

CLAIM SUMMARY / DETERMINATION

Claim Number:	J13014-0014
Claimant:	Resolve-Magone Marine Services (Alaska), Inc.
Type of Claimant:	OSRO
Type of Claim:	Removal Costs
Claim Manager:	[REDACTED]
Amount Requested:	\$1,528,642.55

FACTS:

Oil Spill Incident

On June 30, 2013 at approximately 0700, Sector Anchorage received a report that the 78' F/V LONE STAR had partially sank approximately 3.5 miles north of the mouth of the Igushik River, which flows southward from Amanka Lake into the Nushagak Bay arm of Bristol Bay. The entire River is located within Togiak National Wildlife Refuge and flows through the village of Manoktak, which is known for fishing.

The Lone Star's crew reported to the Coast Guard that the anchor line struck the vessel's transducer while they were anchoring the vessel. While at anchor, the tides swung the vessel around and ripped the transducer and cooling lines out, creating a hole in the steel hull. The vessel took on water, turned onto its side and overturned in 18 feet of water.¹ A Good Samaritan vessel, F/V TRADITION, safely recovered all four people on board.²

During an over flight during mid-morning on June 30, 2013, a sheen approximately 300 feet by 20 feet in size was observed discharging from the vessel. At risk was an estimated 14,000 gallons of diesel fuel, 250 gallons of unleaded gasoline, 150 gallons of hydraulic oil, and 150 gallons of lubricating oils located on the vessel at the time of sinking. Sheen from the sunken vessel caused the Alaska Department of fish and Game (ADF&G) to close the local set-net fishery until the pollution threat was mitigated.³

Responsible Party

[REDACTED] own the F/V LONE STAR and are the responsible parties. The RPs' Spill Management Team (SMT) is the Meredith Management Group, Inc.⁴ The RP's legal Counsel is [REDACTED] of Matthews and Zahare, P.C., in Anchorage, Alaska.⁵

¹ See, OSLTF Claim Form page 1, item # 2.

² See, ICS 209 – CG, Dated 7/17/2013

³ See, Incident Summary Report from NPFC Claim J13014-0001, page 71.

⁴ [REDACTED], Regional Response Manager, Captain [REDACTED], President, and Mr. [REDACTED], VP Operations.

⁵ See, Authorization to Represent letter to NPFC from Mr. [REDACTED] dated January 16, 2014; found in NPFC Claim # J13014-0003.

Claim and Claimant

The Claimant, Resolve-Magone Marine Services (Alaska), Inc., made presentment to the RPs on September 13, 2013 via its invoices.⁶ These invoices were not paid in full by the RP or its insurers. The RP's insurers made four payments towards invoices 27462-1 – 27462-5. A total of four payments were made by Great American Insurance Company (GAIC) and they were in the amount of \$150,000 on July 25, 2013, \$72,026.23 on August 07, 2013, \$378,385.93 on August 07, 2013, and \$243,473.73 on August 23, 2013. On September 19, 2013, Shipowner's Mutual Protection and Indemnity Club paid \$250,000 on behalf of the RPs.⁷ Resolve – Magone seeks to recover the amounts due on the five invoices.⁸

On November 13, 2014, Resolve – Magone received a letter from [REDACTED], on behalf of the Lone Star's P&I underwriters⁹ stating that Resolve/Magone has a balance due for pollution response and mitigation efforts in the amount of \$1,528,642.55. The letter further states that the owners/operator/underwriters stipulate that OPA 90 policy limits were met.¹⁰ [REDACTED]. [REDACTED]'s letter further advises that it would be in the best interest for Resolve/Magone to submit a claim to the Fund.¹¹

On March 17, 2016, Resolve-Magone submitted a removal cost claim to the National Pollution Funds Center (NPFC or Fund) for reimbursement of its uncompensated removal costs in the collective amount of \$1,528,642.55. On March 18, 2016, the NPFC sent an RP Notification letter to [REDACTED] via their attorney, [REDACTED].¹²

Asset Purchase Agreement by and among Resolve – Magone Marine Services (Alaska), Inc.

Effective, January 17, 2014, [REDACTED] and [REDACTED] sold Magone Marine Services, Inc. to Resolve Marine Group. On the effective date, Resolve Marine Group purchased certain property, assets and rights of Magone Marine Services related to the Magone Marine's business upon the terms and conditions of the purchase agreement. This asset purchase included the invoices that are subject to this claim, Magone invoices 27462-1 – 27462-5.¹³

Description of Removal Activities

On July 13, 2013, Magone Marine's support vessels arrived on-site to commence operations to "hot-tap" the remaining fuel and other accessible hydrocarbons from the casualty into tanks on the surface. Magone Marine chartered the tank barge RIVERWAYS-14 to store the fuel/oil removed from the casualty.

⁶ Invoices 27462-1 – 27462-5 (As presented on the NPFC spreadsheet of costs)

⁷ See, Resolve Marine Executive Summary, page 2 of NPFC Claim Submission.

⁸ Invoices 27462-1 – 27462-5.

⁹ [REDACTED] is the President /Marine Surveyor for Alaska Marine Surveyors, Inc.

¹⁰ The RP's insurance policy limit of \$1,000,000 was exhausted by the expenses associated with the incident. The insurer is Great American Insurance Group.

¹¹ See [REDACTED] letter to Resolve Marine Group, Inc., dtd November 13, 2014.

¹² See RP notification letter in File Folder, dtd March 18, 2006.

¹³ See, Resolve-Magone Marine Purchase Documents. Asset Purchase Agreement, dated January 17, 2014, among Resolve – Magone Marine Services (Alaska), Inc., Magone Marine Services, Inc., [REDACTED] and [REDACTED].

Divers installed hot-tap coupons at the highest point of each of the nine fuel tanks. Each tank was hot-tapped and affixed with a threaded connector for controlled oil/water discharge and subsequent tank closure. The tank vents or fills were opened on the low side of each tank to allow water ingress to displace the oil through discharge hoses to the tank barge RIVERWAYS-14. When the crew observed only water flowing into a tank, this was the indication that oil had been completely removed from that tank.¹⁴

Fuel removal operations continued until August 09, 2013. All nine fuel tanks had been addressed and were confirmed to be free of hydrocarbons. Also, on August 09, 2013, the FOSCR on scene declared the threat of pollution had been mitigated and no further pollution response actions were needed.¹⁵

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.

¹⁴ See Claimant's Executive Summary.

¹⁵ See POLREP 5 and FINAL

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. Findings of Facts

1. USCG Sector Anchorage, as the FOSC for this incident, determined that the actions undertaken by the Claimant are deemed consistent with the NCP. 33 U.S.C. §§ 2702(b)(1)(B) and 2712(a)(4);
2. The incident involved a 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. The claim was submitted within the six year period of limitations for claims. 33 U.S.C. § 2712(h)(1);
5. Claimant properly presented the claim to the responsible party, who denied payment.
6. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined which removal costs presented were for actions in accordance with the NCP and that costs for these actions were indeed reasonable and allowable under OPA and 33 CFR § 136.205 as set forth below.

B. Analysis

The NPFC Claims Manager 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 “removal 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 costs were adequately documented and reasonable.

Limit on Liability Claim # J13014-0003

On August 29, 2014, The RPs, [REDACTED] and Burrece Fisheries, Inc. and their subrogated insurers, Great American Insurance Company of New York, Shipowner's Mutual Protections and Indemnity Association (Luxembourg), along with other reinsurers presented a claim to the Oil Spill Liability Trust Fund (OSLTF or the Fund). The RPs asserted that they demonstrated entitlement to their statutory limit on liability as set forth in 33 U.S.C. § 2704(a)(2). At the time of the incident, the applicable limit per ton was \$1000; the gross tonnage for the F/V LONE STAR was \$146,000 or \$854,400.00, whichever is greater. The Claims Adjudication Division conducted an analysis of evidence and facts and determined that [REDACTED] and Burrece Fisheries, Inc. et al was entitled to its limitation on liability on April 07, 2015 as the responsible parties for the F/V LONE STAR, whose gross tonnage was 146,000 tons, would be limited to \$854,400 in liability for removal costs and damages.

Claimant also asserted that it incurred approximately \$1,489,125.40 in removal costs and hired six vendors to conduct the removal actions. [REDACTED], through their legal representative, submitted five binders of documentation to the Fund that provided general incident documentation, vessel specific information, crew specific information, incident/circumstance/situational documentation, insurance policies and communications, removal cost documentation,¹⁶ and other forms of supporting documentation.

The National Pollution Funds Center (NPFC) Claims Manager reviewed the actual cost invoices and dailies to confirm that the Claimant had incurred all costs claimed and that all costs were supported by the record, were compensable "removal actions" under the Oil Pollution Act (OPA) and the claims regulations at 33 CFR 136, whether the costs were incurred as a result of the actions, whether the actions taken were determined by the FOOSC to be consistent with the NCP or directed by the FOOSC, and whether the costs were adequately documented and reasonable. Additionally, the NPFC Claims Manager reviewed the payment record against the claimed costs for each contractor/subcontractor.

On July 01, 2015, the NPFC, in accordance with OPA, 33 U.S.C. 2701 et seq., offered the [REDACTED], \$170,815.90 as full compensation for OPA claim number J13014-0003.

On August 26, 2015, the NPFC received the [REDACTED] request for reconsideration of the claim, via email. After careful review of the additional and new supporting documentation that was provided by the RP, on Reconsideration status of the claim, the NPFC offered the [REDACTED] \$186,912.11, as final agency action, on October 21, 2015.

Although the RP's sum certain for their claim was \$1,489,125.40, the NPFC's Determination dated July 01, 2015, approved \$170,815.90. The RP's limit of liability was \$854,400, therefore the NPFC deducted its statutory limit from the amount determined to be OPA compensable, \$1,025,215.90. The total amount exceeded the RP's limit on liability \$170,815.90 and thereby determined that \$186,912.11 was compensable from the OSLTF.

¹⁶ Magone Marine Service, Inc., Meredith Management Group, Inc., Global Risk Solutions, Inc., Natural Resources Consultants, Inc., Alaska Department of Fish & Game, and Alaska Marine Surveyors.

Magone Marine Invoices Presented by the RP

As mentioned above, the RPs hired six vendors to conduct the removal actions. Specifically, one of the vendors was Magone Marine Services, Inc. (Magone). The Magone invoices that are subject of this claim, were also subject of the RP's Limit of Liability claim, Magone invoices #27462-1 through #27462-5. However, Magone invoices #27462-4 and #27462-5 were not supported by proofs of payment, therefore the RP received no compensation, from the Fund for invoices #2746-4 and #27462-5. Proofs of payment were presented by the RP for the remaining invoices.¹⁷ Overall, the NPFC determined that \$912,617.93 was OPA compensable for Magone invoices #27462-1 - #27462-3 and #27462-B.¹⁸

Magone Marine Invoices Presented by Resolve-Magone on March 17, 2016

The NPFC adjudicated the Magone invoices (#27462-1 through #27462-5) in their entirety. However, the NPFC can not compensate Resolve-Magone (Claimant) for any line item that the NPFC has already compensated the RP for. The NPFC used the spreadsheet that was already created for the Limit on Liability claim (RP claim) and added separate columns that show the Resolve- Magone approved and denied columns with NPFC comments that explain the reasons that the Fund either approved or denied that particular line item.¹⁹

Invoice #27462-2 was not fully presented by the RP on the Limit on Liability claim. The RP only presented costs to the Fund for dates between July 19, 2013 through July 26, 2013. At the NPFC's request, Resolve-Magone submitted Magone invoice #27462-2 in its entirety which included the dates July 13, 2013 through July 18, 2013.

The NPFC determines that the "NPFC Approved" costs incurred by Resolve-Magone were reasonable and necessary in order to mitigate the affects of the incident. Upon review of the information provided by Resolve-Magone, the NPFC hereby determines that the approved costs were billed in accordance with the rate schedules and/or contracts/charter agreements that were in place at the time that the services were rendered, unless otherwise indicated below and were determined to be consistent with the National Contingency Plan (NCP).

Itemization of Denied Costs by Invoice

Invoice # 27462-1

- Not compensable because the Fund has already paid the line item to the RP.
- Claimant must provide supporting documentation.

Invoice # 27462-2

- Denied for no proof of payment.
- No contracts or receipts provided.
- Not compensable because the Fund has already paid the line item to the RP.

¹⁷ RP submission, Vol 5 of 5, tabs 43 and 44.

¹⁸ Magone Invoice # 27462-B is not part of the Resolve-Magone claim that is presently before the Fund.

¹⁹ See NPFC spreadsheet of costs with Resolve-Magone line by line adjudication.

Invoice # 27462-3

- Not compensable because the Fund has already paid the line item to the RP.
- Claimant must provide supporting documentation.

Invoice #27462-4

- Line item was not on the Magone Marine rate schedule.
- Per diem was paid for on Invoice 27462-1 and 27462-2.
- Claimant would have to provide daily work log
- FOSCR on scene declares threat of pollution has been mitigated and no further pollution response actions were needed. This cost has not been coordinated by the FOSC and is therefore denied. Please see POLREP 5 and Final.

The NPFC hereby determines that the NPFC will offer and the OSLTF is available to pay **\$446,759.58** as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under Claim #J13014-0014. All of the costs deemed compensable by the Fund have been paid for by the RP/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.

All costs determined payable included in this determination have been reviewed and determined to be compensable as presented and in accordance with 33 USC §§2712(a)(4) and 2713 and the OSLTF claims adjudication regulations at 33 CFR Part 136.205, to pay claims for uncompensated removal costs that are determined to be consistent with the National Contingency Plan. 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.”

AMOUNT: \$446,759.58

Claim Supervisor: [REDACTED]

Date of Supervisor’s review: *June 2, 2016*

Supervisor Action: *Approved*