom of the inlet in approximately 80 feet of water. Approximately 35,000 gallons of diesel fuel and oil were onboard the vessel at the time of the allision.

Upon notification of the incident, OMSI activated their Oil Spill Response Organization (OSRO) Alaska Chadux, who initiated mobilization of pollution removal resources and Incident Management Team to the location. The motor vessel VIGILANT (VIGILANT) was also diverted from a tow in Nikiski and responded to provide assistance. However, by the time the VIGILANT arrived on-scene, the MONARCH was on her side alongside the platform and sinking. A light sheen was observed emanating from the back of the vessel. The MONARCH sank shortly after the arrival of the VIGILANT. Global Diving Services and Stirling Salvage were also contacted and mobilized in anticipation of the complex activities associated with the survey, salvage and removal of oil from the sunken vessel. Global Diving personnel deployed onboard the motor vessel SAND ISLAND (SAND ISLAND) in anticipation of diving on the sunken vessel.²

Attempts to locate the vessel over the next several days were limited due to the strong currents and ice flow. Side scanning sonar operations were conducted off the motor vessel CHAMPION (CHAMPION) as well as the Granite Point platform with limited results. On January 21, 2009, Global Diving personnel on the SAND ISLAND stood down and de-mobilized from the scene. On January 22, 2009, side scanning sonar operations located the MONARCH and determined that the vessel had come to rest on the bottom of Cook Inlet at the base of the Granite Point platform. Recognizing the danger and complexity of continuing response

¹ *See* Disposition of Wreck provided by the Claimant on August 5, 2013, p. M000040-43.

² *See* Disposition of Wreck provided by the Claimant on August 5, 2013, p. M000045-46.

operation in the heavy ice, the Unified Command consisting of CG Sector Western Alaska, AK Department of Environmental Conservation, and OMSI developed, signed and implemented an Ice Season Monitoring Plan (ISMP) which established numerous objectives. The ISMP was scheduled to remain in effect until April, 1 2009.³ The ISMP's objectives included:

- Monitor the stability and status of the vessel;
- Minimize the environmental impact of the incident;
- Platform personnel and service vessels to monitor and report ice conditions and maintain a lookout for any pollution or debris that may be liberated from the wreck;
- Routine flights to monitor for pollution and debris;
- Pollution response equipment and materials to remain staged and available onboard the CHAMPION and at the Offshore Systems Kenai (OSK) facility in Kenai, AK.

For the remainder of January and through the month of February, heavier than normal ice flows severely hampered efforts to better document the position and condition of the MONARCH. An Acoustic Doppler Current Profiler (ADCP) was deployed from the Granite Point platform to measure loads being placed on the hull of the MONARCH and a high resolution multibeam sonar was deployed from the towing vessel GLACIER WIND (GLACIER WIND). On February 18, 2009, the Unified Command reached consensus that the risk of pollution needed to be mitigated prior to any attempts to determine the fate of the wreck. As such, the issue of determining a final plan and ultimate disposition of the MONARCH would remain open pending a comprehensive evaluation after ice conditions permitted an underwater survey and assessment. Side scanning sonar was discontinued and de-mobilized on February 27, 2009.⁴

Ice conditions continued to thwart sonar deployment throughout the month of March and into April. The ISMP was extended through May 1, 2009, when weather and ice condition moderated and Global Diving personnel could commence underwater operations to ascertain damage to the vessel, her position on the bottom of Cook Inlet, and options to mitigate the pollution from the sunken vessel.⁵

On May 1, 2009, Global Diving personnel mobilized and deployed on the SAND ISLAND from Nikiski to evaluate the condition of the MONARCH. Over the next 14 days, Global Diving personnel conducted a total of 34 dives on the wreck and determined the exact position of the wreck; damage incurred to the wreck during its allision and sinking; and a fuel/oil distribution within the wreck. Based upon their fuel/oil distribution assessment, Global Diving personnel estimated that approximately 3550 gallons of diesel fuel/oil were lost from the port fuel oil day tank and port hydraulic oil tank onboard the MONARCH during its allision with the Granite Point platform. But as there was no other apparent damage to any of the remaining fuel tanks onboard the vessel, approximately 31,500 gallons of diesel fuel/oil remained onboard the sunken vessel.⁶

³ *See* Disposition of Wreck provided by the Claimant on August 5, 2013, p. M000057-58.

⁴ *See* Disposition of Wreck provided by the Claimant on August 5, 2013, p. M000061-65.

⁵ *See* Disposition of Wreck provided by the Claimant on August 5, 2013, p. M000068-69.

⁶ *See* Disposition of Wreck provided by the Claimant on August 5, 2013, p. M000073-79.

Defueling operations were scheduled to start during the summer months of 2009. The first phase of defueling involved the utilization of the motor vessel PERSERVERANCE as the operational platform for the defueling. Global Diving mobilized personnel and equipment to the PERSERVERANCE and the PERSERVERANCE departed Nikiski on June 11, 2009, to anchor off the Granite Point platform and begin dive operations. Dive operations began on June 13, 2009, and divers were able to successfully dive on the MONARCH and remove approximately 1,000 gallons of diesel fuel from one of the vessel's fuel tanks. However, the starboard anchor on the PERSERVERANCE dragged and released on the evening of June 13, 2009, which resulted in a near allision with the Granite Point platform. Due to the strong currents and vessel's inability to continually idle its main engines, the PERSERVERANCE was released from further operations and the Unified Command began assessing other vessels better equipped to conduct fuel removal operations from the MONARCH.⁷

The next phase of recovery involved the SAND ISLAND which wouldn't permanently anchor over the wreck but would instead anchor well away from the wreck and shift into location during periods of a slack tide and tie off to the legs of the platform during diver operations. During this phase, Global Diving personnel were tasked with analyzing the best approach to access each of the MONARCH's fuel tanks and make preparations which included:

- Clearing the wreck of entanglement hazards;
- Using underwater burning equipment to cut away bulwarks obstructing access to fuel tank openings;
- Removing MONARCH debris in way of fuel tank openings;
- Cutting away frames and other obstructions limiting access to tank vents and fill pipes.

The SAND ISLAND with Global Diving personnel conducted these operations through July 1, 2009.⁸

The final phase of the recovery involved the landing craft POLAR BEAR (POLAR BEAR) which was determined to be better suited for the conditions as it had a flat bottom, shallow draft and open afterdeck. Global Diving personnel also developed a four point anchoring system for the POLAR BEAR making it better equipped for the strong currents and would prevent anchor release and near misses with the Granite Point platform as experienced by the PERSERVERANCE. Preparations for deployment began on July 19, 2009, and the POLAR BEAR departed for the Granite Point platform on July 29, 2009. The SAND ISLAND joined the POLAR BEAR as it was loaded with oil spill recovery materials and would serve as a secondary oil spill response vessel as well as the dive safety vessel and platform for USCG personnel. The PERSERVERANCE was again engaged as the primary oil spill response vessel. Over the next 12 days, Global Diving personnel dove on the wreck on a three tide dive cycle to remove diesel fuel and oil remaining onboard the MONARCH. In all, a total of 12,445 gallons of diesel fuel and oil were recovered from the vessel, 860 gallons were determined to be unrecoverable and 21,958 gallons were unaccounted for and assumed lost during the sinking of the vessel. With the removal operations complete, the POLAR BEAR departed for her home port of Homer, AK, on

⁷ *See* Disposition of Wreck provided by the Claimant on August 5, 2013, p. M000083-85.

⁸ *See* Disposition of Wreck provided by the Claimant on August 5, 2013, p. M000086-87.

August 13, 2009. All of the diesel fuel and oil recovered from the MONARCH was transferred to a shore facility for recycling and proper disposal.⁹

Final disposition options of the wreck were considered and included removing the wreck intact; removing the wreck in sections; scrapping the wreck in situ; moving the wreck away from the Granite Point platform into deeper water or leaving it in place. After considering all of the risks involved with removing the wreck and confirming that the wreck hadn't moved from its initial resting place next to the base of the Granite Point platform for over a period of 12 months, a recommendation was made to leave the wreck in place.¹⁰ To date, the MONARCH remains at the bottom of Cook Inlet at the base of the Granite Point platform.

III. CLAIMANT AND CLAIM HISTORY

On January 11, 2012¹¹, Claimant submitted a claim to the Oil Spill Liability Trust Fund (OSLTF or the Fund) that was assigned Claim J09011-0001. On behalf of OSMI, Claimant asserted entitlement to the statutory limit of liability, stating that they expended \$2,697,299.99 in uncompensated removal costs. The applicable statutory limitation of liability of the responsible party at the time of the incident was \$800,000.00; therefore, Claimant sought reimbursement of \$1,897,299.99.¹² The NPFC reviewed the documentation submitted by the Claimant in support of the asserted entitlement to a limitation on liability and documentation independently gathered by the NPFC.¹³

On June 30, 2014, the NPFC denied claim J09011-0001 in accordance with 33 U.S.C. § 2704(c)(1)(a) on the grounds Claimant was not entitled to a statutory limitation of liability because the incident was proximately caused by the gross negligence of the responsible party.

On August 11, 2014, the Claimant through its legal representative, Mr. [REDACTED] of Rubin, Fiorella & Friedman LLP, requested reconsideration of claim J09011-0001 via email to Mr. [REDACTED]. Mr. [REDACTED] requested a 90 day extension of time to submit further factual and legal support and rebuttal.¹⁴ On August 12, 2014, the NPFC advised Counsel that he needed to provide the factual or legal grounds for the request in order for the NPFC to properly consider a request for reconsideration.¹⁵ On August 12, 2014 at 4:59pm, Mr. [REDACTED] responded to the NPFC outlining his intention to submit a request for reconsideration. Although in compliance with the governing claims regulation for requesting reconsideration, 33 C.F.R. §136.115(d), the

⁹ See Disposition of Wreck provided by the Claimant on August 5, 2013, p. M000091-95.

¹⁰ See Disposition of Wreck provided by the Claimant on August 5, 2013, p. M0000169-191.

¹² In their original claim submission, the Claimant asserted that they expended \$2,698,159.59 in removal costs before the \$800,000.00 limit of liability and were seeking \$1,898,159.59 in reimbursement. After a mistake in the cost documentation was identified, the Claimant changed their sum certain to \$2,697,299.99 before the \$800,000.00 limit of liability and was seeking \$1,897,299.99 in reimbursement. See email from Claimant to Mr. [REDACTED] NPFC dated July 7, 2017.

¹³ See Claim submitted by WQIS dated January 11, 2012.

¹⁴ See Claimant's initial request for reconsideration dated August 11, 2014.

¹⁵ See NPFC email to Mr. [REDACTED] dated August 12, 2014.

request only included a sampling of the grounds for reconsideration.¹⁶ On August 13, 2014, the NPFC granted the Claimant's request for extension of the deadline to provide a fully supported request for reconsideration. A December 1, 2014 due date was provided to the Claimant.¹⁷ On December 1, 2014, the Claimant sought reconsideration, arguing that the NPFC had misapplied the law as there was no evidence supporting the NPFC determination that the incident was caused by the gross negligence of the responsible party.¹⁸

On May 29, 2015, the Claimant filed a Complaint against the United States of America in the United States District Court of Columbia, seeking a judicial review of the decision and final agency action of the USCG National Pollution Funds Center denying their claim pursuant to the Oil Pollution Act for reimbursement from the Oil Spill Liability Trust Fund for removal expenses paid by the Claimant associated with the oil spill from the MONARCH.¹⁹

On July 21, 2015, the NPFC denied the Claimant's request for reconsideration of claim J09011-0001 on the grounds that under 33 U.S.C. § 2704(c)(1)(a) the Claimant was not entitled to a statutory limitation of liability because the incident was proximately caused by the gross negligence of the responsible party.²⁰

On December 21, 2015, the Claimant filed a Motion for Summary Judgment against the United States of America in the United States District Court of Columbia, Civil Action No. 15-789.²¹ On December 22, 2016, the United States District Court of Columbia granted the Claimant's Motion for Summary Judgment and remanded claim J09011-0001 back to the NPFC for adjudication consistent with its ruling.²²

In response to the court's order, the NPFC commenced adjudication of the claim, assigned it claim number J09011-0002, and treated it as an ordinary removal cost claim. After careful review of Claimant's documents, the NPFC determined that a significant amount of claim J09011-0002 was not supported by adequate documentation, such as work descriptions, dailies, or other third-party, objective evidence demonstrating that the items and personnel billed were related to oil pollution response. Accordingly, on February 24, 2017, the NPFC requested additional information concerning sixteen subject areas of Claimant's submissions. The NPFC gave the Claimant a deadline of April 3, 2017 to address the concerns and to provide the additional information.

¹⁶ *See* Claimant's email outlining factual basis for reconsideration along with a 90 day extension of time to submit official request and supporting documentation dated August 12, 2014.

¹⁷ *See* NPFC email granting extension to submit fully supported request for reconsideration dated August 13, 2014.

¹⁸ *See* Claimant's request for reconsideration dated December 1, 2014.

¹⁹ *See* Claimants Complaint filed with the United States District Court for the District of Columbia Order, Civil Action No. 15-789 dated May 29, 2015.

²⁰ *See* NPFC determination on reconsideration dated July 21, 2015.

²¹ *See* Claimants Motion for Summary Judgment filed with the United States District Court for the District of Columbia Order, Civil Action No. 15-789 dated December 21, 2015.

²² *See* United States District Court for the District of Columbia Order, Civil Action No. 15-789 dated December 22, 2016.

On March 31, 2017, Mr. [REDACTED], the spill manager working on the project and on behalf of Claimant²³, requested a 60 day extension of the deadline. The NPFC denied the request, but advised that Mr. [REDACTED] should provide what he had by the April 3rd deadline, and that he could, on that day, seek an extension if he needed.

On April 3, 2017, Mr. [REDACTED] did request more time and on April 4, 2017, the NPFC granted an extension until May 25, 2017. On May 18, 2017, Mr. [REDACTED] made a third request for an extension. The NPFC granted the request and the new deadline was set for June 25, 2017.

On June 23, 2017, the NPFC requested clarification of some of the information that had been provided to date and as it pertained to Claimant's Invoice Log²⁴, listing all eleven vendors/payees that Claimant had paid over the course of the response and for which it sought reimbursement. NPFC highlighted the specific problems with the documentation as it related to this Invoice Log.

On July 7, 2017, Mr. [REDACTED] answered the NPFC's latest request only in part as he was still awaiting more information. The NPFC advised the Claimant that it was moving forward with full adjudication, but that the Claimant could respond any time with new information up until the time the adjudication was completed. On July 14, 2017, Mr. [REDACTED] provided additional information in support of their claim submission.

IV. INITIAL DETERMINATION

The NPFC reviewed all documentation submitted with the claim which included an analysis of the actual cost invoices and dailies in an effort to determine whether Claimant had shown that it actually incurred the claimed costs. Relying on its review, the NPFC determined that the majority of the claimed costs were reasonable and necessary to mitigate the effects of the incident. Specifically, after analyzing \$2,697,299.99 in claimed costs, the NPFC determined that a total of \$1,832,519.35 were OPA compensable removal costs. The remaining \$864,780.64 were determined not to be compensable as the Claimant failed to demonstrate how those remaining claimed costs satisfied OPA's criteria for compensable removal costs. After deducting the \$800,000.00 statutory limit of liability from the allowable \$1,832,519.35, the NPFC concluded that the OSLTF was eligible to reimburse \$1,032,519.35 to the Claimant.

On August 11, 2017, the NPFC issued a determination on claim J09011-0002 to the Claimant offering \$1,032,519.35 for their OPA compensable removal costs.²⁵ The determination provided a detailed description of the \$864,780.64 in denied costs as well as a cost summary spreadsheet that accounted for every claimed expenditure either approved or denied.

²³ Claimant hired the Maritime Alliance Group Inc. ("MAGI") to conduct spill management services on its behalf. Mr. [REDACTED] oversaw the spill management services for this particular project, and, as will be discussed in greater detail, was NPFC's primary point of contact during the adjudication process.

²⁴ See OSV MONARCH Invoice Log. This document was submitted by Claimant in its initial claim. The Invoice Log included identification of the vendor, the invoice number and date, the amount paid and date paid, and the check number associated with the payment. The total amount on the Invoice Log was \$2,698,159.59 but Claimant's actual claim was \$1,898,159.59 (\$2,698,159.59 less the \$800,000 limit of liability). On July 7, 2017, Claimant amended its sum certain to \$1,897,299.99 due to a mathematical error in one of its cost submissions.

²⁵ See NPFC J09011-0002 determination dated August 11, 2017.

