

CLAIM SUMMARY / DETERMINATION on RECONSIDERATION

Claim Number:	J17008-0001
Claimant:	Samson Tug & Barge with Subrogated Insurers
Type of Claimant:	RP
Type of Claim:	Limit of Liability
Claim Manager:	(b) (6) (b) (6)
Amount Requested:	\$2,975,404.19
Action Taken:	Offer in the Amount of \$2,880,730.07

EXECUTIVE SUMMARY:

On April 19, 2017, the tug POWHATAN sank at its berth at the Samson Tug & Barge dock, Sitka, AK, and released oil into the Starrigavan Bay, a navigable waterway of the United States.¹ The discharge of oil was reported to the U.S. Coast Guard (CG) National Response Center.² Samson Tug and Barge Company, Inc. (Samson), the owner and operator of the POWHATAN, arrived on-scene and assumed responsibility for the incident. Samson hired Southeast Alaska Petroleum Research Organization (SEAPRO) to conduct the pollution removal activities and Alaska Commercial Divers (ACD) to conduct diving and salvage operations.³ On June 14, 2017, the POWHATAN was removed from Starrigavan Bay and placed onto a deck barge where it was secured and drained of all liquids. Once the oil was removed, the CG Federal On-Scene Coordinator (FOSC) determined that the POWHATAN no longer posed a substantial threat to discharge oil into a navigable waterway of the United States.⁴ Great American Insurance Company provided oil pollution insurance⁵ while other underwriters provided protection & indemnity insurance for the vessel.⁶ Samson and their subrogated insurers (Claimants) submitted a claim for entitlement to limited liability⁷ to the CG National Pollution Funds Center (NPFC). Claimants sought reimbursement of removal costs incurred in excess of the limit of liability under 33 U.S.C. § 2704. Under the OPA, the limit of liability applicable to the POWHATAN was \$939,800.00. Claimants initially contended that they incurred \$3,829,604.08 in removal and natural resource damage costs. As a result, Claimants sought a total of \$2,889,804.08 as compensation for their removal and natural resource damage costs incurred in excess of the limit.⁸ The NPFC thoroughly reviewed all documentation submitted with the claim, analyzed the applicable law and regulations, and concluded that Claimants demonstrated

¹ Coast Guard Pollution Report Message (CG POLREP/CG-SITREP-POL) 1 DTG P 250114Z Apr 2017.

² CG National Response Center Report # 1176144 dated on April 19, 2017.

³ CG-SITREP-POL 1 DTG P 250114Z Apr 2017.

⁴ CG SITREP-POL 7 (F) DTG 162000Z Jun 2017.

⁵ Great American Insurance Company policy #OHM 3492755 14 issued to Samson Tug and Barge via Venneberg Insurance, Inc. effective June 1, 2016, page 15. The per occurrence limit as set forth in the policy for an oil spill incident was \$5,000,000.00.

⁶ Policy of Insurance #VI 1611 issued by Navigators Insurance Company (35%), Liberty International Underwriters (10%), Zurich North America (20%), New York Marine & General Insurance Company (15%) and Travelers Insurance (20%) to Samson Tug and Barge via Venneberg Insurance, Inc. effective June 1, 2016, pages 1-2. The per occurrence limit as set forth in the policy for protection and indemnity was \$1,000,000.00.

⁷ See, 33 U.S.C. § 2704.

⁸ Claim submission cover page dated April 29, 2019 with a sum certain identified as \$2,799,357.79. See also, email from Claimant to NPFC dated September 5, 2019, citing their payment of a CG issued invoice in the amount of \$85,848.79 and amending their sum certain to include payment of that invoice to \$2,885,206.58. See also, email from Claimant to NPFC dated October 29, 2019, citing to their payment of two additional contractor invoices totaling \$4,597.50 and amending their sum certain to include the payment of those invoices to \$2,889,804.08.

an entitlement to limited liability. Additionally, the NPFC determined that removal costs totaling \$2,727,526.71 in removal costs in excess of the limit of liability were compensable and offered this amount as full and final compensation of this claim⁹ under the Oil Pollution Act (OPA).¹⁰ On February 21, 2020, the NPFC received the Claimants' timely request for reconsideration.¹¹

Requests for reconsideration are considered *de novo*. The NPFC has thoroughly reviewed the original claim, the request for reconsideration, all information provided by the Claimants, information it obtained independently, and the applicable law and regulations. Upon reconsideration, the NPFC concludes that the facts established within the NPFC's initial determination as well as information provided by the Claimants within their request for reconsideration support the Claimants' request for reconsideration and offers to reimburse the Claimants \$2,880,730.07 for uncompensated removal costs incurred as a result of the oil spill incident, as outlined in the original determination and below.

I. CLAIM HISTORY:

On April 29, 2019, the Claimants presented a claim for entitlement to limited liability to the NPFC for \$2,889,804.08.¹² The NPFC thoroughly reviewed the original claim, all information provided by the Claimants or obtained independently, the relevant statutes and regulations, and ultimately determined that \$2,727,526.71 of the \$2,889,804.08 was compensable and denied the remainder of the claimed costs.¹³ The NPFC's initial determination is hereby incorporated by reference.

On February 21, 2020, the NPFC received the Claimants' timely request for reconsideration.¹⁴

II. REQUEST FOR RECONSIDERATION

The regulations implementing OPA require requests for reconsideration of an initial determination to be in writing and include the factual or legal grounds for the relief requested, along with any additional support for the claim. The claimant has the burden of providing all evidence, information, and documentation deemed necessary by NPFC to support the claim. When analyzing a request for reconsideration, the NPFC performs a *de novo* review of the entire claim submission, including any new information provided by the Claimant in support of its request for reconsideration. The written decision by the NPFC is final.

⁹ 33 CFR 136.115.

¹⁰ 33 U.S.C. § 2703(a) and 33 U.S.C. § 2704(a).

¹¹ Letter from Claimants to the NPFC dated February 21, 2020, requesting reconsideration of the NPFC's determination dated January 16, 2020.

¹² Claim submission cover page dated April 29, 2019 with a sum certain identified as \$2,799,357.79. *See also*, email from Claimant to NPFC dated September 5, 2019, citing their payment of a CG issued invoice in the amount of \$85,848.79 and amending their sum certain to include payment of that invoice to \$2,885,206.58. *See also*, email from Claimant to NPFC dated October 29, 2019, citing to their payment of two additional contractor invoices totaling \$4,597.50 and amending their sum certain to include the payment of those invoices to \$2,889,804.08.

¹³ NPFC determination issued to Samson Tug & Barge with subrogated insurers dated January 16, 2020.

¹⁴ Letter from Claimants to the NPFC dated February 21, 2020, requesting reconsideration of the NPFC's determination dated January 16, 2020.

On February 21, 2020, the Claimants submitted a timely request for reconsideration and provided information in support of costs denied by the NPFC totaling \$70,598.09.¹⁵ In addition, the Claimants submitted additional uncompensated removal cost invoices and proof of payment for costs that were not previously submitted within their original claim submission totaling \$85,600.11.¹⁶ The Claimants described these costs as incurred for services provided during their response to the POWHATAN and requested that the NPFC consider these additional uncompensated removal costs when adjudicating their claim on reconsideration.¹⁷ The Claimants also amended their sum certain to \$2,975,404.19 to include the addition of these new removal costs.¹⁸ The NPFC determined that it will consider these additional costs within the scope of the original claim. The consideration of removal costs previously denied and contested upon reconsideration as well as the removal costs presented as new are addressed in the NPFC's Analysis on Request for Reconsideration section below.

III. ANALYSIS ON REQUEST FOR RECONSIDERATION:

The regulations implementing OPA require requests for reconsideration of an initial determination to be in writing and include the factual or legal grounds for the relief requested, along with any additional support for the claim in accordance with our governing claims regulations at 33 CFR 136.115(d).

The NPFC has thoroughly reviewed and considered the Claimants' request for reconsideration and because the claimant has met its burden, finds the following previously denied costs, reimbursable, as described below.

1. NPFC Initial Determination - Charges in the amount of \$48,062.23 for State of Alaska Department of Environmental Conservation (ADEC) personnel were denied because the labor rates were not supported. As all ADEC personnel costs were denied, all ADEC charges in support of ADEC personnel were also denied.

Claimants' Response - The Claimants provided hourly pay tables for ADEC personnel, along with itemized receipts to document ADEC's travel and expenses and seek reimbursement of costs denied by the NPFC within their original determination.¹⁹

NPFC Determination upon Reconsideration - ADEC personnel and travel costs in the amount of \$48,061.77 are approved. The Claimants properly supported the costs upon

¹⁵ Within their request for reconsideration, the Claimants seek reconsideration of certain costs denied by the NPFC. Specifically, the Claimants seek reconsideration of ADEC costs totaling \$48,062.23, Polaris costs totaling \$21,110.86 and O'Brien's costs totaling \$1,425.00. These costs total \$70,598.09.

¹⁶ Within their request for reconsideration, the Claimants seek reimbursement for uncompensated removal costs not previously submitted within their original claim submission. Specifically, the Claimants seek reimbursement for Meredith Management costs totaling \$14,539.36, SEAPRO costs totaling \$67,385.75, and O'Brien's costs totaling \$3,675.00. These costs total \$85,600.11.

¹⁷ Letter from Claimants to the NPFC dated February 21, 2020, requesting reconsideration of the NPFC's determination dated January 16, 2020.

¹⁸ Email from the Claimants to the NPFC dated March 2, 2020. For reference, \$2,889,804.08 + \$85,600.11 = \$2,975,404.19.

¹⁹ Letter from Claimants to the NPFC dated February 21, 2020, requesting reconsideration of the NPFC's determination dated January 16, 2020. *See also* ADEC personnel hourly pay tables for FY16, FY17 and FY18 provided as Exhibit 1 to the Claimants request for reconsideration. *See also*, ADEC itemized receipts provided by the Claimants on March 3, 2020.

reconsideration by providing hourly pay tables and itemized receipts. The \$0.46 that remains denied represents an unidentified difference between what was claimed and what was provided by the Claimants upon reconsideration.

2. NPFC Initial Determination - Charges in the amount of \$21,109.91 for Polaris Applied Sciences personnel and travel expenses specific to Polaris invoices 4142 and 4151 were denied because the Claimants failed to properly support the costs as uncompensated removal costs.

Claimants' Response - The Claimants provided a signed declaration from Mr. (b) (6), Polaris Applied Sciences, in which he described the allocation of time and services provided by Polaris personnel specific to Polaris invoices 4142 and 4151 as uncompensated removal costs. The Claimants seek reimbursement in the amount of \$21,110.86 for these costs.²⁰

NPFC Determination upon Reconsideration - Polaris Applied Sciences personnel and travel costs in the amount of \$21,109.91 are approved. The Claimants properly identified and supported the removal costs associated with Polaris invoices 4142 and 4151 by submitting a signed declaration by Mr. (b) (6) in which he described the allocation of time and services dedicated to removal operations. The \$0.95 that remains denied represents an unidentified difference between what was claimed and what was provided on reconsideration.

3. NPFC Initial Determination – Charges in the amount of \$1,425.00 for O'Brien's Response Management (O'Brien's) personnel costs were denied as the Claimants did not provide an O'Brien's rate schedule in support of these costs.

Claimants' Response – The Claimants provided an O'Brien's rate schedule and seek reimbursement of costs denied by the NPFC.²¹

NPFC Determination upon Reconsideration – O'Brien's personnel costs in the amount of \$1,425.00 are approved. The Claimants provided an O'Brien's rate schedule with their request for reconsideration.

In addition, the NPFC has thoroughly reviewed and considered the Claimants removal costs submitted as new within their request for reconsideration and find the following costs reimbursable as described below.

1. Costs Submitted as New – The Claimants seek reimbursement for retainers applied to Meredith Management Group (Meredith) invoices totaling \$14,539.36. Specifically, the Claimants provided evidence that Meredith was under contract with Great American and received an annual credit retainer in the amount of \$100,000.00 paid semiannually (\$50,000.00 every six months). Per the terms of this contract, Meredith agreed to bill

²⁰ Letter from Claimants to the NPFC dated February 21, 2020, requesting reconsideration of the NPFC's determination dated January 16, 2020. See also declaration prepared by Mr. (b) (6), Polaris Applied Sciences dated February 20, 2020, provided as Exhibit 4 to the Claimants request for reconsideration.

²¹ Letter from Claimants to the NPFC dated February 21, 2020, requesting reconsideration of the NPFC's determination dated January 16, 2020. See also O'Brien's rate schedule provided as Exhibit 6 to the Claimants request for reconsideration.

Great American at a 50% discounted rate until their credit retainer balance was \$0.00. Three Meredith invoices provided within their original claim submission included invoices that were partially satisfied by applying the retainer credit. Meredith invoice 8816 included a retainer credit of \$5,298.11 for the balance of the \$50,000.00 first half retainer. Meredith invoice 8874 included a retainer credit of \$4,903.75 and Meredith invoice 8901 included a retainer credit of \$4,337.50, both of which were applied to the \$50,000.00 second half retainer. These retainer credits total \$14,539.36.²²

NPFC Determination - Retainer costs associated with Meredith invoices totaling \$14,539.36 are approved. The Claimants properly presented the costs as uncompensated removal costs and provided a copy of the retainer agreement between Meredith and Great American and proofs of payment to Meredith.

2. Costs Submitted as New – The Claimants seek reimbursement for payments made to Seapro after final audit totaling \$67,385.75. Within their original claim submission, the Claimants submitted Seapro invoice 2017R03 seeking reimbursement in the amount of \$60,731.99. Additionally, the Claimants submitted Seapro invoice 2017R04 seeking reimbursement in the amount of \$61,733.78. Lastly, the Claimants submitted Seapro invoice 2017R05 seeking reimbursement in the amount of \$46,634.71. Each of these invoices were submitted “pending final audit” by O’Brien’s. The removal costs pursued by the Claimants for these invoices totaled \$169,100.48 and were approved by the NPFC for payment within their original determination. Upon reconsideration, the Claimants provided O’Brien’s final audit of Seapro invoices 2017R03, 2017R04 and 2017R05 along with proof of payments made to Seapro as a result of the audit.²³ The final payments made to Seapro for invoices 2017R03, 2017R04, and 2017R05 after audit totaled \$67,385.75.

NPFC Determination - Seapro invoices 2017R03, 2017R04 and 2017R05 paid after audit totaling \$64,392.29 are approved as the Claimants properly presented the costs as uncompensated removal costs and provided copies of audited invoices, daily reports, itemized receipts and proof of payment to Seapro. The \$2,993.44 is denied because support was either missing or the receipts lacked itemization.

3. Costs Submitted as New – In addition to O’Brien’s invoice auditing costs previously denied but approved upon reconsideration above, the Claimants seek reimbursement of O’Brien’s personnel costs for contractor invoice auditing work conducted in 2018

²² Letter from Claimants to the NPFC dated February 21, 2020, requesting reconsideration of the NPFC’s determination dated January 16, 2020. *See also* Meredith retainer agreement with Great American dated December 13, 2016, provided as exhibit 2 to the Claimants request for reconsideration. *See also*, Meredith retainer payment from Great American in the amount of \$50,000.00 dated December 21, 2016, and Meredith retainer payment from Great American in the amount of \$50,000.00 dated July 15, 2017, provided as exhibit 3 to the Claimants request for reconsideration.

²³ Specifically, the Claimants provided the final audit of Seapro invoice 2017R03 with proof of payment to Seapro in the amount of \$15,578.18. Additionally, the Claimants provided the final audit of Seapro invoice 2017R04 with proof of payment to Seapro in the amount of \$27,521.05. Lastly, the Claimants provided the final audit of Seapro invoice 2017R05 with proof of payment to Seapro in the amount of \$24,286.52. *See*, Letter from Claimants to the NPFC dated February 21, 2020, requesting reconsideration of the NPFC’s determination dated January 16, 2020. *See also*, Seapro invoices 2017R03, 2017R04 and 2017R05 with supporting documentation and proof of payment provided as Exhibit 5 to the Claimants request for reconsideration.

totaling \$3,675.00 that was not included with their original claim submission.²⁴ Specifically, the Claimants provided O'Brien's invoice 95356 in the amount of \$630.00, invoice 95602 in the amount of \$2,775.00 and invoice 95846 in the amount of \$270.00 totaling \$3,675.00.

NPFC Determination - O'Brien's personnel costs totaling \$3,675.00 are approved. The Claimants properly presented these costs as uncompensated removal costs and provided the All Hazards Incident Management Team Service Agreement between O'Brien's and Great American, as well as invoices and proof of payment made to O'Brien's.

IV. CONCLUSION:

The NPFC hereby determines that the OSLTF will pay \$2,880,730.07 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # J17008-0001. All costs claimed and approved by the NPFC, are compensable removal costs, payable by the OSLTF as presented by the Claimant.²⁵

AMOUNT APPROVED: \$2,880.730.07

	(b) (6)
Claim Supervisor:	(b) (6)
Date of Supervisor's review:	<i>April 24, 2020</i>
Supervisor Action:	<i>Revised offer on reconsideration approved</i>

²⁴ Specifically, the Claimants provided O'Brien's invoice 95356 in the amount of \$630.00, invoice 95602 in the amount of \$2,775.00 and invoice 95846 in the amount of \$270.00 totaling \$3,675.00. *See*, Letter from Claimants to the NPFC dated February 21, 2020, requesting reconsideration of the NPFC's determination dated January 16, 2020. *See also* All Hazards Incident Management Team Service Agreement between O'Brien's and Great American dated December 29, 2017. *See also*, O'Brien's invoices 95356 in the amount of \$630.00, invoice 95602 in the amount of \$2,775.00, and invoice 95846 in the amount of \$270.00 with subsequent proofs of payment provided as Exhibit 6 to the Claimants request for reconsideration.

²⁵ See NPFC Summary of Costs spread sheet dated March 3, 2020.