CLAIM SUMMARY / DETERMINATION

Claim Number:	S18010-0001
Claimant:	GEICO Marine Insurance Company
Type of Claimant:	Corporation
Type of Claim:	Property Damage
Claim Manager:	[redacted]
Amount Requested:	$3,765.05

<u>FACTS</u>:

On January 18, 2018, an oil discharge was discovered in the vicinity of a pier west of Cannery Pier Hotel and Spa at 10 Basin Street, Astoria, Oregon. The discharge emanated from a 16' X 6' oil tank beneath the hotel's pier on the Columbia River, a navigable water of the U.S.

The oil spill was reported to the United States Coast Guard and Sector Columbia River personnel responded. The oil escaped the tank and migrated west toward the West End Mooring Basin marina, and eastward along the shoreline. Containment booms were placed to prevent migration of the oil, but the oil affected vessels and shorelines in the vicinity of the Cannery Pier Hotel.

The Cannery Pier Hotel assumed initial responsibility as a "responsible party" for the spill.

<u>CLAIMANT:</u>

The Claimant, GEICO Marine Insurance Company (GEICO) is the subrogated insurer of a 41' sailboat that was damaged by the oil spill.

<u>CLAIM:</u>

GEICO seeks reimbursement of the value of the damage to the boat, four fenders, one buoy, and dock lines that were damaged by the oil. GEICO seeks the estimated value of the total damages in the amount of $3,765.05.

<u>APPLICABLE LAW</u>:

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.

"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.

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.

Damage claims must be presented within 3 years after the date on which the injury and its connection with the discharge in question were reasonably discoverable with the exercise of due care. 33 U.S.C. §2712(h)(2).

Under 33 CFR 136.105(a) and 136.105(e)(6), the claimant bears the burden of providing all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim.

The pertinent provisions of the regulations specifically relating to property damage claims follow:

33 CFR §136.213 Authorized claimants.
(a) A claim for injury to, or economic losses resulting from the destruction of, real or personal property may be presented only by a claimant either owning or leasing the property.
(b) Any claim for loss of profits or impairment of earning capacity due to injury to, destruction of, or loss of real or personal property must be included as subpart of the claim under this section and must include the proof required under §136.233.

33 CFR §136.215 Proof.
(a) In addition to the requirements of subparts A and B of this part, a claimant must establish—
(1) An ownership or leasehold interest in the property;
(2) That the property was injured or destroyed;
(3) The cost of repair or replacement; and
(4) The value of the property both before and after injury occurred.

33 CFR §136.217 Compensation allowable.
(a) The amount of compensation allowable for damaged property is the lesser of—
(1) Actual or estimated net cost of repairs necessary to restore the property to substantially the same condition which existed immediately before the damage;

(2) The difference between value of the property before and after the damage; or
(3) The replacement value.

DETERMINATION:

GEICO claimed $3,765.05 for damages to its insured's sailboat and accessories. GEICO is eligible to submit this claim because it paid its insured for damages that resulted from this OPA incident and is, thus, subrogated to the damaged third party's claim.

To support this claim, GEICO provided the Certificate of Documentation showing its insured owned the property. GEICO also provided a surveyor's report, which described the damages and included an estimate of the value of the damages. Further, GEICO provided photographs of the damage. The surveyor's report and the photographs both show oil damage to the claimed property. Coast Guard records of the damaged vessels in the spill location list the insured's vessel and the damaged property as being oiled. Thus, NPFC finds that the third party's property was damaged by the OPA-oil discharge.

With regard to valuation of the damages, the surveyor provided GEICO with estimates for the repair work, supplies, and haul-out, and attached Port of Astoria and Englund Marine written estimates supporting his valuation of these items. In turn, GEICO provided these to the NPFC. In addition to the repair cost estimates, GEICO provided replacement values and the difference in value before and after the injury to the property. GEICO has thus proven the damage and valuations sufficiently to satisfy the proof requirements of the regulations.

Regarding the amount paid by GEICO, the OSLTF may only reimburse the lesser of the cost of repair, replacement value, or the difference between the value of the property before and after the damage. The repair value of the sailboat included the costs to haul out, prep the hull and re-paint the damaged portion and totaled $3,389.68. The estimated value of the boat was $75,000 prior to the damage and was $71,234.95 after the damage leaving a difference of $3,765.05.[1] The replacement value prior to the damage was $75,000. Therefore, the NPFC finds the allowable valuation of the boat damage to be $3,389.68.

As for the fenders, buoy and lines, GEICO provided information showing that they were two years old when the oil damaged them. GEICO paid the insured $375.37 for their replacement. $238.75 was the cost for the fenders and buoy and $136.62 was the cost for the lines. The repair cost would be higher to attempt to remove the oil and staining from these items. The difference in value is the depreciated replacement cost since the items had no residual value when covered in oil and they had to be removed from the water and likely disposed during the response. GEICO showed that the fenders and buoy had a useful life of 12 years. GEICO estimated the life span of the lines to be 6 years, but provided no basis for this estimation. NPFC contacted Englund Marine to find out the estimated life of the lines and Englund Marine stated that the lines would have a life expectancy of approximately 4 years.[2] Based on the documentation provided by GEICO, NPFC finds that the fenders and buoy had about 10 years out of 12 years total useful life left in them. Based on the fact that the claimant obtained the replacement estimate from Englund Marine and Englund Marine, as the seller, provided an estimate of the

[1] BoatUS insurance policy BUS5363020-00 - Declarations Page dated 07/14/2017
[2] June 18, 2018 email from Englund Marine.

rope's service life, the NPFC finds Englund's service life estimate more reliable and believes that the ropes had two years of the four years total useful life left when they were damaged. Thus, the NPFC valued the fenders and buoy at 5/6 of the replacement cost or $198.96, and the value of the lines at 1/2 of their replacement cost or $68.31. The NPFC approves $267.27 for reimbursement for the fenders, buoy and lines as it is the difference in value before and after the damage and represents the lowest value under the regulations. The remaining claimed amount of $108.10 related to these items is denied.

Part of the claimed amount includes the insured's deductible of $750.00, which GEICO withheld and did not pay. This amount is not a subrogated amount to which GEICO may be entitled and is denied.

Therefore, the NPFC approves $2,906.95, which represents the reimbursable amount paid for the insured's boat, fenders, buoy and lines. These values are approved because they represent the lowest of the allowable costs in accordance with the claims regulations. The remaining $858.10 covering $750.00 for the unpaid deductible plus the $108.10 for the reduction in the other property is denied.

The NPFC determines that GEICO should be paid $2,906.95 of the amount claimed.

Claim Supervisor: [redacted] [redacted]

Date of Supervisor's review: 6/19/2018

Supervisor Action: ***Approved***

Supervisor's Comments: