

CLAIM SUMMARY / DETERMINATION

Claim Number:	920029-0001
Claimant:	Atlantic Coast Marine Group, Inc.
Type of Claimant:	OSRO
Type of Claim:	Removal Costs
Claim Manager:	(b) (6), (b)(6) (6), (b)
Amount Requested:	\$30,403.25
Action Taken:	Offer in the amount of \$30,303.25

EXECUTIVE SUMMARY:

On December 17, 2019, the 56-foot shrimp trawler *Melissa Ann II*, caught fire and sank at the Core Creek Marina, under the Core Creek Bridge, in Beaufort, North Carolina.¹ The incident resulted in the potential release of diesel fuel into the Core Creek; a navigable waterway of the United States.² Coast Guard (CG) Sector North Carolina was dispatched to serve as Federal On Scene Coordinator (FOOSC).³ The Owner of *Melissa Ann II*, Mr. (b) (6), (b) (Mr. (b) or RP), and the Operator of *Melissa Ann II* at the time of the spill was Captain (b) (6), (b) (Mr. (b) or RP). They were identified as the responsible parties (RPs), as defined by the Oil Pollution Act of 1990.⁴

On December 17, 2019, Atlantic Coast Marine Group, Inc. (ACMG or Claimant) was directed by the Beaufort Fire Department to recover and remove all oil from the identified spill locations.⁵ ACMG submitted all expenses to Mr. (b) (6) on January 29, 2020,⁶ and ACMG also submitted all expenses to Mr. (b) (6) on July 17, 2020.⁷ ACMG has received no notification or response from the RP, Mr. (b) (6), or from the joint RP, Mr. (b) (6).

On June 23, 2020, ACMG presented its removal costs claim to the National Pollution Funds Center (NPFC) for \$30,403.25.⁸ The NPFC has thoroughly reviewed all documentation submitted with the claim, analyzed the applicable law and regulations, and after careful consideration has determined that \$30,303.25 of the requested amount is compensable and offers this amount as full and final compensation of this claim.

I. INCIDENT, RESPONSIBLE PARTY AND RECOVERY OPERATIONS:

Incident

On December 17, 2019, the 56-foot shrimp trawler *Melissa Ann II*, owned by Mr. (b) (6), (b) (6), caught fire and sank at the Core Creek Marina, under the Core Creek Bridge, in Beaufort, North Carolina. Two (2) passengers were onboard the vessel at the time of the fire, and both were hospitalized due to smoke inhalation.⁹ The two (2) passengers stated they were trying to fix a hydraulic motor when it began

¹ CG North Carolina Incident Management Timeline.

² NRC Case Number 1266697 dated December 17, 2019.

³ CG SITREP 1 dated December 17, 2019.

⁴ 33 U.S.C. § 2701(32).

⁵ USCG Witness Statement Form dated December 23, 2019.

⁶ UPS Certified Mail Receipt dated January 29, 2020.

⁷ Email from the NPFC to the ACMG dated July 21, 2020.

⁸ ACMG claim submission received June 23, 2020.

⁹ News Article dated December 18, 2019.

to smoke and catch fire. The vessel sank, leading to a potential discharge of diesel fuel into the Core Creek, a navigable waterway of the United States.¹⁰

On December 17, 2019, the Beaufort Fire Department served as the first responders on scene at the incident.¹¹ At 2147, responders contacted CG Sector North Carolina, who arrived on scene at 2217 to conduct an on scene investigation.¹² CG Sector North Carolina served as the FOSC for the spill cleanup. The Beaufort Fire Department directed ACMG to respond to the oil spill on December 17, 2019.¹³ CG Sector North monitored ACMG's cleanup activity.¹⁴

Responsible Party

The FOSC identified Mr. (b) (6) as the Owner of the *Melissa Ann II*¹⁵ and determined that the vessel posed a substantial threat of a discharge of oil to navigable waters of the United States on December 17, 2019.¹⁶ Mr. (b) (6) has been identified as the Operator of the vessel at the time of the sinking.¹⁷

The NPFC issued a Responsible Party Notification Letter to the Owner on May 27, 2020,¹⁸ and issued a Responsible Party Notification Letter to the Operator on July 9, 2020.¹⁹ The NPFC has received no notification or response from Mr. (b) (6). The NPFC was notified by Mr. (b) (6) that he received the claimed costs from ACMG as of July 17, 2020.²⁰ Mr. (b) (6) did not provide a response to ACMG regarding payment of the invoiced costs.⁽⁶⁾

Recovery Operations

On December 17, 2019, ACMG was notified of the *Melissa Ann II*'s potential oil spill release into the Core Creek at the Core Creek Marina, under the Core Creek Bridge, in Beaufort, North Carolina. ACMG was directed to assist with cleanup and removal of the spill.²¹ ACMG arrived on-site and began oil cleanup and vessel removal operations on December 17, 2019.²²

ACMG boomed off the area surrounding the *Melissa Ann II* and personnel removed the vessel and all vessel fuel tanks from the waterway.²³ Full cleanup of *Melissa Ann II*'s oil spillage was completed on January 6, 2020.²⁴

II. CLAIMANT AND RP:

¹⁰ SITREP 1 dated December 17, 2019.

