

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

UNITED STATES OF AMERICA and)
STATE OF LOUISIANA,)
)
Plaintiffs,)
)
v.)
)
SHELL OFFSHORE INC.,)
)
Defendant.)

COMPLAINT

The United States of America, by authority of the Attorney General of the United States, acting at the request of the National Oceanic and Atmospheric Administration (“NOAA”) and the United States Department of the Interior (“DOI”) through the United States Fish and Wildlife Service, and the State of Louisiana (the “State”), appearing through the Louisiana Oil Spill Coordinator’s Office, Department of Public Safety (“LOSCO”), Louisiana Department of Natural Resources (“LDNR”), Louisiana Department of Environmental Quality (“LDEQ”), Louisiana Department of Wildlife and Fisheries (“LDWF”), and the Coastal Protection and Restoration Authority (“CPRA”), through the undersigned attorneys, file this complaint and allege as follows:

NATURE OF THE ACTION

1. This is a civil action brought against Defendant Shell Offshore Inc. (“Shell”) for recovery of damages for injury to, destruction of, loss of, or loss of use of natural resources, under Section 1002 of the Oil Pollution Act (“OPA”), 33 U.S.C. § 2702, and Section 2480 of the

Louisiana Oil Spill Prevention and Response Act (“OSPR”), La. Rev. Stat. 30:2480. Plaintiffs seek damages in order to compensate for and restore natural resources injured by Shell’s crude oil spill that occurred at its Green Canyon Block 248 subsea oil production system in the Gulf of Mexico beginning on or about May 11, 2016. Plaintiffs also seek to recover unreimbursed costs of assessing such damages.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and Section 1017(b) of OPA, 33 U.S.C. § 2717(b). The Court also has supplemental jurisdiction over the State law claim pursuant to 28 U.S.C. § 1367.

3. Venue is proper in this district pursuant to 28 U.S.C. §§ 121 and 1391(b), and Section 1017(b) of OPA, 33 U.S.C. § 2717(b), because Defendant is located and doing business in this district and this district is the nearest district to which the incident occurred.

STATUTORY BACKGROUND

The Oil Pollution Act of 1990

4. Section 1002(a) of OPA, 33 U.S.C. § 2702(a), provides that “each responsible party for a . . . facility from which oil is discharged . . . into or upon the navigable waters or adjoining shorelines or the exclusive economic zone is liable for the removal costs and damages specified in [33 U.S.C. § 2702(b)] that result from such incident.”

5. Section 1001(32)(C) of OPA, 33 U.S.C. § 2701(32)(C), defines “responsible party” to include, in the case of an offshore facility, “the lessee or permittee of the area in which the facility is located.”

6. Section 1001(32)(E) of OPA, 33 U.S.C. § 2701(32)(E), defines “responsible party” to mean, in the case of a pipeline, “any person owning or operating the pipeline.”

7. Section 1001(27) of OPA, 33 U.S.C. § 2701(27), defines “person” to include a corporation.

8. Section 1001(7) of OPA, 33 U.S.C. § 2701(7), defines “facility” to mean “any structure, group of structures, equipment, or device (other than a vessel) which is used for one or more of the following purposes: exploring for, drilling for, producing, storing, handling, transferring, processing, or transporting oil. This term includes any . . . pipeline used for one or more of these purposes.”

9. Section 1001(22) of OPA, 33 U.S.C. § 2701(22), defines “offshore facility” to mean “any facility of any kind located in, on, or under any of the navigable waters of the United States, and any facility of any kind which is subject to the jurisdiction of the United States and is located in, on, or under any other waters, other than a vessel or a public vessel.”

10. Section 1001(23) of OPA, 33 U.S.C. § 2701(23), defines “oil” to mean “oil of any kind or in any form, including petroleum.”

11. Section 1001(7) of OPA, 33 U.S.C. § 2701(7), defines “discharge” to mean “any emission (other than natural seepage), intentional or unintentional,” and to include “spilling, leaking, pumping, pouring, emitting, emptying, or dumping.”

12. Section 1001(21) of OPA, 33 U.S.C. § 2701(21), defines “exclusive economic zone” to include “the zone established by Presidential Proclamation Numbered 5030, dated March 10, 1983.” Pursuant to the Presidential Proclamation, the exclusive economic zone “extends to a distance 200 nautical miles from the baseline from which the breadth of the territorial sea is measured.”

13. 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, 33 U.S.C. § 2702(a), include “[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, a State trustee, an Indian tribe trustee, or a foreign trustee.”

14. Section 1001(20) of OPA, 33 U.S.C. § 2701(20), defines “natural resources” to include “land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the exclusive economic zone), any State or local government or Indian tribe, or any foreign government.”

15. Section 1001(14) of OPA, 33 U.S.C. § 2701(14), defines “incident” to mean “any occurrence or series of occurrences having the same origin, involving one or more . . . facilities . . . resulting in the discharge . . . of oil.”

The Louisiana Oil Spill Prevention and Response Act

16. The purpose of OSPRA is to assist the State of Louisiana “in fulfilling its duties to protect, conserve, and replenish the natural resources of th[e] state in accordance with Article XI, Section 1 of the Constitution of Louisiana.” La. Rev. Stat. 30:2453(A).

17. It is the intent of OSPRA “to support and complement the Oil Pollution Act of 1990 (P.L. 101-380) and other federal law, specifically those provisions . . . relating to the responsibilities of state agencies designated as natural resource trustees. The legislature intends [OSPRA] to be interpreted and implemented in a manner consistent with federal law.” La. Rev. Stat. 30:2453(B).

18. OSPRA provides that a responsible party shall make full payment or initiate restoration, rehabilitation, replacement, or mitigation of damages to natural resources after completion of an assessment of natural resource damages and the amount of the damages by the

state agencies designated as natural resource trustees. La. Rev. Stat. 30:2480(G).

19. “Responsible party” means “[t]he owner or operator of a . . . terminal facility from which an unauthorized discharge of oil emanates or threatens to emanate.” La. Rev. Stat. 30:2454(22)(a). “Responsible party” also includes any person “who causes, allows, or permits an unauthorized discharge of oil or threatened unauthorized discharge of oil.” La. Rev. Stat. 30:2454(22)(c).

20. “Owner” or “operator” means “[a]ny person owning a terminal facility . . . ; or [a] person operating a terminal facility by lease, contract, or other form of agreement.” La. Rev. Stat. 30:2454(20)(b).

21. “Terminal facility” includes any “offshore pipeline, structure, equipment, or device used for the purposes of drilling for, pumping, storing, handling, or transferring oil and operating where a discharge from the facility could threaten waters of the state” La. Rev. Stat. 30:2454(28).

22. “‘Unauthorized discharge of oil’ means any actual or threatened discharge of oil not authorized by a federal or state permit.” La. Rev. Stat. 30:2454(29).

23. “‘Discharge of oil’ means an intentional or unintentional act or omission by which harmful quantities of oil are spilled, leaked, pumped, poured, emitted, or dumped into or on coastal waters of the state or at any other place where, unless controlled or removed, they may drain, seep, run, or otherwise enter coastal waters of the state.” La. Rev. Stat. 30:2454(7).

24. “‘Oil’ means oil of any kind or in any form, including but not limited to crude oil, [and] petroleum” La. Rev. Stat. 30:2454(18).

25. “Damages” means and includes “damages for injury to, destruction of, or loss of natural resources as defined in [OSPRA], includ[ing] the reasonable and any direct, documented

cost to assess, restore, rehabilitate, or replace injured natural resources, or to mitigate further injury, and their diminution in value after such restoration, rehabilitation, replacement or mitigation, which shall be recoverable by the state of Louisiana.” La. Rev. Stat. 30:2454(5)(a).

26. “‘Natural resources’ means all land, fish, shellfish, fowl, wildlife, biota, vegetation, air, water, groundwater supplies, and other similar resources owned, managed, held in trust, regulated, or otherwise controlled by the state.” La. Rev. Stat. 30:2454(17).

FIRST CLAIM FOR RELIEF

Natural Resource Damages under Section 1002 of OPA

27. The preceding paragraphs are realleged and incorporated herein by reference.

28. Shell is a corporation and a “person” within the meaning of Section 1001(27) of OPA, 33 U.S.C. § 2701(27).

29. At the time of the oil spill, beginning on or about May 11, 2016, Shell was the operator and lessee or permittee of the subsea oil production system, including the leaking pipeline, at Green Canyon Block 248 in the Gulf of Mexico.

30. On or about May 11, 2016, Shell’s subsea oil production system at Green Canyon Block 248 in the Gulf of Mexico, including the leaking pipeline, was an “offshore facility” within the meaning of Section 1001(22) of OPA, 33 U.S.C. § 2701(22).

31. Shell’s offshore facility at Green Canyon Block 248 is located approximately 97 miles off the coast of Louisiana and is within the exclusive economic zone of the United States.

32. Shell was the “responsible party” for the offshore facility and the pipeline within the meaning of Section 1001(32) of OPA, 33 U.S.C. § 2701(32).

33. Beginning on or about May 11, 2016, Shell discharged crude oil into the waters of the Gulf of Mexico from Shell’s Green Canyon Block 248 offshore facility. The oil spilled from

a 6-inch-diameter pipeline that is used to transfer oil from a production well on the sea floor to a collection point. Shell reported to DOI's Bureau of Safety and Environmental Enforcement that the incident resulted in an estimated discharge of 1,926 barrels of oil (80,892 gallons) into the waters of the Gulf of Mexico.

34. The spilling of crude oil beginning on May 11, 2016, into the waters of the Gulf of Mexico was a "discharge" within the meaning of Section 1001(7) of OPA, 33 U.S.C. § 2701(7).

35. The crude oil released during the incident was "oil" within the meaning of Section 1001(23) of OPA, 33 U.S.C. § 2701(23).

36. Shell discharged oil into the "exclusive economic zone" of the United States within the meaning of Section 1001(8) of OPA, 33 U.S.C. § 2701(8).

37. Shell's oil discharge polluted portions of the Gulf of Mexico from the sea floor to the water surface.

38. Oil, including oil sheen, was observed over a large area around the spill site. The surface oil generally traveled west-northwest sweeping through an area of over 1,270 square miles over five days.

39. Oil was observed within 75 miles of shore before strong winds mixed much of the remaining oil into the water column.

40. Numerous types of sea birds and aquatic life are known to inhabit the oiled areas.

41. Shell, the United States Coast Guard, and the State responded to the spill, including use of mechanical recovery vessels and other assets. Response efforts concluded on May 16, 2016.

42. Shell's oil discharge caused injury to, destruction of, loss of, or loss of use of

“natural resources” within the meaning of Section 1001(20) of OPA, 33 U.S.C. § 2701(20).

43. NOAA and FWS are designated United States trustees of natural resources injured by Shell’s discharge of oil pursuant to Section 1006(b)(2) of OPA, 33 U.S.C. § 2706(b)(2), Subpart G of the National Oil and Hazardous Substances Pollution Contingency Plan (“NCP”) (40 C.F.R. §§ 300.600, *et seq.*), and Executive Order 12580 (3 C.F.R., 1987 Comp. p. 193, 52 Fed. Reg. 2923 (January 23, 1987)), as amended by Executive Order 12777, 56 Fed. Reg. 54757 (October 19, 1991).

44. The Louisiana trustees, LOSCO, LDNR, LDEQ, LDWF, and CPRA (collectively, the “State Trustees”) are designated by the Governor of Louisiana as State trustees of natural resources injured by the discharge of oil from Shell’s offshore facility pursuant to Section 1006(b)(3) of OPA, 33 U.S.C. § 2706(b)(3), and 40 C.F.R. § 300.605.

45. The trustees for the United States and the State are coordinating injury assessment and restoration efforts.

46. Plaintiffs have incurred costs in assessing injuries to natural resources resulting from the oil spill.

47. Pursuant to Section 1002(a) and (b)(2) of OPA, 33 U.S.C. § 2702(a) and (b)(2), Shell is liable to the United States and to the State Trustees for damages for injury to, destruction of, loss of, or loss of use of natural resources, including the reasonable costs of assessing such injury, destruction, loss, or loss of use resulting from the discharge of oil from Shell’s offshore facility as alleged herein.

SECOND CLAIM FOR RELIEF

Natural Resource Damages under Section 2480 of OSPRA

48. The preceding paragraphs are realleged and incorporated herein by reference.

49. The Louisiana trustees, LOSCO, LDNR, LDEQ, LDWF, and CPRA serve as State Trustees under OSPRA according to La. R.S. 30:2451, *et seq.* and LA. ADMIN. CODE tit. 43, part XXIX, *et seq.*

50. Shell was the owner and/or operator of the subsea oil production system, including the leaking pipeline, at Green Canyon Block 248 in the Gulf of Mexico and as such is the responsible party under OSPRA. La. Rev. Stat. 30:2454(22).

51. The reported release of an estimated 1,926 barrels of crude oil from Shell's terminal facility, including the leaking pipeline, beginning on or about May 11, 2016 was not authorized by a federal or state permit and therefore constitutes an unauthorized discharge of oil under OSPRA. La. Rev. Stat. 30:2454(29).

52. The unauthorized discharge of oil caused injury to, destruction of, or loss of natural resources managed, held in trust, and/or regulated by the State Trustees, including but not limited to birds and estuarine-dependent water column resources.

53. The State Trustees have incurred costs in assessing damages to natural resources resulting from the unauthorized discharge of oil.

54. Pursuant Section 2480 of OSPRA, La. Rev. Stat. 30:2480, Shell is liable to the State Trustees for natural resource damages, including the reasonable cost of assessing such damages, resulting from the unauthorized discharge of oil from Shell's offshore terminal facility as alleged herein.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court:

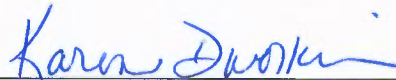
A. Award Plaintiffs a judgment against Defendant Shell Offshore Inc. for all damages for injury to, destruction of, loss of, or loss of use of natural resources, including the

reasonable costs of assessing such injury, destruction, loss, or loss of use; and

B. Grant such other relief as this Court deems just and proper.

Respectfully submitted,

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