CLAIM SUMMARY / DETERMINATION FORM

Date	:	8/30/2010
Claim Number	:	910123-001
Claimant	:	Hudson Marine Management Services Inc
Type of Claimant	:	OSRO
Type of Claim	:	Removal Costs
Claim Manager	:	[redacted]
Amount Requested	:	$38,836.64

FACTS:

1. ***Oil Spill Incident:*** On March 23, 2009, Hudson Marine Management Services (HMMS) was notified by Captain [redacted], Master of the M/V MARIANO LAURO that a discharge of oil had occurred while the vessel was conducting bunkering operations at the Stapleton Anchorage Area, NY. The M/V MARIANO LAURO was taking on bunkers from the Barge DBL-32 at Stapleton Anchorage, NY, when an over flow of heavy fuel oil (HFO) 180 from the port and starboard side overflow vents was observed[1]. An estimated amount of 400 gallons of bunker oil was released into the waters of Stapleton Anchorage, NY,[2] an area of substantial maritime traffic located in the center of New York Bay which is a navigable water of the United States.

   Immediately upon receiving notification from the Master, HMMS, the Spill Management Team[3] made the following notifications in accordance with the Vessel Response Plan (VRP)[4]; the National Response Center[5], and New York Department of Environmental Control (NJ DEC), report # 0813847. HMMS notified and mobilized the vessel's contracted Oil Spill Responder (OSRO) National Response Corporation (NRC)[6] who then activated Miller's Launch, a local clean up company.

   The Claimant made presentment to the RP, M/V MARIANO LAURO, Peninsula Enterprise via various emails.[7] The NPFC issued a RP Notification letter and to date has received no response.

2. ***Description of Removal Activities:*** To mitigate the impact to navigable waters, HMMS directed Miller's Launch to deploy containment boom around the M/V MARIANO LAURO and to continue maintenance of the boom through the night. Further, HMMS immediately prepared a response assessment. HMMS developed plans in cooperation with the OSRO to determine the quickest and most efficient means of containment and cleanup, personnel, and material resources needed to carry out the response. HMMS was responsible for updating the status of the cleanup effort with all interested parties

[1] Situation Report No. 1 for M/V MARIANO LAURO, Page 3.
[2] MISILE Case Report # 445621
[3] Contract regarding professional services rendered by HMMS to MAR SRL
[4] Vessel Response Plan/SOPEP Services, Page 16, Contract regarding professional services rendered by HMMS to MAR SRL.
[5] Incident Report # 900729
[6] National Response Corporation Invoice # 538670, dated 5/22/2009
[7] Several Emails from Hudson Marine Management Services, S.R.L. to operation@ peninsula. It dated 5/19/10 through 7/9/10.

including the Federal On-Scene Coordinator (FOSC) USCG Sector, NY and NY DEC as State On-Scene Coordinator (SOSC). Also, HMMS worked with Miller's Launch to develop a disposal plan for all recovered material, overseeing the testing of recovered oil to determine status for disposal.[8]

Miller's Launch arrived on scene on March 23, 2009 and deployed boom around the vessel and barge. They supported the on deck cleanup of the MARIANO LAURO which was being conducted by the vessel crew. The support included providing the vessel crew with the necessary sorbent material to pick up the oil on deck. The OSRO continued with cleanup operations which included the cleanup of oiled riprap by using Hotsy spray units, sorbents, and pumps with hoses. Also Miller's Launch conducted vessel hull cleaning operations.

On March 30, 2009, HMMS and the contractor conducted a final cleanup and walkthrough of the scene and continued to lay and maintain sorbent snare which was maintained until Monday, April 6, 2009. The snares were required by USCG in order to control any residual oil that was exposed during the tidal changes and weather conditions.

On April 6, 2009 the USCG signed off on the active cleanup operations following an inspection and allowed HMMS and the contractor to reduce the resources deployed to the scene to maintain a static response effort of the contaminated area.[9]

3. ***The Claim:*** The Claimant, HMMS, who served as Qualified Individual and Spill Management Team, submitted a removal cost claim to the National Pollution Funds Center (NPFC), on July 22, 2010 for reimbursement of the uncompensated removal costs in the amount of $38,836.64 that HMMS provided to the MARIANO LAURO, Peninsula Enterprise in the New York Harbor from March 23, 2009 through April 6, 2009. This claim is for removal costs based on HMMS' rate schedule in place at the time services were provided.

This claim consists of a signed OSLTF Claim Form, HMMS Invoice # 34153, HMMS Time Sheets, HMMS Expense Statement, Rental Car Receipts, Gas Receipts, Griffin Invoice # 6043591, Griffin Invoice # 6052960, Emails to RP, NRC Report, Situation Reports MISILE Report, National Response Corporation (NRC) Billing Summary and Contract regarding Professional Services Rendered by Hudson Marine Management Services, Inc.

<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. 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).

[8] Situation Reports One through Eleven
[9] Situation Report # 11

"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:

A. Overview:

1. The NPFC has determined that the actions undertaken by the Claimant are deemed consistent with the NCP.
2. The incident involved the discharge and continuing substantial threat of discharge of "oil" as defined in OPA 90, 33 U.S.C. § 2701(23), to navigable waters.
3. In accordance with 33 CFR § 136.105(e)(12), the Claimant has certified no suit has been filed in court for the claimed uncompensated removal costs.
4. In accordance with 33 CFR § 136.101(2), the claim was submitted within the 6 year statute of limitations.
5. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined that the majority of the removal costs presented were for actions in accordance with the NCP and the costs for these actions were indeed reasonable and allowable under OPA and 33 CFR § 136.205.

B. Analysis:

NPFC CA reviewed the actual cost invoices and dailies to confirm that the claimant had incurred all costs claimed. The review focused on: (1) whether the actions taken were compensable "removable actions" under OPA and the claims regulations at 33 CFR 136 (e.g., actions to prevent, minimize, mitigate the effects of the incident); (2) whether the costs were incurred as a result of these actions; (3) whether the actions taken were consistent with the NCP or directed by the FOSC, and (4) whether the costs were adequately documented and reasonable.

The Claims Manager confirmed that the services provided were billed in accordance with the rate schedule in place at the time the services were rendered. The Claims Manager has confirmed that all costs have been incurred and are sufficiently supported by the record with the exception of the $35.00 wire transfer charge which is unsubstantiated.

C. Determined Amount:

The NPFC hereby determines that the OSLTF will pay $38,801.64 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under Claim # 910123-001. All costs claimed are for charges paid for by the Claimant for removal actions as that term is defined in OPA and are compensable removal costs, payable by the OSLTF as presented by the Claimant.

AMOUNT: $38,801.64

Claim Supervisor: [redacted]

Date of Supervisor's review: ***9/7/10***

Supervisor Action: ***Approved***

Supervisor's Comments: