

CLAIM SUMMARY / DETERMINATION FORM

Date	: 6/23/2010
Claim Number	: J07008-001
Claimant	: Homeward Bound Charters
Type of Claimant	: OSRO
Type of Claim	: Removal Costs
Claim Manager	: Alyssa Lombardi
Amount Requested	: \$54,847.50

FACTS:

- 1. *Oil Spill Incident:*** The United States Coast Guard Sector Anchorage Case # 341722,¹ reports that on March 18, 2007, the F/V Exodus Explorer grounded and sank in approximately 6 fathoms of water at Gannet Rocks in Kuluk Bay, while transiting back into Adak Harbor, both which are navigable waterways in the US. The vessel was carrying 2500 to 3000 gallons of diesel fuel. There was a visible oil sheen emitting from the semi-submerged vessel, which was upside down and approximately 100 yards from shore. A local bow picker retrieved all passengers from the vessel's raft and brought them back into Adak.²

The incident was reported to the National Response Center (NRC) on March 18, 2007 at approximately 11:25 AM local time via report # 829533 by Mr. Dan Carney of B and N Fisheries (B & N), the named responsible party (RP).³ Hudson Marine Management Services—hired by the insurer of the RP-- hired the claimant, Homeward Bound Charters (HBC) to observe and respond as necessary to the spill-site.⁴

The USCG Sector Anchorage issued a Notice of Federal Interest to B & N, advising it was the RP.⁵ HBC did present their costs to Hudson before submitting their claim to the NPFC; however, Hudson informed HBC that they did not agree with the invoicing for the spill cleanup. To date, the RP has not produced any evidence that it (or its insurer/P & I Club) paid either the contractor, Hudson, or the sub-contractor, HBC.

- 2. *Description of removal actions performed:*** HBC arrived on-scene to provide assistance in pollution mitigation and logistical support for the salvage efforts led by T & T Marine Salvage, Inc. HBC was compensated for its efforts by T & T Marine Salvage, Inc. from March 20 through April 7, 2007. Beginning April 8, 2007, HBC was under direct contract with Hudson Marine Management Services, the Spill Management Team (SMT) for the RP. According to written documents submitted by Mr. Steve LaLonde to CAPT Mark Devries,⁶ Hudson sub-contracted the M/V Homeward Bound to perform waterborne surveys of the wreck and adjacent area several times a week, with the

¹ See Sector Anchorage's Coast Guard Case # 341722 opened 3/18/2007

² See ADEC SITREP # 1, dated 3/19/2007

³ See NRC report # 829533, dated 3/18/2007

⁴ See letter from Mr. Steve La Londe, Hudson, to CAPT Mark Devries, USCG COTP, dated 4/11/2007

⁵ See NOFI, signed by MST1 Terry Hasenauer (Then, MST3), issued 3/18/2007

⁶ See letter from Mr. Steve La Londe, Hudson, to CAPT Mark Devries, USCG COTP, dated 4/11/2007

observed conditions recorded. HBC was also to perform additional runs as the situation warranted.

- 3. *The Claim:*** On April 28, 2010, Homeward Bound Charters submitted a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of removal costs in the amount of \$54,847.50 for the services provided from April 8, through May 24, 2007. This claim is for removal costs based on the rate schedule in place at the time services were provided. A copy of the vendor rate schedule is provided in the claim submission.

This claim consists of copies of the invoicing and associated dailies, a copy of MISLE Case # 341722, a copy of NRC Report # 829533, copies of POLREPS # 1-4, copies of the State of Alaska SITREPS # 1-5, a copy of the NOFI issued to B&N Fisheries Company, a copy of the witness statement written by Capt. Dan Carney of B&N, photographs and internal email correspondence.

The review of the actual cost invoicing and dailies 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 actions taken were consistent with the NCP or directed by the FOOSC, and (4) whether the costs were adequately documented.

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:

A. Overview:

1. The FOSC coordination has been established via Sector Anchorage’s Case Report # 341722.⁷
2. The incident involved the report of 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 on time.
5. Presentment of costs to the RP’s representatives (Hudson) was made by the claimant, prior to the submission of the claim. The NPFC also notified the RP of the claim submission to the NPFC and, to date, the NPFC has received no response.
6. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined that all removal costs presented were for actions in accordance with the NCP and that the costs for these actions were indeed reasonable and allowable under OPA and 33 CFR § 136.205.

⁷ See Sector Anchorage’s Coast Guard Case # 341722 opened 3/18/2007

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 “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 actions taken were determined by the FOOSC, to be consistent with the NCP or directed by the FOOSC, and (4) whether the costs were adequately documented and reasonable.

The Claims Manager confirmed that all action (as shown in the invoicing and service records) performed by the claimant were in keeping with the rate sheets provided at the time they were hired by Hudson. The Claims Manager also validated the costs incurred and determined they were reasonable and necessary and performed in accordance with the National Contingency Plan (NCP).

