

## CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10016-001
Claimant	: Chevron U.S.A., Inc.
Type of Claimant	: Corporate (US)
Type of Claim	: Removal Costs
Claims Manager	: [REDACTED]
Amount Requested	: \$2,701,979.68

### **FACTS:**

On December 5, 2009, at 0515, Sector New Orleans (SEC NOLA) received notification of a fishing vessel that broke free from its emergency mooring location after taking on water through a leaking shaft seal. The vessel drifted away unmanned, coming to rest against Chevron Platform Main Pass Block 41B, where it was reported sunk with 3,500 gallons of diesel fuel on board. SEC NOLA conducted an investigation and found the F/V CAPTAIN MIKE discharged 35 gallons of diesel fuel at a rate of 5-10 gallons per hour, causing a 7 mile by .10 mile sheen into the Gulf of Mexico, a navigable waterway of the United States.<sup>1</sup> As of December 29, 2009, an estimated 2,500 gallons of fuel had leaked from the vessel.<sup>2</sup> On January 4, 2010, the vessel was removed from the water and secured on a deck barge.<sup>3</sup> The FOSC confirmed that at that point, the F/V CAPTAIN MIKE no longer posed a threat to the environment.<sup>4</sup>

### **CLAIM AND CLAIMANT:**

On April 8, 2010, Chevron U.S.A., Inc. (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) originally seeking \$2,759,563.94 in uncompensated removal costs resulting from the CAPTAIN MIKE incident. Chevron hired O'Brien's Response Management to oversee the spill response. They also hired the International Construction Group, LLC and its subcontractors to remove the CAPTAIN MIKE from the water. Several dive companies were hired to conduct damage assessments on the platform, the fishing vessel and a lift boat that was next to the platform. American Pollution Control, Corp. provided a spill response vessel, equipment and personnel along with Marine Spill Response Corp. providing equipment and personnel. Several other contractors were hired to provide dock support and facility underwater damage assessments.

The claim was originally denied because 1) the NPFC was not able to obtain a firm sum certain from the Claimant that was substantiated with accurate invoices, contractor daily cost sheets, and contracts and/or rate schedules for each vendor; 2) the Claimant failed to provide information the NPFC requested for over three months in order for the NPFC to be able to properly adjudicate the claim. 33 CFR 136.105(a) and 136.105(e)(6) requires that the Claimant bears the burden of providing all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim; and 3) the Claimant failed to provide documentation that demonstrated they had uncompensated removal costs pursuant to the governing claims regulations located at 33 CFR 136.205.

### **REQUEST FOR RECONSIDERATION:**

Claimant emailed the NPFC stating it was putting together "another claim" (reconsideration) and wanted to meet to discuss it.<sup>5</sup> Chevron's claim representative met at the NPFC with the assigned Claims Manager to go over their reconsideration claim package on September 28, 2011.

<sup>1</sup> See SITREP-POL One DTG 102201Z DEC 09.

<sup>2</sup> See SITREP-POL Three DTG 291540Z DEC 09.

<sup>3</sup> See MST1 [REDACTED] email dated January 4, 2010.

<sup>4</sup> See LCDR [REDACTED] email dated May 12, 2011.

<sup>5</sup> See, [REDACTED] email dated September 15, 2011.

The reconsideration documents presented at the meeting consisted of the following:

1. Chevron letter dated September 26, 2011;
2. Optional OSLTF Claim Form signed and dated September 22, 2011, which includes the following attachments:
  - a. Chevron letter to the RP summarizing oil spill removal costs
  - b. Vessel Destruction and Hold Harmless Agreement
  - c. RP letter to National Vessel Documentation Center
  - d. Fishing Vessel Captain MIKE Oil Spill – Description of Nature, Extent and Cause of Damages, Claimant Actions
    - D-1. Incident location, MP 41BB
    - D-2. Photograph of F/V CAPTAIN MIKE against MP 41 BB facility
    - D-3. Photo of oil spill from F/V CAPTAIN MIKE
    - D-4. Photo of oil spill from F/V CAPTAIN MIKE
    - D-5. Photo of oil spill from F/V CAPTAIN MIKE
    - D-6. Photo of oil spill from F/V CAPTAIN MIKE
    - D-7. Mesotech of CAPTAIN MIKE on MP 41 BB platform
    - D-8. Resources at Risk in vicinity of MP 41
    - D-9. IOS-800
  - e. Incident Action Plan Operational Period 1
  - f. Incident Action Plan Operational Period 2
  - g. Incident Action Plan Operational Period 3
  - h. Binder containing sixteen (16) tabs of Response invoices, rate information, documentation, payment verification

