

seq., the Louisiana Coastal Wetlands Conservation, Restoration and Management Act, La. R.S. 49:213.1, *et seq.*, and the provisions of La. R.S. 56:1, *et seq.*, seeking recovery of natural resource damages, removal costs, and other expenses arising out of the discharge of oil into navigable waters of the United States and the State of Louisiana and the adjoining shorelines.

II. JURISDICTION, VENUE AND NOTICE

2. This Court has jurisdiction over this action under 28 U.S.C. §§ 1331 and 1345 and Section 1017(b) of OPA, 33 U.S.C. § 2717(b). This Court also has supplemental jurisdiction over state law claims in this action under 28 U.S.C. § 1367.

3. Authority to bring this action on behalf of the United States is vested in the United States Department of Justice by 28 U.S.C. §§ 516 and 519.

4. Authority to bring this action is vested in the Office of the Spill Coordinator, Office of the Governor, pursuant to the Louisiana Constitution, Article IX, Section 1 and La. R.S. 30:2451, *et seq.*

5. The State of Louisiana is authorized to bring this suit pursuant to La. R.S. 30:2025A,B(1)(a) and G(1), 33 U.S.C. § 2706(b) and 33 U.S.C. § 2717.

6. Venue is proper in the Eastern District of Louisiana pursuant to 28 U.S.C. § 1391 and Section 1017(b) of OPA, 33 U.S.C. § 2717(b), inasmuch as it is the judicial district in which the discharge occurred.

III. PLAINTIFFS

7. Plaintiff, the United States of America, has commenced this action on behalf of NOAA and DOI, the federal agencies that have been designated by the President to act on behalf of the public as trustees for natural resources belonging to, managed by, controlled by, or

appertaining to the United States.

8. Plaintiff, the State of Louisiana, and the state trustees for natural resources as designated by the Governor of the State of Louisiana pursuant to 33 U.S.C. § 2706(b)(3), to wit; the Louisiana Oil Spill Coordinator, the Louisiana Department of Environmental Quality, the Louisiana Department of Wildlife and Fisheries, and the Louisiana Department of Natural Resources, are trustees for the natural resources injured by the discharge under various federal statutes and regulations which include, but are not limited to, the Oil Pollution Act of 1990, 33 U.S.C. § 2701, *et seq.*; the Clean Water Act, 33 U.S.C. § 1251, *et seq.*; and the National Contingency Plan, 40 C.F.R. Part 300.

IV. DEFENDANTS

9. Defendant Marine Oil Trader 3, Ltd., is organized under the laws of Liberia with offices at 80 Broad Street, Monrovia, Liberia.

10. Defendant ERMIS Maritime Corp. is organized under the laws of Liberia with offices at 330 Theseos Ave., 176-75, Athens, Greece.

11. At the time of the incident that forms the basis for this Complaint, Marine Oil Trader 3, Ltd., was the owner of the vessel WESTCHESTER.

12. At the time of the incident that forms the basis for this Complaint, ERMIS Maritime Corp. was the operator of the vessel WESTCHESTER.

13. Defendants are each a "person" within the meaning of Section 1001(27) of OPA, 33 U.S.C. § 2701(27).

V. STATUTORY AND REGULATORY AUTHORITY

A. FEDERAL AUTHORITY

Removal Authority and the Oil Spill Liability Trust Fund

14. Section 311(c) of the CWA, 33 U.S.C. § 1321(c), empowers the President to "ensure effective and immediate removal of a discharge, and mitigation or prevention of a substantial threat of a discharge of oil . . . (i) into or on the navigable waters; (ii) on the adjoining shorelines to the navigable waters...or (iv) that may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States."

15. Federal removal actions are financed through the Oil Spill Liability Trust Fund, which is a revolving fund that is financed by taxes on petroleum, pursuant to 26 U.S.C. § 4611, and by contributions from responsible parties.

Natural Resource Damages

16. Pursuant to Section 1006 of OPA, 33 U.S.C. § 2706, federal trustees shall be designated by the President to act on behalf of the public as trustees for natural resources belonging to, managed by, controlled by, or appertaining to the United States; and state and local trustees shall be designated by the Governor to act on behalf of the public as trustees for natural resources belonging to, managed by, controlled by, or appertaining to the State or a political subdivision.

17. Pursuant to Section 1006(b) of OPA, 33 U.S.C. § 2706(b), and the National Contingency Plan, 40 C.F.R. Part 300, Subpart G, the DOI and NOAA and the Louisiana Oil Spill Coordinator's Office ("LOSCO"), the Louisiana Department of Environmental Quality ("LDEQ"), the Louisiana Department of Wildlife and Fisheries ("LDWF"), and the Louisiana

Department of Natural Resources (“LDNR”) have been designated to act on behalf of the public as trustees for natural resources belonging to, managed by, controlled by, or appertaining to the United States and the State of Louisiana.

18. Pursuant to Section 1006(c) of OPA, 33 U.S.C. § 2706(c), state and federal trustees are authorized to assess natural resource damages and to develop and implement a plan for the restoration, rehabilitation, replacement, or acquisition of the equivalent of the natural resources under their trusteeship.

19. NOAA has promulgated a Natural Resource Damage Assessment regulations at 15 C.F.R. Part 990, which can be used by the trustees in conducting natural resource damage assessments when natural resources and/or services are injured as a result of an incident involving an actual or substantial threat of a discharge of oil.

Recovery of Removal Costs and Natural Resource Damages

20. Section 1002(a) of OPA, 33 U.S.C. § 2702(a), provides, inter alia, as follows:

Notwithstanding any other provision or rule of law . . . 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 . . . is liable for the removal costs and damages specified in subsection (b) that result from such incident.”

21. Section 1002(b)(1)(A) of OPA, 33 U.S.C. § 2702(b)(1)(A), provides that the removal costs referred to in Section 1002(a) of OPA include "all removal costs incurred by the United States [and] a State...under [inter alia] subsection (c)...of section 1321 of this title...."

22. Section 1002(b)(2) of OPA, 33 U.S.C. § 2702(b)(2), provides that the damages referred to in Section 1002(a) of OPA include inter alia “[d]amages 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...[or] a State trustee....”

23. Pursuant to 15 C.F.R. § 990.62, *et seq.* the trustees may issue a written demand, inviting a responsible party to implement the Final Restoration Plan, and to advance a specified sum representing trustee assessment costs and all trustee costs associated with implementing the Final Restoration Plan.

B. STATE AUTHORITY

24. Pursuant to the Louisiana Constitution, Article IX, Section 1 and La. R. S. 30:2451, *et seq.*, the Office of the Spill Coordinator, Office of the Governor shall have the authority to institute, prosecute, or intervene in any civil action or proceeding as necessary for the protection of any right or interest of the state.

25. Pursuant to Article IX, Section 1 of the Louisiana Constitution, “The natural resources of the state including air and water...and esthetic quality of the environment shall be protected, conserved, and replenished insofar as possible and consistent with the health, safety and welfare of the people.”

26. Pursuant to the opinion of the Louisiana Supreme Court in the case of *Save Ourselves, Inc., et al. v. Louisiana Environmental Control Commission, et al.*, 452 So.2d 1152 (La. 1984), “the Natural Resources article of the 1974 Louisiana Constitution imposes a duty of environmental protection on all state agencies and officials,”

27. La. R.S. 30:2451, *et seq.* establishes the Louisiana Oil Spill Prevention and Response Act (“OSPRA”). La. R.S. 30:2453 provides that the legislature, “finds and declares that the release of oil into the environment presents a real and substantial threat to the public health and welfare, to the environment, the wildlife and aquatic life, and to the economy of this

state.” Therefore, the purpose of OSPRA, “is to assist the legislature in fulfilling its duties to protect, conserve, and replenish the natural resources of this state in accordance with Article IX, Section 1 of the Constitution of Louisiana.” OSPRA at La. R.S. 30:2455 creates the Office of the Louisiana oil spill coordinator (“LOSCO” or “Coordinator”) to administer the oil spill response and natural resource damage assessment provisions of the act.

28. La. R.S. 36:231 creates the Department of Environmental Quality and gives it the power to sue and be sued, and to “. . . provide for the administration and enforcement of the environmental laws of the state, to ensure the maintenance of a healthful and safe environment in Louisiana”

29. La. R.S. 30:2076 states that, “No person shall discharge or allow to be discharged into any waters of the state: (a) Any waste or any other substance of any kind that will tend to cause water pollution in violation of any rule, order, or regulation; or (b) Any substance, the discharge of which violates any term, condition, or limit imposed by a permit.”

30. Pursuant to La. R.S. 30:2025B(1)(a), the Louisiana Department of Environmental Quality “may bring a civil action in the name of the state to recover any damages or penalties resulting from a violation of any requirement of this subtitle, or any rule, regulation, or order adopted thereunder.”

31. La. R.S. 36:351 creates the Department of Natural Resources which shall have the power to sue and be sued, and “shall be responsible for the conservation, management and development of water, minerals, timber, and other such natural resources of the state. . . .”

32. La. R.S. 49:213.1, “. . . places responsibility for the direction and development of the state’s coastal vegetate wetlands conservation and restoration plan in the Wetlands

Conservation and Restoration Authority within the office of the governor. Primary responsibility for carrying out the elements of the plan is placed in the office of coastal restoration and management within the Department of Natural Resources.”

33. La. R.S. 49:214.26 establishes a coastal management program within the Department of Natural Resources.

34. La. R.S. 49:214.36 provides for the enforcement of the terms and conditions of the coastal use permit by injunctive, declaratory, or other actions necessary to ensure that no uses are made of the coastal zone for which a coastal use permit has not been issued when required .

35. La. R.S. 36:601 creates the Department of Wildlife and Fisheries which shall have the power to sue and be sued, and “shall have control and supervise all wildlife of the state, including fish and all other aquatic life.”

36. La. R.S. 56:401 provides “ a person who kills. . . or injures any fish, wild birds, wild quadrupeds, or other wildlife and aquatic life in violation of this title (Wildlife and Fisheries) . . . is liable to the state for the value of each fish, wild bird, wild quadrupeds, or other wildlife and aquatic life, unlawfully killed . . . or injured.”

VI. FACTS GIVING RISE TO LIABILITY

37. On November 28, 2000, the 890-foot vessel WESTCHESTER, owned and operated by Defendants, spilled 544,400 gallons of Nigerian crude oil into the Mississippi River after striking an unknown object about 57 miles down river from New Orleans, Louisiana.

38. As a result of this incident, several thousand acres, including Mississippi River surface waters and shoreline habitats, coastal surface waters, adjacent marsh and other habitats, and the fauna inhabiting these areas, were exposed to crude oil (black oil, emulsified oil, or

sheen).

39. The United States Coast Guard directed and monitored removal activities in response to the oil spill.

40. NOAA, DOI, and the State of Louisiana also monitored the removal activities in response to the oil spill.

41. The United States incurred removal costs in responding to the oil spill, and these costs were paid by the Oil Spill Liability Trust Fund.

42. Defendants have fully reimbursed the Spill Fund.

43. The State of Louisiana also incurred costs in responding to the oil spill.

44. Natural resources and services provided by natural resources belonging to, managed by, controlled by or appertaining to the United States and the State of Louisiana were injured or lost as a result of the oil spill.

45. NOAA, DOI, LOSCO, LDEQ, LDNR, and LDWF (“Natural Resource Trustees” or “Trustees”) assessed the injury that the oil spill caused to natural resources and/or their services, and the Trustees prepared a Damage Assessment and Restoration Plan and Environmental Assessment (“DARP/EA”), pursuant to the National Environmental Policy Act (“NEPA”), 42 U.S.C. § 4321, *et seq.*; 40 C.F.R. Ch. V; 33 U.S.C. § 2706(c); and 15 C.F.R. § 990.55.

46. After reviewing public comments on the DARP/EA, the Natural Resource Trustees selected Restoration Projects to compensate for the injury and/or loss to the natural resources and the natural resource services, and the Trustees issued a Final Restoration Plan.

VII. GENERAL ALLEGATIONS

47. The spill was a “discharge” of “oil” in “quantities as may be harmful,” as those terms are defined in subsection 1001(7) and (23) of OPA, 33 U.S.C. § 2701(7) and (23), 40 C.F.R. § 110.3, and La. R.S. 30:2454(7) and (13).

48. The spill was a discharge of oil into or upon the navigable waters of the United States and of the State of Louisiana and/or adjoining shorelines.

49. The tanker WESTCHESTER from which the oil was discharged was a vessel, as that term is defined by Section 1001(37) of OPA, 33 U.S.C. § 2701(37), and by La. R.S. 30:2454(29).

50. Defendant Maritime Oil Trader, 3 Ltd., as the owner of the vessel, is a responsible party, as that term is defined by Section 1001(32)(A) of OPA, 33 U.S.C. § 2701(32)(A), and by La. R.S. 30:2454(29).

51. Defendant Ermis Maritime Corp., as the operator of the vessel, is a responsible party, as that term is defined by Section 1001(32)(A) of OPA, 33 U.S.C. § 2701(32)(A), and by La. R.S. 30:2454(29).

VIII. FIRST CLAIM FOR RELIEF

52. Paragraphs 1 through 51 are realleged and incorporated by reference.

53. The costs incurred by the State of Louisiana, in responding to the oil spill are “removal costs” as that term is defined in Section 1001(30) and (31) of OPA, 33 U.S.C. §§ 2701(30) and (31), and by La. R.S. 30:2454(25).

54. The discharge of oil into navigable waters of the United States and of the State of Louisiana and the adjoining shorelines on or about November 28, 2000, renders the Defendants

liable under Section 1002(a) of OPA, 33 U.S.C. § 2702(a), and under La. R.S. 30:2480 for all costs incurred by the State of Louisiana for removal of such oil, together with interest, penalties, and processing charges.

IX. SECOND CLAIM FOR RELIEF

55. Paragraphs 1-51 are realleged and incorporated by reference.

56. The marsh, intertidal, subtidal, and water column habitats and the plant, fish, shellfish, and wildlife species that were injured by the oil spill were “natural resources,” as that term is defined in Section 1001(20) of OPA, 33 U.S.C. § 2701(20).

57. The discharge of oil into navigable waters of the United States and the adjoining shorelines on or about November 28, 2000, renders the Defendants liable to the United States under Section 1002(a) of OPA, 33 U.S.C. § 2702(a), for the cost of restoring, rehabilitating, replacing, or acquiring the equivalent of, the damaged natural resources and their services and for the diminution in value of those natural resources and their services pending restoration, including the cost for assessing the natural resource damages.

X. THIRD CLAIM FOR RELIEF

58. Paragraphs 1-51 are realleged and incorporated by reference.

59. The land, fish, shellfish, fowl, wildlife, biota, vegetation, air water, ground-water supplies, and other similar resources owned, managed, held in trust, regulated, or otherwise controlled by the state are “natural resources” as that term is defined by La. R.S. 30:2054(17).

60. The marsh, intertidal, subtidal, and water column habitats and the plant, fish, shellfish, and wildlife species that were injured by the oil spill were “natural resources,” as that term is defined in Section 1001(20) of OPA, 33 U.S.C. § 2701(20).

61. The discharge of oil into navigable waters of the United States and of the State of Louisiana and onto the adjoining shorelines on or about November 28, 2000, renders the Defendants liable to the State under Section 1002(a) of OPA, 33 U.S.C. § 2702(a), and La. R.S. 30:2480 for the cost of restoring, rehabilitating, replacing, or acquiring the equivalent of, the damaged natural resources and their services and for the diminution in value of those natural resources and their services pending restoration, including the cost for assessing the natural resource damages.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs, the United States of America, and the State of Louisiana respectfully requests that this Court:

- a. Enter a judgment against Defendants and in favor of the State of Louisiana for the State's removal costs and other expenses incurred in connection with the oil spill;
- b. Enter a judgment against Defendants and in favor of the United States and the State of Louisiana for all of the injury to, destruction of, loss, or loss of use of natural resources and natural resource services resulting from the oil spill, including the costs of restoring, replacing, and/or acquiring the equivalent of the injured resources and the diminution in value of those resources and their services pending restoration or replacement;
- c. Order the Defendants to pay the costs incurred by the United States and the State of Louisiana in assessing the natural resource damages and preparing a plan for restoration of such damages;
- d. Order the Defendants to implement, or to pay the costs incurred by the United

States and the State of Louisiana in implementing, the Final Restoration Plan developed by the natural resource trustees for restoration of natural resources damaged by the discharge of oil from the WESTCHESTER, and any modifications to the Plan;

- e. Order the Defendants to pay future costs incurred by the United States and the State of Louisiana for monitoring and oversight of the implementation of the Final Restoration Plan, and any modification to the Plan;
- f. and Grant such other relief as the court deems just and proper.

Respectfully submitted,

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