V. REQUEST FOR RECONSIDERATION

On August 29, 2017, the Claimant requested reconsideration of claim J09011-0002 stating that they had discovered additional information that would better support their claim. The Claimant also requested a 45-day extension of time (through October 12, 2017) to collect the newly identified additional information.²⁶ The NPFC granted their extension of time.²⁷

On October 12, 2017, the Claimant provided the following additional information to support costs related to Mr. [REDACTED] and Mr. [REDACTED]:

- a. A declaration from Mr. [REDACTED] dated September 30, 2017, with Exhibits “A”-“D” comprised of corresponding invoices;
- b. Aspen Extended Stay Suites Kenai hotel receipt Folio 56224 for Mr. [REDACTED] for dates June 30, 2009 – July 8, 2009;
- c. Aspen Extended Stay Suites Kenai hotel receipt Folio 56474 for Mr. [REDACTED] from July 15, 2009— July 27, 2009;
- d. Aspen Extended Stay Suites Kenai hotel receipt Folio 57059 for Mr. [REDACTED] for dates August 10, 2009 – August 12, 2009;
- e. Certified Travizon Invoice Receipt #757004 for Mr. [REDACTED] dated August 11, 2009;
- f. Itemized Avis rental car receipt for Mr. [REDACTED] for dates July 8, 2009 – July 27, 2009 (plus non-itemized Avis rental car receipts dated July 8, 2009; July 18, 2009; and July 21, 2009);
- g. Stirling Salvage spreadsheet provided by [REDACTED] of Maritime Alliance Group Inc. (MAGI) documenting Mr. [REDACTED]’s hour’s on-scene, day’s on-scene, out of pocket expenses;
- h. Stirling Salvage Invoice #901-1 dated January 25, 2009 issued to Global Diving & Salvage in the amount £22,500.00;
- i. Stirling Salvage Invoice #901-2 dated February 28, 2009 issued to Global Diving & Salvage in the amount £6,770.50;
- j. Stirling Salvage Invoice #901-3 dated May 31, 2009 issued to Global Diving & Salvage in the amount £39,721.69;
- k. Stirling Salvage Invoice #901-4 dated June 30, 2009 issued to Global Diving & Salvage in the amount £55,848.30;
- l. Stirling Salvage Invoice #901-5 dated July 31, 2009 issued to Global Diving & Salvage in the amount £52,877.12.²⁸

VII. ANALYSIS ON RECONSIDERATION

1. Applicable law

a. Authority to pay removal cost claims.

²⁶ See email from Mr. [REDACTED], WQIS to Mr. [REDACTED] dson, NPFC dated August 29, 2017.

²⁷ See email from Mr. [REDACTED], USCG NPFC to Mr. [REDACTED], WQIS dated August 30, 2017.

²⁸ See email from Mr. [REDACTED], MAGI to Mr. [REDACTED], NPFC dated October 12, 2017.

Under 33 U.S.C. § 2712 (a)(4), the Fund shall be available to the President for the payment of claims for uncompensated removal costs in accordance with 33 U.S.C. § 2713. Additionally, 33 U.S.C. § 2712 (a)(4) limits reimbursement to those removal costs determined by the President to be consistent with the NCP. Removal costs include “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 ...” 33 U.S.C. §2701(31). The term “remove” or “removal” means “containment and removal of oil [...] from water and shorelines or the taking of other actions as may be necessary to minimize or mitigate damage to the public health or welfare, including, but not limited to fish, shellfish, wildlife, and public and private property, shorelines, and beaches.” *Id.* at §2701(30).

OSLTF claims regulations specifically provide what a claimant must show in order to obtain reimbursement for removal costs. Before OSLTF reimbursement can be authorized, the claimant must show that “the actions taken were necessary to prevent, minimize, or mitigate the effects of the incident” and that “the removal costs were incurred as a result of these actions”.²⁹ A removal cost claimant must also show “[t]hat the actions taken were determined by the FOSC to be consistent with the National Contingency Plan or were directed by the FOSC.”³⁰

The regulations also control how much OSLTF compensation is allowable for a removal cost claim. Only reasonable and uncompensated removal costs can be reimbursed. The applicable regulation explains:

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.³¹

Accordingly, the Claimant must show that the specific costs claimed were incurred as a result of “removal actions” under OPA and the claims regulations at 33 CFR 136 (e.g., actions to prevent, minimize, mitigate the effects of the incident). Claimant must also show that the costs were reasonable and uncompensated.

b. The NPFC adjudication process for payment of removal cost claims.

When adjudicating claims against the OSLTF, the NPFC utilizes an informal process controlled by 5 U.S.C. § 555.³² As a result, 5 U.S.C. § 555 (e) requires the NPFC to provide a

²⁹ 33 C.F.R. § § 136.203 (a) and (b).

³⁰ 33 C.F.R. § 136.203 (c).

³¹ 33 C.F.R. § 136.205.

³² The court in *Bean Dredging, LLC v. United States*, 773 F. Supp. 2d 63, 75 (D.D.C. 2011), characterized the informal adjudication process for OSLTF claims with the following: “[W]hile the OPA allows responsible parties to present a claim for reimbursement to the NPFC, they do not confer upon such parties a right to a formal hearing, a right to present rebuttal evidence or argument, or really any procedural rights at all, *see* 33 U.S.C. §§ 2704, 2708,

brief statement explaining the basis for a denial. This determination is issued to satisfy that requirement.

During the adjudication of claims against the Fund, the NPFC acts as the finder of fact. In this role the NPFC considers all relevant evidence and weight its probative value when determining the facts of the claim. If there is conflicting evidence in the record, the NPFC will make a determination as to what evidence is more credible or deserves greater weight, and finds facts based on the preponderance of the evidence.

c. Request for Reconsideration

Once an adjudication has been made, the claimant may request reconsideration of the initial determination. The request for reconsideration must be in writing and include the factual or legal grounds for the relief requested, providing any additional support for the claim.³³ When analyzing a request for reconsideration, the NPFC performs a *de novo* review of the entire claim submission, including new information provided by the claimant in support of its request for information. The NPFC provides a written notification of the decision within 90 days after receipt of the request for reconsideration. This written decision is final.³⁴ If the claimant fails to accept the settlement offer provided in the written decision within 60 days after it was mailed to claimant, this settlement offer will be automatically void. The NPFC's Director reserves the right to revoke this settlement offer at any time.³⁵

2. The determination on reconsideration.

The NPFC's August 11, 2017 determination described in detail the Claimants' burden of proving their claim against the OSLTF under 33 U.S.C. § 2708. Specifically, the NPFC's August 11, 2017 determination concluded that the Claimant satisfied their burden on the issue of limited liability and entitlement to certain allowable pollution removal costs as determined by the NPFC. That discussion is incorporated by reference, and will not be repeated herein. Thus, the central focus of the determination on reconsideration is whether Claimant has provided satisfactory evidence to support compensation for those costs that were previously denied.

During the adjudication of this claim on reconsideration, the NPFC considered Claimant's initial submissions as well as its additional information submitted in support of the request for reconsideration. Claimant's additional information, however, only represented and supported a portion of the costs the NPFC previously denied. Accordingly, any cost previously denied and not addressed in the additional information, remain denied. The additional information provided by the Claimant is addressed below.

Declaration of Mr. [REDACTED]

2713, an entirely unremarkable fact given that Congress' overarching intent in enacting the OPA was to 'streamline' the claims adjudication process"

³³ 33 C.F.R. §136.115(d).

³⁴ 33 C.F.R. §136.115(d).

³⁵ 33 C.F.R. 136.115 (b). *See also, Smith Property Holdings v. United States*, 311 F.Supp.2d 69, 83 (D.D.C. 2004).

Mr. [REDACTED] was an attorney retained by the Claimant to represent its pollution interests in the Nikiski Command Post and to ensure proper resources were available for the pollution response associated with the sinking of the MONARCH. Mr. [REDACTED] addressed his response activities while working at the Nikiski Command Post from January 15, 2009 – January 21, 2009 and provided both travel and lodging receipts in support of his billed expenditures.

After reviewing his declaration and travel receipts, the NPFC approves the following costs:

- travel totaling \$1,860.00 for January 15 and 16, 2009;
- Hourly rate for work in the Command Post totaling \$2,060.00 for January 18 and 22, 2009;
- and the travel and lodging costs totaling \$1,899.96 as supported by his travel receipts.

However, personnel costs in the amount of \$487.51 are denied. These costs include researching the Alaskan Administrative Codes for possible penalties on January 23, 2009, discussing manifests with the hull surveyor, and food receipts on January 29, 2009.³⁶ Mr. [REDACTED]'s investigation into Alaska's penalties does not constitute "removal costs", as this work has nothing to do with the containment and removal of oil. Nor does it pertain to minimizing or mitigating damage to the public health or welfare. Rather, this work likely pertains to investigation and/or legal work on issues of pollution liability. Similarly, the evidence regarding Mr. [REDACTED] "discussion with hull surveyor" concerning manifests is inadequate. The invoice has only a one line reference to this discussion and no details as to manifesting, etc. In fact, the discussion occurred in January, but disposal did not actually begin until May 2009. Finally, Claimant did not provide itemized food receipts for some of Mr. [REDACTED]'s meal expenses, and those items are therefore denied.

Mr. [REDACTED] also attested to the pollution removal activities of Mr. [REDACTED], of Alaska Chadux who served as the Section Planning Chief in the Incident Command, from January 16, 2009 – January 20, 2009. Mr. [REDACTED] questioned the denial of Mr. [REDACTED]'s personnel charges totaling \$2,645.61 during this time period. The NPFC referred back to Alaska Chadux Invoice R09-001 and verified that all of Mr. [REDACTED]'s time from January 15, 2009 – January 20, 2009 had previously been approved by the NPFC.

It appears that Mr. [REDACTED] confused his dates and Alaska Chadux invoices. Specifically, the NPFC had denied \$2,645.61 on the Alaska Chadux invoice R09-016 for dates May 26, 2009 – June 1, 2009. The denied costs consisted of personnel charges for Mr. [REDACTED] totaling \$2,375.00 for his role as Planning Chief; \$237.50 in administrative costs associated with the denied personnel costs; and \$33.11 in meal costs. Mr. [REDACTED] was not in the Command Center to attest to Mr. [REDACTED]'s pollution removal activities from May 26, 2009 – June 1, 2009. Thus, Claimant has still failed to provide additional information to support these costs, and the costs remain denied.³⁷

³⁶ See [REDACTED] Invoice #020309 as a tab on the NPFC master cost summary spreadsheet for better detail.

³⁷ See Alaska Chadux Invoices #R09-001 and R09-016 as tabs on the NPFC master cost summary spreadsheet for better detail.

There are 5 additional [REDACTED] invoices associated with this claim that were not addressed by either Mr. [REDACTED] in his declaration or by the Claimant with additional information. As such, any costs associated with these invoices and denied by the NPFC in the August 11, 2017 determination remain denied on reconsideration.³⁸

Stirling Salvage Invoices, Travel Receipts and Spreadsheet:

According to the Stirling Salvage invoices submitted by the Claimant, Global Diving & Salvage hired Stirling Salvage Limited to provide professional services relating to the sinking of the MONARCH. Mr. [REDACTED] was the Salvage Master responsible for the oversight of the diving operations on the MONARCH and the person who generated the Global Diving's Fuel Recovery Operation daily reports.

The Claimant provided a Stirling Salvage spreadsheet that documented Mr. [REDACTED]'s actual work hours and days, and his time on-scene. This spreadsheet along with Global Diving's Fuel Recovery Operations progress reports and daily logs were used by the NPFC to better evaluate Mr. [REDACTED]'s role and day's on-scene during the response. In addition, the Claimant provided additional invoices to support the charges associated with Captain [REDACTED]'s work. It is important to note that the Claimant never mentioned or referred the NPFC back to the Global Diving documentation previously provided where the Fuel Recovery Operational progress reports were provided. In the NPFC's attempt to piece together Mr. [REDACTED]'s activities, it sought to locate more amplifying information to assist in the approval of Mr. [REDACTED]'s costs on reconsideration and as such, the progress reports were helpful to the NPFC in determining by a preponderance of the evidence that the amounts approved on reconsideration are adequately supported by the record. Using all available information, the NPFC addresses the costs associated with Stirling Salvage, and adjudicates those costs as follows:

- a. Airline travel invoice #757004 in the amount of \$6,450.90 dated August 11, 2009 is approved;³⁹
- b. Aspen Extended Stay Suites Kenai hotel receipt Folio 56224 in the amount of \$1,383.30 for dates June 30, 2009-July 8, 2009 is approved;⁴⁰
- c. Aspen Extended Stay Suites Kenai hotel receipt Folio 56474 in the amount of \$1,517.92 for dates July 19, 2009-July 27, 2009 is approved;⁴¹
- d. Aspen Extended Stay Suites Kenai hotel receipt Folio 57059 in the amount of \$315.88 for dates August 10, 2009 – August 12, 2009 is approved;⁴²
- e. Costs in the amount of \$2,064.76 approved for two of the Avis car rental charges but the third charge in the amount of \$543.01 is denied as it appears that it encompasses dates that Mr. [REDACTED] was not present for the MONARCH response;⁴³

³⁸ See [REDACTED] Invoices #073009, 102009, 052010, 072610 and 102210 as tabs on the NPFC master Cost summary spreadsheet for better detail.

³⁹ See Global Diving & Salvage Invoice 0113568 as a tab on the NPFC master cost summary spreadsheet for better detail.

⁴⁰ See Global Diving & Salvage Invoice 0113431 as a tab on the NPFC master cost summary spreadsheet for better detail.

⁴¹ See Global Diving & Salvage Invoice 0113431 as a tab on the NPFC master cost summary spreadsheet for better detail.

⁴² See Global Diving & Salvage Invoice 0113568 as a tab on the NPFC master cost summary spreadsheet for better detail.

⁴³ See Global Diving & Salvage Invoice 0113431 as a tab on the NPFC master cost summary spreadsheet for better detail.

- f. Costs in the amount of \$38,391.60 are approved for Stirling Salvage Invoice #901-1 dated January 25, 2009 issued to Global Diving & Salvage;⁴⁴
- g. Costs denied for Stirling Salvage Invoice #901-2 dated February 28, 2009 issued to Global Diving & Salvage in the amount £6,660.50. Specifically, the dates on the invoice range from January 25, 2009 – February 28, 2009 and there is nothing in the record that demonstrates or supports the OPA allowable pollution removal activities of Mr. [REDACTED] on those dates;
- h. Costs in the amount of \$55,361.32 are approved for Stirling Salvage Invoice #901-3 dated May 31, 2009 issued to Global Diving & Salvage in the amount £39,721.69;⁴⁵
- i. Costs in the amount of \$81,919.58 approved from Stirling Salvage Invoice #901-4 dated June 30, 2009 issued to Global Diving & Salvage in the amount £55,848.30;⁴⁶
- j. Costs in the amount of \$80,640.00 approved from Stirling Salvage Invoice #901-5 dated July 31, 2009 issued to Global Diving & Salvage in the amount £52,877.12;⁴⁷
- k. Costs in the amount of \$49,920.00 approved from Stirling Salvage Invoice #901-6 dated August 31, 2009 issued to Global Diving & Salvage in the amount £31,005.94.⁴⁸

VIII. CONCLUSION

After reviewing the additional information submitted by the Claimant and conducting a *de novo* review of the entire claim submission, the NPFC determines that the OSLTF will offer \$1,297,453.43 in compensation for the OPA-reimbursable removal costs incurred by the Claimant and submitted to the NPFC under reconsideration for claim # J09011-0002.

AMOUNT: \$1,297,453.43

Claim Supervisor: [REDACTED]

Date of Supervisor's review: *11/29/2017*

Supervisor Action: *Approved*

⁴⁴This invoice was in the amount £22,500.00. During audit, the Claimant applied an exchange rate of \$3,199.30 a day for services provided. When adjudicating this claim, the NPFC used the same exchange rate. See Global Diving & Salvage Invoice 0112253 on the OMSI Sub 2 on the NPFC master cost summary spreadsheet for a detailed breakdown of costs approved and costs denied.

⁴⁵ During audit, the Claimant applied an exchange rate of \$3,200.00 a day and \$251.46 an hour for services provided. When adjudicating this claim, the NPFC used the same exchange rates. See Global Diving & Salvage Invoice 0113094 as a tab on the NPFC master cost summary spreadsheet for detailed breakdown of costs approved and costs denied.

⁴⁶ During audit, the Claimant applied an exchange rate of \$3,200.00 a day and \$244.08 an hour for services provided. When adjudicating this claim, the NPFC used the same exchange rates. See Global Diving & Salvage Invoice 0113191 as a tab on the NPFC master cost summary spreadsheet for detailed breakdown of costs approved and costs denied.

⁴⁷ During audit, the Claimant applied an exchange rate of \$3,200.00 a day and \$254.34 an hour for services provided. When adjudicating this claim, the NPFC used the same exchange rate. See Global Diving & Salvage Invoice 0113431 as a tab on the NPFC master cost summary spreadsheet for a detailed breakdown of costs approved and costs denied.

⁴⁸ During audit, the Claimant applied an exchange rate of \$3,200.00 a day and \$245.90 an hour for services provided. When adjudicating this claim, the NPFC used the same exchange rate. See Global Diving & Salvage Invoice 0113568 as a tab on the NPFC master cost summary spreadsheet for a detailed breakdown of costs approved and costs denied.