All of the above documents were presented in the original claim except for items 1, 2 and 2.h. The binder (2.h) containing sixteen (16) tabs and the signed claim form provided a new sum certain of \$2,701,929.68.

#### **RECONSIDERATION CLAIM ANALYSIS:**

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 § 136.233, a claimant must establish loss of profits or impairment of earning capacity and that the loss was due to the destruction or injury to real or personal property or natural resources. The NPFC considered all the documentation submitted by the Claimant. The request for reconsideration must be in writing and include the factual or legal grounds for the relief requested, providing any additional support for the claim. 33 CFR 136.115(d).

The NPFC performed a *de novo* review of the entire claim submission upon reconsideration.

In its original submittal, the Claimant failed to provide a specific sum certain for its claim. Upon reconsideration, the Claimant submitted a binder containing sixteen (16) tabs which consist of response invoices, rate information, documentation, and payment verification. However, the Claimant submitted some invoices on reconsideration that had not been first presented to the Responsible Party (RP). As such, the NPFC requested that the Claimant provide proof of presentment of all invoices submitted. Presentment was confirmed via certified mail on 11/29/2011, however the NPFC could not complete adjudication of the claim until the RP was given 90 days (2/27/2012) to respond. The RP has not responded as of the date of this claim determination.

In the NPFC's initial denial determination the NPFC stated that the Claimant failed to provide proof of payment for each contractor and subcontractor claimed. Upon reconsideration, the Claimant has submitted financial display documents of payments made to each contractor associated with this incident.

The NPFC requested<sup>6</sup> and received an affidavit from Chevron stating the display documents affirm that payment was made by Chevron to the bank account of each vendor named in the document.<sup>7</sup>

On December 29, 2011, the NPFC requested additional information in order to further adjudicate the claim. This request included the need for daily logs, rate schedules, and other miscellaneous information to properly substantiate the claim.<sup>8</sup> Claimant responded on January 19, 2012 with some of the additional information. The Claimant also issued a statement via email on January 19, 2012 that they did not have access to ICG subcontractor cost information (Tab 3) and understood that the NPFC could not compensate them without that documentation.<sup>9</sup> Finally, on January 23, 2012, the Claimant submitted all of the information it could gather to support the claim.<sup>10</sup>

The NPFC reviewed the total invoiced costs submitted with the claim and placed them on a spreadsheet (see Enclosure (2) NPFC cost spreadsheet). The Claimant presented a sum certain of \$2,701,929.68. Upon review of this claim, the NPFC found the following:

- a. Tab 1 – International Construction Group LLC: Claimant's total for this vendor was \$1,278,367.75. The NPFC found the invoiced costs total \$1,278,380.25 (\$12.50). The difference is \$4.50 in Doc #1 and \$8.00 in Doc # 2 of this invoice which equals \$12.50. The NPFC would deny these costs because they are above the amount paid by the Claimant to its contractor but the Claimant did not request the \$12.50 costs, therefore the NPFC does not deny this amount, but shows an adjustment of (-12.50) on the "1 ICG LLC" tab on the NPFC cost spreadsheet.
- b. Tab 3 – International Construction Group LLC Subcontractor Costs: Claimant's total for this vendor was \$271,227.34. The NPFC found the total invoiced costs total \$271,228.34. NPFC would deny the \$1.00 difference on Max Welding ticket # 169591 because it is above the amount paid by the Claimant to its contractor but the Claimant did not request the additional \$1.00, therefore the NPFC does not deny this amount, but shows a deducted adjustment of (-1.00) on the "3 ICG LLC" tab on the NPFC cost spreadsheet.
- c. Tab 8 – American Pollution Control: Claimant's reconsideration total cost for this vendor was \$51,094.47. In a November 10, 2011 email, the NPFC notified the Claimant that the total cost for this vendor was \$51,144.47 (+\$50.00), which Claimant had paid. The Claimant was asked if it would like to amend its sum certain by this amount. The Claimant replied by email dated December 13, 2011 stating that they would like their total sum certain increased by \$50.00. Based on that request, the NPFC increased the Claimant's sum certain to \$2,701,979.68.

Upon review of the claim, the NPFC denies the following costs:

- a. Tab 3 -- International Construction Group LLC (ICG LLC) Subcontractor Costs: All costs in this tab are denied because Claimant failed to provide: 1) documentation to support the claimed costs, including rate schedules or contracts 2) ICG LLC's proof of payment to its subcontractors, and 3) signed daily records of removal activities performed. Total costs denied under this tab equal **\$271,227.34**. See Enclosure (2) NPFC cost spreadsheet Tab 3 for a detailed denial of each cost.
- b. Tab 5 – Fugro Chance Inc.: Sonar equipment costs totaling \$6,141.94 are denied because this equipment was being billed for two days after the vessel had already been lifted and placed on a barge on the morning of 1/04/10 according to FOSC email dated 1/04/10. Therefore, this equipment was no longer needed to conduct an underwater survey of the fishing vessel. An additional \$7,758.24 under invoice # 123111 was denied which encompasses two days worth of undocumented work. This invoice states it is for services rendered from 12/18/09-1/6/10. However, dailies provided start on 12/21/09 with only a partial day cost. Tab 11 of this claim contains the same vendor. Tab 11 shows Fugro went back to the office on 12/15/09 due to

<sup>6</sup> See, NPFC email to Chevron dated October 18, 2011.

<sup>7</sup> See, Chevron letter dated December 13, 2011, attachment 3: Affidavit from Mr. [REDACTED] Finance Manager for Chevron's Gulf of Mexico Business Unit.

<sup>8</sup> See, NPFC email dated December 29, 2011.

<sup>9</sup> See, Chevron email dated January 19, 2012.

<sup>10</sup> See, Chevron email dated January 23, 2012.

weather, without completing a full day. Therefore the NPFC denies the apparent two day undocumented cost, since it is reasonable to assume that work did not start up again until 12/21/09 as a documented partial day. Additionally, no dailies were provided to substantiate the costs. Total costs denied under this tab equal **\$13,900.18**. See Enclosure (2) NPFC cost spreadsheet Tab 5 for a detailed denial of each cost.

- c. Tab 6 – Marine Spill Response Corp: Invoice 003-73374 consists of third party charges from Ace Transportation, LLC under this vendor. The NPFC denies costs totaling **\$1,432.57** under this invoice because no rate schedule could be provided. See Enclosure (2) NPFC cost spreadsheet Tab 6 for a detailed denial of each cost.
- d. Tab 7 – American Pollution Control (AMPOL): Invoice documentation submitted showed a credit # 10276-5207 issued for ticket # 53362. Costs of \$1,953.00 are denied because of this credit and because these costs are covered under claimant's ticket number 1050 in Tab 8 of its submission. Additionally, third party vendor Martin Holdings' invoice number 510021756 and 410074071 totaling \$938.40 are denied because no rate schedule was provided for Martin Holdings. Finally, AMPOL's rate schedule shows \$95.00 per person per day for subsistence, unless a predetermined rate is established reasonable for the specific area. Claimant could not prove the higher applied rate of \$125.00 per person per day. NPFC denies subsistence costs for 4 people a day for six days that are in excess of the published rate of \$95.00 per day. Therefore  $\$30.00 (\$125.00 - 95.00 = \$30.00) \times 4 \text{ people} \times 6 \text{ days} = \$720.00$  denied. Total denied under this tab equals **\$3,611.40**. See Enclosure (2) NPFC cost spreadsheet Tab 7 for a detailed denial of each cost.
- e. Tab 8 – American Pollution Control (AMPOL): AMPOL's rate schedule states offshore work shall have a 12 hour minimum, but overtime is only given for inshore work except weekends or holidays, which will be time and a half. NPFC denies overtime costs which were billed while the vessel was offshore because they did not fall on a weekend or holiday. These costs total \$1,353.00. Additionally, the NPFC denies claimed subsistence costs when no signed meal sheets or other confirming documentation was provided totaling \$1,875.00 and subsistence costs that were overbilled (5 persons vs. 3) or at the wrong rate (\$125.00 vs. \$95.00) totaling \$1,775.00. Finally, this vendor billed for a driver under invoice # 57047. There is no driver listed on the vendor's rate schedule. Because it invoiced for a vehicle, the NPFC finds it reasonable to pay the lowest personnel rate on AMPOL's rate sheet, which is \$28.00 an hour for laborer. Vendor billed at  $\$32.00 \times 6 \text{ hours} = \$192.00$ . NPFC paid at  $\$28.00 \times 6 \text{ hours} = \$168.00$ . The difference denied is \$24.00. Total denied under this tab equals **\$5,027.00**. See Enclosure (2) NPFC cost spreadsheet Tab 8 for a detailed denial of each cost.
- f. Tab 12 – American Pollution Control (AMPOL): AMPOL's rate schedule shows \$95.00 per day per person for subsistence, unless a predetermined rate is established reasonable for the specific area. Claimant could not provide documentation supporting the \$125.00 rate applied. In addition, vendor charged for additional people on 12/13/09 and 12/15/09 which were not supported by the documentation submitted. Therefore, the NPFC denies a total of **\$2,040.00** under this tab. See Enclosure (2) NPFC cost spreadsheet Tab 12 for a detailed denial of each cost.
- g. Tab 13 – NPFC requested and Chevron confirms that Survey Inspector - Level 4" should be billed at \$68.00 per hour as shown on rate schedule vs. the \$68.60 billed. This results in a denial of \$196.20 ( $.60 \times 327$ ). Additionally, per diem was not noted on the rate schedule, yet was billed for 3 days at \$35.00 per day. NPFC denies this cost totaling \$105.00. Also, print/copy/fax and pc costs were invoiced at a higher rate than allowed by the published rate schedule. Therefore, NPFC denied the extra costs totaling \$150.00. Finally, a lodging receipt of \$75.38 was invoiced, but lodging is not noted on the published rate schedule. Therefore, NPFC denies this cost. Total costs denied under this tab are **\$526.58**. See Enclosure (2) NPFC cost spreadsheet Tab 13 for a detailed denial of each cost.
- h. Tab 14 – Marine Spill Response Corp: Invoice 003-73584 consists of third party charges from Ace Transportation, LLC under this vendor. The NPFC denies costs totaling **\$1,432.57** under this

invoice because no rate schedule could be provided. See Enclosure (2) NPFC cost spreadsheet Tab 14 for a detailed denial of each cost.

- i. Tab 15 – EDG: Print/copy/fax and pc costs were invoiced at a higher rate than allowed by the published rate schedule. Therefore, NPFC denied the extra costs totaling \$75.00. Additionally, NPFC finds costs of \$10,752.84 denied because they represent costs billed for personnel, mileage, per diem, lodging and peripherals used after the FOSC determined the vessel no longer posed a substantial threat (on 1/04/10) to the environment. Therefore, the NPFC finds a total of **\$10,827.84** denied under this tab.

Total costs denied equal \$310,025.48. All remaining costs in the amount of **\$2,391,954.20** represent reasonable removal costs required to raise and remove the fishing vessel from the Gulf of Mexico and place it on a barge, mitigating the continuing release of oil.

The NPFC hereby determines that the NPFC offers, and the OSLTF is available to pay, **\$2,391,954.20** as full compensation for reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # N10016-0001. 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.

**AMOUNT APPROVED: \$2,391,954.20**

Claim Supervisor

Date of Supervisor's Review: 6/26/12

Supervisor Action: *Reconsideration approved*

Supervisor's Comments: