

CLAIM SUMMARY / DETERMINATION

Claim Number:	J13014-0007
Claimant:	[REDACTED]
Type of Claimant:	Individual
Type of Claim:	Removal Costs, Natural Resources, Property Damage, Subsistence Use
Claim Manager:	[REDACTED]
Amount Requested:	\$10,500.00

INCIDENT

On June 30, 2013, the F/V LONE STAR sank and discharged oil into the Igushik River, posing a substantial threat of a discharge of oil into Bristol Bay, 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. At the time of the incident [REDACTED] and [REDACTED] owned the vessel and Burrece Fisheries, Inc. operated the vessel; all are responsible parties under OPA.

CLAIMANT AND CLAIM

Claimant

The Claimant is a commercial set-net salmon fisherman who leases a site on the banks of the Igushik River, in Bristol Bay, Alaska.

Claim

The NPFC received the claim on December 29, 2014. Ms. [REDACTED] seeks \$10,500 for claimed losses and removal costs due to the incident. The amount consists of \$5,000 for removal costs, \$3,000 for subsistence use, \$1,500 for natural resources, and \$1,000 for damage to real or personal property. The claimant states that she presented her claim to the responsible party in June 2014.

APPLICABLE LAW:

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".

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].

“Damages” means damages specified in section 2702(b)...and includes the costs of assessing these damages. 33 U.S.C. § 2701(5).

Natural Resource Damages are damages for injury to, destruction of, loss of, or loss of use of, natural resources, including the reasonable costs of assessing the damage, which shall be recoverable by a United States trustee, a State trustee, an Indian tribe trustee, or a foreign trustee. 33 U.S.C. §2702 (b)(2)(A)

Rights of subrogation – “Payment of any claim or obligation by the Fund under this Act shall be subject to the United States Government acquiring by subrogation all rights of the claimant or State to recover from the responsible party.” 33 U.S.C. §2712(f)

DETERMINATION:

Claimant provided copies of her driver’s license, 2014 fishing permit, a copy of the State of Alaska Public Notice of Shore Fishery Lease Applications with her lease identified, a map identifying the location of her lease, and photographs of the lease site and sorbent boom. Claimant provided no arguments or other evidence supporting her claim, despite the NPFC’s requests for such documentation by letter dated January 13, 2015, and by letter dated February 20, 2015, attached to an email the same day.

The claim must be denied for several reasons. Though the claimant states that the claim was submitted to the RP in June of 2014, there is no evidentiary documentation showing when or what she presented to the RP. Upon receipt of the claim to the Fund, the NPFC notified the RP of the claim by letter dated December 31, 2014. Through its attorney, the RP replied to the

NPFC by letter dated January 7, 2015, providing reasons and documentation supporting denial of the claim. The RP provided a copy of a Settlement Agreement and Release of liability dated February 6, 2014, which shows that the claimant released all claims related to commercial fishing lost profits and income due to the spill in exchange for a payment of \$5,518.61. The RP provided a copy of a Stipulation of Dismissal with Prejudice in the U.S. District Court for the District of Alaska, executed on behalf of the claimant on June 19, 2014. The Dismissal with Prejudice dismisses “all claims” against all Defendants in the matter.

These documents show that the claimant retains no rights to recover against the designated RP or its charterer, Trident Seafoods Corporation, which she could subrogate to the Fund, were the Fund to compensate her. In accordance with 33 U.S.C. §2712(f), because the claimant retained no rights to recover against any RPs, and has no rights to subrogate to the Fund, her claim must be denied.

Even if the claimant had subrogable rights to provide to the Fund if she were paid, she has not proven her claim. She has not shown that the oil spill caused any losses. Regarding the subsistence portion of her claim, Ms. [REDACTED] provided no evidence to show her fishing history or records showing any subsistence use of natural resources, nor has she provided any evidence that she could not and did not catch salmon for subsistence.

With regard to the natural resource damage portion of her claim, Ms. [REDACTED] is not eligible to claim it. Only designated United States, State, Indian tribe and foreign trustees may claim natural resource damages. 33 U.S.C. §2702 (b)(2)(A). Individuals cannot claim these damages.

Regarding the removal costs portion of her claim, Ms. [REDACTED] provided no evidence that she incurred any removal costs that were directed by the Coast Guard Federal On Scene Coordinator (FOSC) or determined by the FOSC to be consistent with the National Contingency Plan (NCP). She provided no evidence that she expended any money dealing with mitigating, minimizing or removing the oil spill.

As for the claimed property damage, the claimant provided no explanation or evidence demonstrating damage or supporting the amount claimed.

For the reasons stated, the claim must be denied.

Claim Supervisor: [REDACTED]

Date of Supervisor's review: 5/8/2015

Supervisor Action: *Approved*

Supervisor's Comments: *Denial Approved.*