¹¹ NRC Case Number 1266697 dated December 17, 2019.

¹² CG North Carolina Incident Management Timeline.

¹³ USCG Witness Statement Form dated December 23, 2019.

¹⁴ CG North Carolina Incident Management Timeline.

¹⁵ CG Investigator statement dated January 21, 2020.

¹⁶ USCG Witness Statement Form dated December 23, 2019.

¹⁷ Email from the NPFC to the ACMG dated July 9, 2020.

¹⁸ RP Notification Letter dated May 27, 2020.

¹⁹ RP Notification Letter dated July 9, 2020.

²⁰ Email from the NPFC to the ACMG dated July 21, 2020.

²¹ USCG Witness Statement Form dated December 23, 2019.

²² ACMG claim submission received June 23, 2020.

²³ USCG Witness Statement Form dated December 23, 2019.

²⁴ ACMG Invoice #2020-TB117 dated January 1, 2020.

Absent limited circumstances, the federal regulations implementing the Oil Pollution Act of 1990 (OPA)²⁵ require all claims for removal costs or damages must be presented to the responsible party before seeking compensation from the NPFC.²⁶

ACMG submitted its request for compensation to Mr. (b) for \$30,403.25 on January 29, 2020²⁷ and submitted its request for compensation to Mr. (b) for \$30,403.25 on July 17, 2020.²⁸ ACMG has received no notification or response from either of the RP's.

III. CLAIMANT AND NPFC:

When an RP denies payment on a claim, a claimant may elect to present its claim to the NPFC.²⁹ On June 23, 2020, the NPFC received a claim for \$30,403.25 from ACMG, signed without a date.³⁰ The NPFC began the adjudication process of the claim submission on June 24, 2020.

On July 9, 2020, the NPFC notified ACMG of their failure to make proper presentment to Mr. (b) the operator of the vessel at the time of the incident. The NPFC provided the RP's contact information (b) and requested the Claimant submit all costs to the second RP and provide the RP with 90 days to respond, and/or deny the costs.³¹ Costs were received by the RP on July 17, 2020.³² No reply was made by the second RP in response to the invoiced costs therefore the NPFC began its adjudication of costs on October 15, 2020.

IV. DETERMINATION PROCESS:

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).³³ As a result, 5 U.S.C. § 555(e) requires the NPFC to provide a brief statement explaining its decision. This determination is issued to satisfy that requirement.

When adjudicating claims against the OSLTF, the NPFC acts as the finder of fact. In this role, the NPFC considers all relevant evidence, including evidence provided by claimants and evidence obtained independently by the NPFC, and weighs its probative value when determining the facts of the claim.³⁴ The NPFC may rely upon, is not bound by the findings of fact, opinions, or conclusions reached by other entities.³⁵ If there is conflicting evidence in the record, the NPFC makes a determination as to what evidence is more credible or deserves greater weight, and makes its determination based on the preponderance of the credible evidence.

V. DISCUSSION:

²⁵ 33 U.S.C. § 2701 et seq.

²⁶ 33 CFR 136.103(c)(1).

²⁷ UPS Certified Mail Receipt dated January 29, 2020.

²⁸ Email from the NPFC to the ACMG dated July 21, 2020.

²⁹ 33 CFR 136.103.

³⁰ ACMG claim submission received June 23, 2020.

³¹ Email from the NPFC to the ACMG dated July 9, 2020.

³² Email from the NPFC to the ACMG dated July 21, 2020.

³³ 33 CFR Part 136.

³⁴ See, e.g., *Boquet Oyster House, Inc. v. United States*, 74 ERC 2004, 2011 WL 5187292, (E.D. La. 2011), "[T]he Fifth Circuit specifically recognized that an agency has discretion to credit one expert's report over another when experts express conflicting views." (Citing, *Medina County v. Surface Transp. Bd.*, 602 F.3d 687, 699 (5th Cir. 2010)).

³⁵ See, e.g., *Use of Reports of Marine Casualty in Claims Process by National Pollution Funds Center*, 71 Fed. Reg. 60553 (October 13, 2006) and *Use of Reports of Marine Casualty in Claims Process by National Pollution Funds Center* 72 Fed. Reg. 17574 (concluding that NPFC may consider marine casualty reports but is not bound by them).

OPA provides a mechanism for compensating parties who have incurred removal costs where the responsible party has failed to do so. 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.”³⁶ The term “remove” or “removal” means “containment and removal of oil [...] from water and shorelines or the taking of other actions as may be necessary to minimize or mitigate damage to the public health or welfare, including, but not limited to fish, shellfish, wildlife, and public and private property, shorelines, and beaches.”³⁷

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan (NCP).³⁸ The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.³⁹ The claimant bears the burden of providing all evidence, information, and documentation deemed relevant and necessary by the Director of the NPFC, to support and properly process the claim.⁴⁰

Before reimbursement can be authorized for uncompensated removal costs, the claimant must demonstrate by a preponderance of the evidence:

- (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 directed by the FOSC or determined by the FOSC to be consistent with the National Contingency Plan.^{41,42}
- (d) That the removal costs were uncompensated and reasonable.⁴³

The NPFC analyzed each of these factors and determined that the majority of costs incurred and submitted by ACMG herein are compensable removal costs based on the supporting documentation provided. All costs approved for payment were verified as being invoiced at the appropriate rate sheet pricing and all costs were supported by adequate documentation which included invoices and/or proof of payment where applicable.

The amount of compensable costs is \$30,303.25, while \$100.00 is deemed non-compensable for the following reasons:

1. ACMG cites usage of their Basic Ordering Agreement (BOA) with the CG Shore Infrastructure Logistics Center (SILC),⁴⁴ as explanation for all costs submitted with the claim.⁴⁵ ACMG invoiced \$100.00 in costs associated with an Anchoring System for December 17, 2019.⁴⁶ Since the Anchoring System costs are not specified in the BOA, the \$100.00 cannot be validated, and the NPFC denies the \$100.00 in costs associated with the Anchoring System.

Overall Denied Costs: \$100.00⁴⁷

³⁶ 33 U.S.C. § 2701(31).

³⁷ 33 U.S.C. § 2701(30).

³⁸ *See generally*, 33 U.S.C. §2712 (a) (4); 33 U.S.C. § 2713; and 33 CFR Part 136.

³⁹ 33 CFR Part 136.

⁴⁰ 33 CFR 136.105.

⁴¹ USCG Witness Statement Form dated December 23, 2019.

⁴² CG North Carolina Incident Management Timeline.

⁴³ 33 CFR 136.203; 33 CFR 136.205.

⁴⁴ Atlantic Coast Marine Group, Inc. BOA #HSCG84-16-A-P00047.

⁴⁵ Email from ACMG to the NPFC dated July 2, 2020.

⁴⁶ ACMG Invoice #2020-TB117 dated January 1, 2020.

⁴⁷ Claim 920029-0001 Summary of Costs spreadsheet.

VI. CONCLUSION:

Based on a comprehensive review of the record, the applicable law and regulations, and for the reasons outlined above, ACMG’s request for uncompensated removal costs is approved in the amount of \$30,303.25.

This determination is a settlement offer,⁴⁸ the claimant has 60 days in which to accept this offer. Failure to do so automatically voids the offer.⁴⁹ The NPFC reserves the right to revoke a settlement offer at any time prior to acceptance.⁵⁰ Moreover, this settlement offer is based upon the unique facts giving rise to this claim and is not precedential.

Claim Supervisor: (b) (6), (b)(b) (6), (b)(b) (6), (b)(b) (6), (b)
(b) (6), (b)(b) (6), (b)(b) (6), (b)(b) (6), (b)
(b) (6), (b)(b) (6), (b)(b) (6), (b)(b) (6), (b)
(b) (6), (b)(b) (6), (b)(b) (6), (b)(b) (6), (b)
(b) (6), (b)(b) (6), (b)(b) (6), (b)(b) (6), (b)

Date of Supervisor’s review: *10/20/2020*

Supervisor Action: *Offer Approved*

⁴⁸ Payment in full, or acceptance by the claimant of an offer of settlement by the Fund, is final and conclusive for all purposes and, upon payment, constitutes a release of the Fund for the claim. In addition, acceptance of any compensation from the Fund precludes the claimant from filing any subsequent action against any person to recover costs or damages which are the subject of the uncompensated claim. Acceptance of any compensation also constitutes an agreement by the claimant to assign to the Fund any rights, claims, and causes of action the claimant has against any person for the costs and damages which are the subject of the compensated claims and to cooperate reasonably with the Fund in any claim or action by the Fund against any person to recover the amounts paid by the Fund. The cooperation shall include, but is not limited to, immediately reimbursing the Fund for any compensation received from any other source for the same costs and damages and providing any documentation, evidence, testimony, and other support, as may be necessary for the Fund to recover from any person. 33 CFR § 136.115(a).

⁴⁹ 33 CFR § 136.115(b).

⁵⁰ 33 CFR § 136.115(b).