CLAIM SUMMARY / DETERMINATION FORM

Date	:	10/28/2009
Claim Number	:	N04080-002
Claimant	:	Main Pass Oil Gathering Company & BP Pipelines (North America) Inc.
Type of Claimant	:	Corporate (US)
Type of Claim	:	Affirmative Defense
Claim Manager	:	Donna Hellberg
Amount Requested	:	$2,453,439.41

I. FACTS

Summary

As Hurricane Ivan was tracked through the Gulf of Mexico in September 2004, it fluctuated between a Category 4 and Category 5 status. Hurricane Ivan passed just east of Louisiana's Mississippi River Delta and made landfall on September 16, 2004, just below a Category 4 status with winds around 130 mph. The high winds, waves, surges, mudslides, and currents associated with Hurricane Ivan caused substantial damage to pipelines in the Gulf of Mexico, including the Main Pass Oil Gathering (MPOG) and Shell's Nakika pipelines, especially at their crossing, both of which were buried in about 22 feet of water within MP Block 69.[1] [2]

Shortly after the passage of Hurricane Ivan, aerial reconnaissance flights were conducted to detect any oil discharges from the pipelines in the Gulf. On September 23, 2004, BP reported an oil slick 2.5 miles by 0.5 miles in the area of Main Pass Block 69 (Block MP-69).[3] The preliminary investigation into the oil spill indicated that the source of the discharge was Shell's Nakika pipeline, but subsequent inspections revealed that oil was discharging from both the Nakika and the MPOG pipelines at this juncture. The MPOG pipeline's other leaks were within three feet of the crossing. Another site of oil discharges from the MPOG pipeline was between Customhouse Bay and North Pass, barely offshore of the Mississippi Delta, Louisiana.[4]

At the crossing, Shell's Nakika and Claimants' MPOG pipelines were subjected to such forces during Ivan that the cement mats previously positioned above and between these buried pipelines, were displaced. Without separation, the pipelines wore through their outer concrete coating to direct contact at this juncture and cracks in both pipelines at this crossing discharged oil into the waters of the Gulf of Mexico.[5]

Claim and Claimants[6]

On May 21, 2008, Main Pass Oil Gathering Company (Main Pass) submitted its claim asserting that it is entitled to reimbursement for removal costs totaling $2,453,439.41 from the Oil Spill

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[1] *See*, Claimants' Binder 6, Section 8, ICS 214 form and attachments, dated 9/29/04, by Mr. Nelson Fetgetter, p. 1.
[2] *See*, Enclosures 1 and 2 for summaries of preexisting conditions of the most intense hurricanes in the Gulf of Mexico.
[3] *See*, Claimants' Binder 5, Section 4, BP Spill Reports, dated 9/23/04 and 10/01/04, pp. 1.
[4] *See*, Claimants' Binders 5&6, Sections. 5, 6, 7, 8, 9 & 10, Hurricane Ivan Assessment Meeting Minutes and attachments, Incident Actions Plans and attachments, Responder Log Books, ICS-214 Responder Logbooks, Inspector's Daily Diary and Work Reports, and Diver's Dailey Job Logs.
[5] *Id.*
[6] For purposes of this decision, we accept the incident information alleged in MPOG/BP's formal claim letter, dated May 21, 2008 and the MPOG/BP's amended claim letter, dated July 2, 2008.

Liability Trust Fund (OSLTF or Fund). First, the Claimant, Main Pass claimed that it had incurred uncompensated response costs under Section 2702(b) of the Oil Pollution Act (OPA), 33 USC § 2702(b) for the clean up of oil discharges from the Nakika pipeline of the Shell Pipeline Company LP (Shell). Second, Main Pass, alleged that as a responsible party (RP) for oil discharges from its Main Pass Oil Gathering (MPOG) pipeline, it is entitled to an "act of God" affirmative defense (33 USC § 2703(a)(1)) pursuant to 33 USC § 2708(a)(1) for the oil discharge from its MPOG pipeline. Both pipelines were damaged and discharged oil at the crossing of Shell's Nakika and the MPOG pipelines and elsewhere by the exceptional forces associated with Hurricane Ivan as it passed through the Gulf of Mexico on September 16, 2004.[7]

The National Pollution Funds Center (NPFC) received an amended claim, dated July 2, 2008. The amendment revealed that Main Pass and BP Pipelines (North America) Inc. (BP) were, respectively, the owner and operator of the MPOG pipeline. And as operator, BP undertook the response efforts and thus incurred the costs, of which, certain costs were charged back to Main Pass and documented in the submissions. As amended, the NPFC will focus on the Claimants' "act of God" affirmative defense to OPA liability, and their entitlement to recover the removal action costs expended for the oil discharges from the MPOG pipeline. As the second claim, the NPFC will review Main Pass/BP's claim for uncompensated removal costs in responding to Shell's Nakika pipeline oil spill under 33 USC § 2702(b). Both are claims for costs incurred in the aftermath of Hurricane Ivan.

Review of Claimants' Record

"Act of God" Claim

The Claimants stated that in cooperation with other oil companies with assets in the Gulf of Mexico, it undertook preventive measures prior to Hurricane Ivan and immediately responded to the damages left behind by the hurricane. While the record of this claim devotes much space describing the actions taken by Main Pass/BP to respond to their pipeline oil spills in the wake of Ivan, little information is provided identifying what measures were undertaken to prevent the oil spill incident, or to avoid its impact by the exercise of due care or foresight. The NPFC was not able to find information to determine whether the MPOG pipeline was "shut in," before the onset of Hurricane Ivan, or after Ivan, whether the pipeline was de-pressurized and whether product transport ceased while the MPOG and the Nakika pipelines were under investigation for damage and oil discharges. (*See*, Binders 5&6)

As part of their record, Main Pass/BP produced no documents eliciting what measures had taken place in the planning, design, and construction of the MPOG pipeline, although one of BP's responders recorded in their daily field log that the MPOG pipeline was located in a known mudslide area.[8] The Claimants referenced the damage which occurred to their MPOG pipeline at the crossing with the Shell's Nakika pipeline at Block MP-69, but little was said about what forces caused the MPOG pipeline to fail at the crossing juncture. Main Pass/BP submitted no account of how the hurricane forces, the wind, the tidal surges, the currents, seafloor failure, and/or the mudslides the pipeline crossing were factors in causing the damage to the pipelines at the crossing, except that the cement mats above and between the pipelines were dislodged by the forces of the hurricane and, despite concerted efforts, could not be found by their divers. [9.10]

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[7] *See, MPOG/BP's* formal claim letter, dated, May 21, 2008 (recv'd May 27, 2008).
[8] *See*, Claimants' Binder 6, Section 8, ICS 214 form and attachments dated 9/23/04 by Mr. Nelson Fetgatter, p. 2.
[9] *See*, Claimants' Binders 5&6, Sections. 5, 6, 7, 8, 9 & 10, H. Ivan Assessment Meeting Minutes and attachments, Incident Actions Plans and attachments, Responder Log Books, ICS-214 Responder Logs, Inspector Daily Diary and Work Reports, and Diver's Dailey Logs.

Claim for Uncompensated Removal Costs for Shell's Pipeline

In a similar fashion, little, if any, information was provided in their claim for uncompensated removal costs for clean up of oil discharged from Shell's Nakika pipeline. For billing purposes, BP sent Shell a demand for payment of $1.998 million for uncompensated removal costs to clean up oil discharges from "Site 2" from Shell's Nakika pipeline at the crossing with the MPOG pipeline. Yet, BP provided no estimates of oil quantities discharged or cleaned up, nor did BP represent how this demand figure was derived, and Shell declined payment.[11]

Once the oil spill was discovered on September 23, 2004, in the vicinity of the Nakika/MPOG pipeline crossing, an initial release amount of 900 gallons was estimated for the oil spill.[12] But the Claimants did not provide any refinement or verification of this amount elsewhere in the record. According to the Assessment Meeting notes, Shell confirmed that 90% of the oil discharged was from the Nakika pipeline.[13] However, this note preceded the discovery and confirmation of leaks from the MPOG pipeline as noted at the 10/02/04 Assessment meeting.[14] And nowhere in the record was this 90% proportion developed for our consideration. (*See*, Binders 5&6)

The record revealed that BP responded to notice of the leaks with necessary repairs to prevent further discharges from the MPOG pipeline. But the Claimants did not provide estimates or verification of the amount or proportion of the MPOG pipeline discharges to the entirety of oil spills at this crossing and in the area subject to BP's removal action efforts. The record also referenced sampling of the Shell and the MPOG pipelines and the sheen of the oil spill incident, but we find no oil sampling results, no oil sampling reports, or expert reports to identify the source of the oil. (*See*, Binders 5&6)

II. APPLICABLE LAW

Title I of the Oil Pollution Act of 1990, 104 Stat 484, 33 USC §2701 *et seq*., provides a strict liability and compensation regime for certain oil pollution. In general, "each responsible party for a vessel or a facility from which oil is discharged, or which poses the substantial threat of a discharge of oil, into or upon the navigable waters or adjoining shorelines or the exclusive economic zone is liable for the removal costs and damages…that result from such incident. 33 USC §2702(a).

The removal costs referred to in subsection (a)…are…any removal costs incurred by any person for the acts taken by the person which are consistent with the National Contingency Plan. 33 USC §2702(b)(1)(B).

The RP for a pipeline includes any person owning or operating the pipeline. 33 USC § 2701(32)(E).

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[10] *See*, Enclosure 3 for "Summary of Preexisting Conditions in the Gulf of Mexico Pertaining to Mudflows/Mudslides."
[11] *See*, Claimants' Binder 5, Sections 1&2, BP's Demand letter and Shell's response.
[12] *See*, Claimants' Binder 5, Section 5, Hurricane Ivan Assessment Meeting Minutes and attachments, dated 09/25/04 (14:00 Hours).
[13] *See*, Claimants' Binder 5, Section 5, Hurricane Ivan Assessment Meeting Minutes and attachments, dated 10/01/04 (14:00 Hours).
[14] *See*, Claimants' Binder 5, Section 5, Hurricane Ivan Assessment Meeting Minutes and attachments, dated 10/02/04 (0800 Hours).

Any person or government may present a claim to the RP for removal costs or damages. 33 USC § 2701(3), (4). If a claim is presented and the RP denies liability or does not settle the claim within 90 days the claim may be presented to the Fund. 33 USC §2713(c). The Fund is expressly available to the President for the "payment of claims in accordance with section 2713…for uncompensated removal costs…or uncompensated damages. 33 USC §2712(a)(4).

The OPA expressly provides that in some circumstances claims may be presented direct to the Fund without first presenting the claim to the RP, including claims "by a responsible party who may assert a claim under section 2708". 33 USC § 2713(b)(1)(B).

Specific to this Shell claim a "responsible party may assert a claim for removal costs and damages under section 2713…only if the responsible party demonstrates that –

> (1) the responsible party is entitled to a defense to liability under section 2703 of this title"…

33 USC § 2708(a)(1).

The OPA provides that in some circumstances the RP may establish a complete defense to liability. "A responsible party is not liable for removal costs or damages…if the responsible party establishes, by a preponderance of the evidence, that the discharge or substantial threat of a discharge of oil and the resulting damages or removal costs were caused solely by –

> (1) an act of God"…

33 USC § 2703(a)(1).

The OPA expressly provides that "'act of God' means an unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character the effects of which could not have been prevented or avoided by the exercise of due care or foresight." 33 USC §2701(1).

In enacting OPA Congress recognized that existing laws provided inadequate remedies and too many barriers to recovery favoring those responsible for spills. Costs should be enough to encourage industry efforts to prevent spills and better contain them when they occur.[15] As in the Clean Water Act (CWA or FWPCA, 33 USC §1251 et seq.) and the Comprehensive Environmental Response Compensation and Liability Act (CERCLA 42 USC 9601 et seq.), the liability associated with the same or similar "act of God" affirmative defenses is strict.[16] The absence of fault or the exercise of due care is not in itself a defense to liability.[17]

III. "ACT OF GOD" CLAIM AS RP FOR THEIR REMOVAL COSTS

Case Precedent

In Apex Oil Company, Inc. v. United States, 208 F.Supp.2d 642 (E.D. La. 2002) (court upheld Coast Guard denial of RP claim because the flood and current conditions at the time of the casualty and spill did not constitute an "act of God" and the RP's underpowered tug was a factor

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[15] S.Rep No.94, 101st Cong., 1st Sess., (1989); 1990 U.S.C.C.A.N 722, 724.

[16] S.Rep 101-94, 11; 1990 U.S.C.C.A.N. 722, 733-734.

[17] *See*, Apex Oil Company, Inc. v. U.S., 208 F.Supp.2d 642, 652 (E.D. La., 2002) and In re Complaint of Metlife Capital Corp, 132 F.3d 818, 820-821 (1st Cir. 1997) (OPA is a strict liability statute).

in the casualty), the court addressed at length the "act of God" defense under the OPA and its companion environmental regimes, the CERCLA and CWA. The court determined that the OPA "act of God" defense should be read to be at least as restrictive in its scope as it is under both the CWA and CERCLA. Indeed while the CWA definition is "textually similar"[18] to the OPA definition, the CERCLA definition is identical.[19] The court recognized that in respect to "exceptional natural phenomena" the burden of proof is much more onerous than under traditional or common law "act of God" concepts, citing to CERCLA legislative history addressing such a distinction between the traditional defense and aspects of the CERCLA definition which is particularly relevant in the context of the instant claim. This was reflected in the legislative histories in support of the enactment of CERCLA and also to sustain amendments to CERCLA under the Superfund Amendments and Reauthorization Act (SARA):

> "The defense for the exceptional natural phenomenon is similar to, but more limited in scope than, the [traditional][20] 'act of God' defense. It has three elements: the natural phenomenon must be exceptional, inevitable, and irresistible. Proof of all three elements is required for successful assertion of the defense. The [traditional][21] 'act of God' defense is more nebulous, and many occurrences asserted as 'acts of God' would not qualify as 'exceptional natural phenomenon.' For example, a major hurricane may be an 'act of God,' but in an area (and at a time) where a hurricane should not be unexpected, it would not qualify as a 'phenomenon of exceptional character.'"

H.R. Rep. 96-172(1), 1980 U.S.C.C.A.N. 6160 6189, and H.R. Rep. 99-253(IV), 1986 U.S.C.C.A.N. 3068, 3101.

While courts considering the "act of God" defense under the various regimes have consistently handed down decisions denying the defense, they have done so on various bases including the absence of sole causation and the unexceptional or anticipated nature of the phenomenon. U.S. v. Alcan Aluminum, 892 F.Supp. 648 (M.D. Pa. 1995) (Hurricane Gloria was not the sole cause of the release where the release was caused in part by unlawful disposal and heavy rains from Gloria were not the kind of natural phenomenon to which the exception applied). U.S. v. Stringfellow, 661 F.Supp. 1053 (C.D. Cal 1987) (Heavy rainfall was not an exceptional natural phenomenon under CERCLA where rains foreseeable based on normal climactic conditions and harm caused could have been avoided by properly designed drains.) Sabine Towing and Transportation Co., Inc v. U.S., 666 F.2d 561(Ct.Cl. 1981)(CWA case where freshet conditions occasioned by spring run-off were not a grave natural disaster or unanticipated).

In United States v. Barrier Industries, Inc., 991 F.Supp. 678 (S.D.N.Y.1998), the court found that spills of hazardous substances caused by bursting pipes after unprecedented cold spell was not an "act of God" within the meaning of CERCLA because the cold spell was not the sole cause of the spill. Numerous other factors antedating the cold weather causally contributed to the problems at the site. Id. at 679. In United States v. M/V SANTA CLARA I, 887 F. Supp. 825 (D.S.C. 1995), the court considered whether an "act of God" had been established under CERCLA. In that case, the defendant claimed that it should not be liable for the clean-up expenses because the release of hazardous materials was caused by a storm. In rejecting that argument, the court reasoned that even if the storm had been poorly forecasted, the vessel expected bad weather and had been

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[18] An "act of God" means an act occasioned by an unanticipated grave natural disaster. 33 USC §1321(a)(12).

[19] 42 USC § 9601(1).

[20] The word "traditional" was added to the legislative history text of SARA, H.R. Rep. 99-253(IV), 1986 U.S.C.C.A.N. 3068, 3100.

[21] The inclusion of "traditional" is for clarification purposes.

instructed to take extra precautions against rough seas. Accordingly, the "act of God" defense was held inapplicable. Id. at 843.

In Liberian Poplar Transports, Inc. v. United States, 26 Cl.Ct. 223 (1992) an oil spill occurred while oil was transferred during a severe thunderstorm. The court found that plaintiff failed to establish this storm as an "act of God" under the FWPCA because the storm could have been anticipated. Id. at 225-226. In Kyoei Kaiun Kaisha, Ltd. v. M/V BERRING TRADER, 795 F. Supp. 1054 (W.D. Wa. 1991), the owners and operators failed to show that "an act of God" was the sole cause of the grounding of the vessel during a severe storm and high winds because the storm was not the sole cause; acts of the crew contributed to grounding. Id. at 1056-1057.
In St. Paul Fire & Marine Ins. Co. v. United States, 4 Cl.Ct. 762 (Ct. Cl. 1984), where severe subsurface settlement caused a rupture of an storage tank and the resulting oil discharge into a river, the court found the soil settlement causing the rupture was entirely foreseeable and was not an "act of God" under the FWPCA. Id. at 768.

Discussion

Hurricane Ivan, Not "Exceptional" or "Unanticipated"

Ivan was a major hurricane, rated just below a category 4 as it made landfall along the Gulf coast. Ivan was ranked 29th of the top 65 most intense hurricanes to strike the U.S. mainland from 1851-2006. While the severity ranking does not rule out an "act of God" defense, Ivan, however, occurred in an area where, and at a time when, it should not have been unexpected. The record is replete with information that industry operators, as well as any person that watches the weather channel would know. There is a hurricane season and the risks include major and minor hurricanes, tropical storms and the damages that can result. Hurricane risks to the oil production industry in the Gulf have long been recognized by industry and regulators alike. Ivan was tracked and forecast in a great deal of detail as clearly shown in the record and we recall it was tracked on television and in the press like most any hurricane today that approaches the coast of the United States. While arguably Ivan may have been grave, irresistible or inevitable, in our view Ivan was not "exceptional" or "unanticipated" as those terms are used in the OPA definition of "act of God."

Denial of the claim is also consistent with the policy purposes underlying the OPA strict liability regime as discussed by the court in *Apex*, *supra*. Under the circumstances presented by this claim, where industry knowingly operates in the face of such risks, shifting the entire OPA oil removal cost and damage risk from industry to the public's Fund would be inequitable and would undermine important incentives that liability brings to prevent and contain oil pollution.

Main Pass/BP's Actions to Prevent or Avoid Pipeline Oil Spills

In addition to the determination of whether Ivan was "exceptional" or "unanticipated," Main Pass/BP must also show that the damage to the pipeline resulting in oil spills could not have been prevented or avoided with the exercise of due care or foresight, or that an "act of God" was the sole cause of the incident.

The Claimants' record was singularly lacking in evidence of the actions, if any, to prevent or avoid the hurricane effects. For instance, the NPFC cannot discern from the record what the status of the MPOG pipeline before and in the aftermath of Ivan. Was it "shut in," before and after Ivan? After Ivan was the pipeline operational and pressurized to transport product? What was the status of the MPOG pipeline during its assessment and investigation for damage and oil discharges? (*See*, Binders 5&6)

Main Pass/BP have not produced evidence that their pipeline damage and resultant oil spills especially at the crossing with Shell's Nakika pipeline in MP Block -69 were not preventable or avoidable. The Claimants have failed to demonstrate that the effects of this hurricane could not have been prevented or avoided with the exercise of due care or foresight, or that the "act of God' was the sole cause of the pipeline damages and the oil spill incident.

Main Pass/BP's Planning and Preventive/Avoidance Measures in Design, Construction, or Location

The Claimants Main Pass/BP produced no documents concerning the planning (location), design, and construction of the MPOG pipeline, except one account suggesting that the MPOG pipeline was located in a known mudslide area.[22] But there was no information about how the pipeline was designed and constructed to prevent or avoid damage in anticipation of hurricane forces, tidal surges, the currents, seafloor failure, and the mudslides. Similarly, no risk assessment or engineering analysis/recommendations on construction, location, and threats was ever provided.

The MMS reports reviewed by the NPFC disclosed that forces on the seafloor during Ivan caused larger mudflow movements, resulting in greater platform and pipeline losses.[23] In the shallow water of the Gulf, buried pipelines have experienced consistent damage from pipeline movement during the hurricane studies of Andrew, Lili and Ivan. Where pipelines are buried in weak silty soils, they are susceptible to failure under the hurricane forces on the seafloor, causing a weakening of the surrounding soil, and failing under the reverse currents generated by the hurricane ocean patterns.[24] At pipeline crossings, the movement of pipelines created lost separation, mats, or cover as a result of pipelines being displaced. In shallow depths, 200 feet or less, pipelines appear to be more susceptible to hurricane forces and should include provisions to maintain separation after installation. Mats and rock appear to be inadequate in areas of seafloor movement, and mudflows.[25]

Main Pass/BP provided the details of how the hurricane forces dislodged the cement mats at the pipeline crossing and scattered them to undetectable locations. The Claimants also detailed how the Nakika and MPOG pipelines wore through their outer cement coating at the crossing and fractures occurred as a result of hurricane forces during Ivan.[26] But the Claimants failed to identify or even speculate which of the hurricane forces caused the damages and whether the pipeline was designed, construction, and appropriately located in anticipation of such forces to prevent or avoid such damages from occurring. (*See*, Binders 5&6)

Because of these omissions, the Claimants have failed to demonstrate that the pipeline damage and the resulting oil spills could not have been prevented or avoided by the exercise of due care or foresight, or that the "act of God" was the sole cause of the pipeline damages and the oil spill incident.

IV. CLAIM FOR UNCOMPENSATED REMOVAL ACTION COSTS for SHELL PIPELINE OIL DISCHARGE

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[22] *See*, Claimants' Binder 6, Section 8, ICS 214 form and attachments dated 9/23/04 by Mr. Nelson Fetgatter, p. 2.

[23] *See*, "*Pipeline Damage Assessment from Hurricane Ivan in the Gulf of Mexico,"* Report No. 440 38570 (Rev. No. 2) Technical Report, Mineral Management Service (DET NORSKE VERITAS), pp. 31-34, May 15, 2006.

[24] *Id.* p. 33.

[25] *Id.* p. 33.

[26] *See*, Claimants' Binders 5&6, Sections. 5, 6, 7, 8, 9 & 10, H. Ivan Assessment Meeting Minutes and attachments, Incident Actions Plans and attachments, Responder Log Books, ICS-214 Responder Logs, Inspector Daily Diary and Work Reports, and Diver's Dailey Logs.

A. Claim Record and Discussion

On April 30, 2007, BP initiated the claim for uncompensated removal costs. In its letter to Shell, the BP letter demanded payment of $1.998 million for response costs related to the oil discharges from "Site 2" its Nakika pipeline at the crossing with the MPOG pipeline. On June 6, 2007, Shell declined to remit payment because of Main Pass/BP's shared responsibility for the response costs.

As the NPFC reviewed this record for support of Main Pass/BP's claim, we find the Claimants have failed to disclose how they derived the $1.998 million figure for the Shell demand letter, nor did they provide an alternative figure with support. The Claimants also have failed to provide us with data or bases for determining how much oil was spilled and what proportion of oil was spilled from the Nakika and from the MPOG pipelines during this incident. Nor did the Claimants disclose the volume of oil in the MPOG pipeline posing a threat of discharge in the aftermath of Ivan and prior to discovery of the MPOG pipeline leaks at the crossing. (*See*, Binders 5&6)

Claimants have also failed to identify and quantify the amount of oil discharged from either Shell's Nakika and the MPOG pipelines during this incident, or to quantify the sum certain or the proportion of the $2,453,439.41 in removal costs which was expended to clean up the oil spilled by Shell's Nakika pipeline, and the difference, attributable to the removal costs for oil discharged from their MPOG pipeline. Because we find no basis to pay this claim, the NPFC will deny Claimants' request for uncompensated removal costs.

V. CONCLUSION

Having reviewed these claims, the NPFC denies the "act of God," claim because the Claimants, Main Pass/BP, have not established that the costs resulting from an unanticipated grave natural disaster or other natural phenomenon of an exceptional character. And the Claimants failed to demonstrate that the effects of the hurricane were not preventable or avoidable by the exercise of due care or foresight, or that the "act of God" was the sole cause of the damages and oil discharges of this incident. The NPFC denies the second claim because the Claimants, Main Pass/BP, provided no basis for the NPFC to pay this claim. The Claimants failed to quantify the amount of oil discharged from the Shell Nakika pipeline, or to ascertain the amount or proportion of oil discharged from the MPOG pipeline. Nor did they quantify the sum certain, the proportion of the $2,453,439.41 in removal costs that was expended to clean up the oil spilled by Shell's Nakika pipeline, excluding the difference, the removal costs attributable to oil discharged from their MPOG pipeline. Accordingly, Main Pass/BP's claims against the OSLTF are denied.

Claim Supervisor: ***Thomas Morrison***

Date of Supervisor's review:

Supervisor Action:

Supervisor's Comments:

U.S. Department of
Homeland Security

**United States
Coast Guard**

Director
National Pollution Funds Center
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VIA EMAIL: [redacted]@frvf-law.com

Fowler Rodriguez Valdes-Fauli
ATTN: H Jake Rodriquez
400 Poydras Street 30th Fl
New Orleans, LA 70130

RE: Claim Number: N04080-002

Dear Mr. H. Jake Rodriquez:

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number N04080-002 involving the Hurricane Ivan, Act of God defense of Main Pass Oil Gathering Company and BP Pipelines (North America) Inc, and we deny their claim for uncompensated response costs for the clean up of oil discharges from the Nakika pipeline at the crossing with the MPOG pipeline. Compensation is denied for the reasons stated in the enclosed Claim Summary / Determination Form.

You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you find that you will be unable to gather particular information within the time period, you may include a request for an extension of time for a specified duration with your reconsideration request. Reconsideration of the denial will be based upon the information provided. A claim may be reconsidered only once. Disposition of that reconsideration in writing will constitute final agency action. Failure of the NPFC to issue a written decision within 90 days after receipt of a timely request for reconsideration shall, at the option of the claimant, be deemed final agency action. All correspondence should include claim number N04080-002.

Mail reconsideration requests to:

Director (ca)
National Pollution Funds Center
U.S. Coast Guard
4200 Wilson Boulevard, Suite 1000
Arlington, VA 22203-1804

Sincerely,

Donna Hellberg
Claims Manager
U.S. Coast Guard

Encl: Claim Summary / Determination Form

(1) NOAA Technical Memorandum NWS TPC-5 entitled *The Deadliest, Costliest, and Most Intense United States Tropical Cyclones from 1851to 2006 (and other frequently requested hurricane facts)*

(2) Summary of Preexisting Conditions in the Gulf of Mexico Pertaining to Hurricanes

(3) Summary of Preexisting Conditions in the Gulf of Mexico Pertaining to Mudflows/Mudslides