In a letter to the NPFC from Hudson, dated June 4, 2010, Hudson claims that the claimant, HBC, has already been paid. Hudson believes that, after its own internal audit, that HBC was only entitled to \$27,000.00 of the claimed \$54,847.50 because they believe the \$15,000.00 charged for 20 days of standby were not reasonable or necessary and exceeded what other contractors charged.⁸ What Hudson fails to realize, however, is that HBC’s standby hours were most certainly necessary due to the fact that Hudson’s written plan to the USCG COTP CAPT DeVries stated that the vessel would be available as needed therefore the claimant charged the reduced rate of standby while the claimant was unable to utilize the obligated equipment elsewhere.⁹ Additionally, invoices signed by Mr. Steve LaLonde, indicated that HBC was charging for standby time and acknowledged. The invoices were based off of the published rate schedule of \$1500.00 per day. Hudson’s issuing of a check for \$27,000.00 does not constitute payment if HBC did not accept the amount and returned the check, which was the case here.

On that basis, the Claims Manager hereby determines that the claimant did in fact incur \$54,847.50 of uncompensated removal costs and that that amount is properly payable by the OSLTF as full compensation for the reimbursable removal costs incurred by the claimant and submitted to the NPFC under claim #J07008-001. The claimant states that all costs claimed are for uncompensated removal costs incurred by the claimant for this incident from April 8 through May 24, 2007. The claimant represents that all costs paid by the claimant are compensable removal costs, payable by the OSLTF as presented by the claimant.

C. Determined Amount: \$54,847.50

The NPFC hereby determines that the OSLTF will pay \$54,847.50 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim J07008-001. 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.

⁸ See Hudson letter to Ms. Alyssa Lombardi, NPFC, dated 6/04/2010

⁹ See letter from Mr. Steve La Londe, Hudson, to CAPT Mark Devries, USCG COTP, dated 4/11/2007

Claim Supervisor: *Donna Hellberg*

Date of Supervisor's review: *6/30/10*

Supervisor Action: *Approved*

Supervisor's Comments:

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
United States Coast Guard
National Pollution Funds Center

US COAST GUARD STOP 7100
4200 WILSON BLVD STE 1000
ARLINGTON VA 20598-7100
E-mail: A [REDACTED]@uscg.mil
Fax: 202-493-6937

5890
6/30/2010

Via email: [REDACTED]@yahoo.com

Mr. Albert Norman Giddings
c/o Homeward Bound Charters
P.O. Box 758
410 F.A.A. Road
Haines, AK 99827

Re: Claim Number J07008-001

Dear Mr. Giddings;

The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act (OPA) (33 U.S.C. 2701 et seq.), has determined that \$54,847.50 is full compensation for OPA claim number J07008-001.

This determination is based on an analysis of the information submitted. Please see the attached determination for further details regarding the rationale for this decision.

If you accept this determination, please sign the enclosed Acceptance/Release Form where indicated and return to the above address.

If we do not receive the signed original Acceptance/Release Form within 60 days of the date of this letter, the determination is void. If the determination is accepted, an original signature and a valid tax identification number (EIN or SSN) are required for payment. If you are a Claimant that has submitted other claims to the National Pollution Funds Center, you are required to have a valid Central Contractor Registration (CCR) record prior to payment. If you do not, you may register free of charge at www.ccr.gov. Your payment will be mailed or electronically deposited in your account within 60 days of receipt of the Release Form.

If you have any questions or would like to discuss the matter, you may contact me at the above address or by phone at 2 [REDACTED].

Sincerely,

Alyssa Lombardi
Claims Manager

ENCL: Claim Summary / Determination Form
Acceptance/Release Form

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
United States Coast Guard
National Pollution Funds Center

US COAST GUARD STOP 7100
4200 WILSON BLVD STE 1000
ARLINGTON VA 20598-7100
E-mail: A [REDACTED]@uscg.mil
Fax: 202-493-6937

Claim Number: J07008-001	Claimant Name: Mr. Albert Norman Giddings c/o Homeward Bound Charters P.O. Box 758 410 F.A.A. Road Haines, AK 99827
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I, the undersigned, ACCEPT the determination of \$54,847.50 as full compensation for the removal costs incurred.

This determination represents full and final release and satisfaction of all removal costs incurred under the Oil Pollution Act of 1990 (33 U.S.C. 2712(a)(4), associated with the above referenced claim. This determination is not an admission of liability by any party. I hereby assign, transfer, and subrogate to the United States all rights, claims, interest and rights of action, that I may have against any party, person, firm or corporation that may be liable for the loss. I authorize the United States to sue, compromise or settle in my name and the United States fully substituted for me and subrogated to all of my rights arising from the incident. I warrant that no legal action has been brought regarding this matter and no settlement has been or will be made by me or any person on my behalf with any other party for costs which are the subject of the claim against the Oil Spill Liability Trust Fund (Fund).

I, the undersigned, agree that, upon acceptance of any compensation from the Fund, I will cooperate fully with the United States in any claim and/or action by the United States against any person or party to recover the compensation. The cooperation shall include, but is not limited to, immediately reimbursing the Fund any compensation received from any other source for the same claim, providing any documentation, evidence, testimony, and other support, as may be necessary for the United States to recover from any other person or party.

I, the undersigned, certify that to the best of my knowledge and belief the information contained in this claim represents all material facts and is true. I understand that misrepresentation of facts is subject to prosecution under federal law (including, but not limited to 18 U.S.C. 287 and 1001).

_____	_____
Title of Person Signing	Date of Signature
_____	_____
Typed or Printed Name of Claimant or Name of Authorized Representative	Signature

_____	_____
Title of Witness	Date of Signature
_____	_____
Typed or Printed Name of Witness	Signature

_____	_____	_____
DUNS #	Bank Routing Number	Bank Account Number