

CLAIM SUMMARY / DETERMINATION FORM

Date	: 8/4/2009
Claim Number	: M09004-001
Claimant	: Charleston Marine Services
Type of Claimant	: Corporate (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: ██████████
Amount Requested	: \$28,840.00

FACTS:

- 1. Oil Spill Incident:** On November 14, 2008, the *M/V NANAMI* ran aground off of Kiawah Island. At the time of the grounding, the vessel contained approximately 400 gallons of fuel. The responsible party's attempts to free the vessel and mitigate the substantial threat of discharge proved to be unsuccessful. On November 15, 2008, the United States Coast Guard (USCG) Sector Charleston, federalized the case due to the substantial threat of discharge to the environment and because the responsible party was not taking proper measures to salvage the vessel. The USCG hired a response contractor who removed in total an approximate 1050 gallons of diesel and left an approximate amount of 250 gallons of diesel. On November 26, 2008, Charleston Marine Services (working under a Coast Guard Basic Ordering Agreement 9BOA)), removed the vessel from the beach. It was determined that the vessel would be moved to Charleston Marine's dock. At the time the vessel was removed, the USCG reported that the hull integrity was confirmed with no pollution. The USCG determined the threat abated and deemed the response and threat completed.
- 2. The Claim:** On August 4, 2009, Charleston Marine Services submitted a claim to the NPFC in the amount of \$28,840.00 for services rendered on or after December 1, 2008 for dockage fees of the abandoned vessel *M/V NANAMI* and for diver and pump services. The claim submission consisted of an NPFC claim form, an invoice, and documentation from the National Vessel Documentation Center related to a tile search.

APPLICABLE LAW:

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. 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”.

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 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:

The NPFC has determined that the costs associated with this claim are not OPA compensable costs as determined by the Federal On Scene Coordinator (FOSC). Sector Charleston closed the Federal Project and deemed the response complete and threat mitigated as of November 26, 2008 therefore all costs presented are not OPA compensable. See 33 CFR 136.203 & 205.

AMOUNT: 0.00

Claim Supervisor: [REDACTED]

Date of Supervisor's review:

Supervisor Action:

Supervisor's Comments: