

CLAIM SUMMARY / DETERMINATION

Claim Number: J13014-0010
Claimant: Natural Resources Consultants, Inc.
Type of Claimant: Corporate
Type of Claim: Loss of Profits and Earnings
Claim Manager: [REDACTED]
Amount Requested: \$9,600.00

FACTS:

Oil Spill Incident

On June 30, 2013, the F/V LONE STAR sank and discharged oil into the Igushik River, a navigable water of the United States. There were approximately 14,500 gallons of diesel, hydraulic and lube oil, and gasoline on board the vessel.

Responsible Party

[REDACTED] and [REDACTED] own the F/V Lone Star and Burrece Fisheries, Inc. operated the vessel; all are responsible parties under OPA.

Claimant and Claim

Natural Resources Consultants, Inc. (NRC or Claimant) is a private company who contracted with the RP/Spill Management Team, Meredith Management Group, Inc. (MMG) to provide personnel, materials, and equipment as technical specialists regarding fishery closures and third party claims resulting from the oil spill incident. Claimant seeks reimbursement of its costs associated with these services in the amount of \$9,600.00.

APPLICABLE LAW:

The Fund shall be available to the President for the payment of uncompensated removal costs determined by the President to be consistent with the National Contingency Plan or uncompensated damages. U.S.C. § 2712(a)(4).

Damages include damages equal to the loss of profits or impairment of earning capacity, due to the injury, destruction of, or loss of real property, personal property or natural resources, which shall be recoverable by any claimant. 33 U.S.C. § 2702(b)(2)(E).

Damage claims to the Fund 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).

With regard to claims for loss of profits and impairment of earning capacity, the NPFC must independently determine that the proof criteria in OPA and the implementing regulations, at 33 CFR Part 136, are met, including the general provisions of 33 CFR 136.105, and the specific requirements for loss of profits and earning capacity claims in Subpart C, 33 CFR 136.231 *et seq.*

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.

Pursuant to the provisions of 33 CFR 136.231, claims for loss of profits or impairment of earning capacity due to injury to, destruction of, or loss of real or personal property or natural resources may be presented to the Fund by the claimant sustaining the loss or impairment.

“In addition to the requirements of Subparts A and B of this part, a claimant must establish the following—

- (a) That real or personal property or natural resources have been injured, destroyed, or lost.
- (b) That the **claimant's income was reduced** as a consequence of injury to, destruction of, or loss of the property or natural resources, and the amount of the reduction.
- (c) The amount of the claimant's profits or earnings in comparable periods and during the period when the claimed loss or impairment was suffered, as established by income tax returns, financial statements, and similar documents. In addition, comparative figures for profits or earnings for the same or similar activities outside of the area affected by the incident also must be established.
- (d) Whether alternative employment or business was available and undertaken and, if so, the amount of income received. All income that a claimant receives as a result of the incident must be clearly indicated and any saved overhead and other normal expenses not incurred as a result of the incident must be established.” 33 CFR 136.233 (a) – (d)

NPFC DETERMINATION:

Analysis

In this claim, Claimant was hired by the RP's Spill Management Team, MMG, to provide personnel, materials, and equipment as technical specialists regarding fishery closures and third party claims. Claimant was not hired to participate in any removal activities. Claimant provided a copy of a purchase order dated July 15, 2013 reflecting that Claimant was authorized to provide services to Meredith Management Group Inc. per an agreed rate schedule.¹ Included was an invoice dated July 31, 2013 totaling \$14,312.50 and a Payment Recommendation Form in the same amount.² The claimed amount appears to be for three unpaid invoices dated September 30, 2013, October 30, 2013 and November 30, 2013 in the amounts of \$4,200, \$3,400 and \$2,000 respectively.

As noted above a claim for loss of profits must be due to the injury to, destruction of, or loss of real or personal property or natural resources, 33 U.S.C. § 2702(b)(2)(E). In this case, the claimed

¹ Claimant submitted an engagement confirmation email dated July 15, 2013 that provided 16 links to the Alaska Department of Fish and Game Division of Commercial Fisheries, News Releases, Emergency Orders [REDACTED]'s letter to [REDACTED] at nrccorp), dated July 15, 2013. Claimant also provided three NRC invoices (0813-2183, 0913-2183, 1013-2183) that provide the hourly rate and the hours billed to Meredith Management Group.

² RP paid Claimant \$14,312.50 on August 06, 2013 under check number 909-677545. See Payment Recommendation Form Bates number BUR-NPF 1900 provided in RP claim number J13014-0003.

loss of profits was due to a contract dispute between Claimant and MMG rather than a loss due to the injury, destruction, or loss of real property, personal property or natural resources. The claimed loss is directly related to Claimant's inability to collect monies from the RP as a result of a contractual agreement entered into after the spill incident occurred.

To the contrary, the incident presented an opportunity for the claimant. A Payment Recommendation Form evidences that Claimant was paid \$14,312.50 in August 2013 for its services.³ This money represents income the Claimant would not have realized if the spill had not occurred.

Summary

For the reasons stated above this claim is denied.

Claim Supervisor:



Date of Supervisor's review: 4/8/2015

Supervisor Action: *Approved*

Supervisor's Comments:

³ This can be found in the Limit of Liability claim presented to the Fund by the Responsible Party.