

## CLAIM SUMMARY / DETERMINATION

<b>Claim Number:</b>	921011-0001
<b>Claimant:</b>	M&G Harbor Services LLC
<b>Type of Claimant:</b>	OSRO
<b>Type of Claim:</b>	Removal Costs
<b>Claim Manager:</b>	(b) (6)
<b>Amount Requested:</b>	\$25,550.00
<b>Action Taken:</b>	Offer in the amount of \$24,800.00

### **EXECUTIVE SUMMARY:**

On December 24, 2020, at approximately 0800 local time, the United States Coast Guard (USCG) Sector Boston was notified of a sunken vessel, P/C JANE FITZ that sank at its berth at Captain's Cove Marina in the town of Quincy, Massachusetts.<sup>1</sup> The sunken vessel was producing a sheen from the onboard fuel oil.<sup>2</sup> On December 26, 2020, United States Coast Guard Sector Boston's Federal on Scene Coordinator's Representative (FOSCR) arrived on scene, following inclement weather and high winds the day before, and noticed an odor of fuel and saw a weathered sheen at the entrance of the marina. The FOSCR saw the sunken vessel which had a sheen surrounding it. The FOSCR noticed "a small bubble of dark oil" releasing from the sunken vessel, slowly and intermittently, into Town River Bay, a navigable waterway.<sup>3</sup>

In accordance with the Oil Pollution Act of 1990, the owner of the P/C JANE FITZ was identified as the Responsible Party (RP) for the incident.<sup>4</sup> The RP hired Continental Marine Services ("Continental) to perform oil pollution response and salvage activities. Continental then hired M & G Harbor Services ("M & G" or "Claimant") to assist with the response and salvage.<sup>5</sup> M & G paid Continental's invoicing and presented its invoices to the RP.<sup>6</sup> The RP did not respond to the claimant. The claimant then presented its uncompensated removal costs claim to the National Pollution Funds Center (NPFC) for \$25,550.00.<sup>7</sup> The NPFC has thoroughly

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<sup>1</sup> National Response Center (NRC) Report 1294915 dated December 24, 2020 and Coast Guard's Marine Information for Safety and Law Enforcement (MISLE) system case number 1246029. While MISLE is an internal Coast Guard database whose information is protected from disclosure (see, <https://www.dhs.gov/publication/dhsuscgpia-008-marine-information-safety-and-law-enforcement-misle>). Some of the information provided in MISLE is available to the public through CG Marine Information Exchange (CGMIX). This case can be found in CGMIX (<https://cgmix.uscg.mil/IIR/IIRSearch.aspx>) using the activity number 7123887. See, Statement from USCG Sector Boston Pollution Responder dated January 15, 2021.

<sup>2</sup> USCG Sector Boston Case Activity 7123887, opened December 24, 2020. See, Statement from USCG Sector Boston Pollution Responder dated January 15, 2021.

<sup>3</sup>*Id.*

<sup>4</sup> NRC Report 1294915 dated December 24, 2020 and USCG Sector Boston Case Activity 7123887, opened December 24, 2020. See, Notice of Federal Interest (NOFI) issued to Mr. (b) (6) and dated December 24, 2020.

<sup>5</sup> Email from claimant to NPFC dated March 9, 2021 which provided a revised incident narrative statement.

<sup>6</sup> Email from claimant to NPFC dated March 7, 2021 which provided proof of payment from the Claimant to Continental Marine dated March 6, 2021 and the claimant hired the Norfolk County Sheriff's Department to serve Mr. (b) (6) with the two invoices contained within the Sheriff's Department service package. The claimant sent an email to the NPFC dated March 7, 2021 which contained a copy of the Sheriff's Department package that it hand served to Mr. (b) (6) on February 11, 2021.

<sup>7</sup> 33 CFR 136.103(c).

reviewed all documentation submitted with the claim, analyzed the applicable law and regulations, and after careful consideration, has determined that \$24,800.00 of the requested \$25,550.00 is compensable and offers this amount as full and final compensation of this claim.

## **I. INCIDENT, RESPONSIBLE PARTY AND RECOVERY OPERATIONS:**

### ***Incident***

On December 24, 2020, at approximately 0800 local time, the National Response Center (NRC) received a report of a sunken vessel creating a sheen at Captain's Cove Marina in Quincy, MA on the Town River Bay, a navigable waterway of the United States.<sup>8</sup> The incident was reported by the Harbor Master of Captain's Cove marina who identified the vessel owner as Mr. (b) (6).<sup>9</sup>

United States Coast Guard (USCG) Sector Boston, in its capacity as the Federal on Scene Coordinator (FOSC), notified the Incident Management Division (IMD) and MST3 (b) (6), Lead USCG Pollution Responder and FOSCR for the incident, contacted the Harbor Master of Captain's Cove marina, Mr. (b) (6). The Harbor Master informed the FOSCR that the vessel sank overnight and was a 30' Chris Craft owned by Mr. (b) (6). The Harbor Master further stated that no one was onboard the vessel at the time of the sinking and stated that Mr. (b) (6) was known to be quarantining at a friend's residence due to COVID.<sup>10</sup>

During the conversation between the FOSCR and Mr. (b) (6), he informed the USCG that the sheen had dissipated. MST3 (b) (6) issued a Notice of Federal Interest (NOFI) to Mr. (b) (6) dated December 24, 2020. The FOSCR also contacted Mr. (b) (6) via telephone who stated that he contacted a salvage company. Mr. (b) (6) further stated that due to the impending inclement weather and high winds expected for December 25, 2020, the salvage company would likely perform response actions on December 26, 2020.<sup>11</sup>

On December 26, 2020, the FOSCR and two other USCG Pollution Responders arrived on scene and noticed an odor of fuel and saw a weathered sheen at the entrance of the marina. The FOSCR saw the sunken vessel and there was a sheen surrounding it. The FOSCR also noticed a small bubble of dark oil releasing from the sunken vessel, slowly and intermittently. The Harbor Master, (b) (6), arranged for a salvage company to deploy boom. The FOSCR and Pollution Responders observed the deployment of boom. At that time, the FOSCR was unable to reach the vessel owner, Mr. (b) (6), and as such the FOSCR maintained communication with the Harbor Master, who was in communication with Mr. (b) (6).<sup>12</sup>

### ***Responsible Party***

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<sup>8</sup> NRC Report # 1294915 dated December 24, 2020.

<sup>9</sup> *Id.*

<sup>10</sup> USCG Sector Boston Case Activity 7123887, opened December 24, 2020. *See*, Statement from USCG Sector Boston Pollution Responder dated January 15, 2021.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

In accordance with the Oil Pollution Act of 1990, the owner of the P/C JANE FITZ is identified as the Responsible Party (RP) for the incident.<sup>13</sup> The RP, (b) (6), was identified as the owner of the P/C JANE FITZ by the NRC reporting party, Mr. (b) (6), Captain's Cove Harbor Master and the United States Coast Guard FOSC.<sup>14</sup>

### ***Recovery Operations***

On December 24, 2020, personnel from Continental Marine Services and M & G Harbor Services personnel arrived on scene and deployed sorbent boom around the sunken vessel as witnessed by the United States Coast Guard.<sup>15</sup> The claimant reports deploying approximately 140 ft. of sorbent boom and half a bag of absorbent mats around the sunken vessel on December 24, 2020 and by 6:00 pm local time, the crew had completed work for the day.<sup>16</sup>

On December 25, 2020, the claimant arrived on scene at approximately 2:00 pm local time to check on the boom and current vessel situation.<sup>17</sup> That evening, the claimant began preparing equipment for the salvage and cleanup operation the next day. On December 26, 2020, response personnel prepared for the vessel lift, moved other vessels out of the way and tended to absorbent and mats. The diver arrived and rigs the vessel. The vessel gunnels were cleared and responders began pumping out the vessel and plugged the holes. At approximately noon, the vessel was stable and absorbents were contained in the vessel. No major sheen was observed around the vessel so the vessel sides were cleaned for transport via water. At approximately 4:00 pm local time, the vessel was officially out of the water and by 4:30 pm, the vessel was successfully moved to Continental Marine's facility.<sup>18</sup>

## **II. CLAIMANT AND NPFC**

Absent limited circumstances, the Federal Regulations implementing the Oil Pollution Act of 1990 (OPA)<sup>19</sup> require all claims for removal costs or damages must be presented to the RP before seeking compensation from the NPFC.<sup>20</sup> When an RP denies a claim or has not settled a claim after 90 days of receipt, a claimant may elect to present its claim to the NPFC.<sup>21</sup>

## **III. CLAIMANT AND NPFC:**

At the time M & G Harbor Services initially submitted its claim to the NPFC, the NPFC determined that M & G Harbor Services had yet to establish proper presentment of all costs to the RP. On January 28, 2021, the NPFC provided M & G Harbor Services the mailing address

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<sup>13</sup> NRC Report 1294915 dated December 24, 2020 and USCG Sector Boston Case Activity 7123887, opened December 24, 2020. *See*, Notice of Federal Interest (NOFI) issued to Mr. (b) (6) and dated December 24, 2020.

<sup>14</sup> *Id.*

<sup>15</sup> USCG Sector Boston Case Activity 7123887, opened December 24, 2020. *See*, Statement from USCG Sector Boston Pollution Responder dated January 15, 2021 and Email from claimant to NPFC dated March 9, 2021 which provided a revised incident narrative statement

<sup>16</sup> Email from claimant to NPFC dated March 7, 2021 which provided a time line of events for actions performed.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> 33 U.S.C. § 2701 *et seq.*

<sup>20</sup> 33 CFR 136.103.

<sup>21</sup> *Id.*

for the RP and informed M & G Harbor Services that proper presentment of all costs must be made before the NPFC could adjudicate the claim.<sup>22</sup> In February 2021, M & G Harbor Services presented its claim via two invoices containing a date range of January 12, 2021 and February 5, 2021.<sup>23</sup> After ninety days had elapsed without a response from the RP, the NPFC began to adjudicate the claim for \$25,550.00.<sup>24</sup>

#### **IV. DETERMINATION PROCESS:**

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).<sup>25</sup> 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.<sup>26</sup> The NPFC may rely upon, is not bound by the findings of fact, opinions, or conclusions reached by other entities.<sup>27</sup> 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.

#### **IV. DISCUSSION:**

An RP is liable for all removal costs and damages resulting from either an oil discharge or a substantial threat of oil discharge into a navigable water of the United States.<sup>28</sup> An RP's liability is strict, joint, and several.<sup>29</sup> When enacting OPA, Congress "explicitly recognized that the existing federal and states laws provided inadequate cleanup and damage remedies, required large taxpayer subsidies for costly cleanup activities and presented substantial burdens to victim's recoveries such as legal defenses, corporate forms, and burdens of proof unfairly favoring those responsible for the spills."<sup>30</sup> OPA was intended to cure these deficiencies in the law.

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<sup>22</sup> NPFC email dated January 28, 2021 to M & G Harbor Services regarding proper presentment of costs to the RP.

<sup>23</sup> The claimant hired the Norfolk County Sherriff's Department to serve Mr. (b) (6) with the two invoices contained within the Sherriff's Department service package. Note that the invoices totaled \$32,550.00; however, the claimant is not requesting reimbursement of the Invoice dated February 5, 2021 in the amount of \$7,000.00 as it is for boat transport and rental/storage fees that were incurred after the threat was mitigated and the vessel removed from the waterway.

<sup>24</sup> 33 CFR 136.103.

<sup>25</sup> 33 CFR Part 136.

<sup>26</sup> 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)).

<sup>27</sup> 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).

<sup>28</sup> 33 U.S.C. § 2702(a).

<sup>29</sup> See, H.R. Rep. No 101-653, at 102 (1990), reprinted in 1990 U.S.C.C.A.N. 779, 780.

<sup>30</sup> *Apex Oil Co., Inc. v. United States*, 208 F. Supp. 2d 642, 651-52 (E.D. La. 2002) (citing S. Rep. No. 101-94 (1989), reprinted in 1990 U.S.C.C.A.N. 722).

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.”<sup>31</sup> 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.”<sup>32</sup>

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan (NCP).<sup>33</sup> The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.<sup>34</sup> 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.<sup>35</sup>

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.<sup>36</sup>
- (d) That the removal costs were uncompensated and reasonable.<sup>37</sup>

The NPFC analyzed each of these factors and determined that the majority of the costs incurred and claimed by M & G Harbor Services and submitted herein are compensable removal costs based on the supporting documentation provided. The NPFC determined all costs that it has approved as OPA compensable, were invoiced in accordance with the published rates at the time services were rendered.

Upon adjudication of the claim, the NPFC made a few requests for additional information as outlined below:

1. A copy of Continental Marine Invoice dated March 6, 2021 in the amount of \$3,575.00;
2. Proof of payment from M & G Harbor Services to Continental Marine in the amount of \$3,575.00;

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<sup>31</sup> 33 U.S.C. § 2701(31).

<sup>32</sup> 33 U.S.C. § 2701(30).

<sup>33</sup> See generally, 33 U.S.C. §2712 (a) (4); 33 U.S.C. § 2713; and 33 CFR Part 136.

<sup>34</sup> 33 CFR Part 136.

<sup>35</sup> 33 CFR 136.105.

<sup>36</sup> Email from the FOSC to the NPFC dated April 12, 2021 providing a Certification of Response Actions Being Consistent with the NCP Memo from the Commander of Sector Boston to NPFC dated April 8, 2021.

<sup>37</sup> 33 CFR 136.203; 33 CFR 136.205.

3. A copy of the Moran Environmental invoicing, manifests for disposal services, and proof of payment;
4. A copy of all applicable rate schedules for pricing;
5. Proof of presentment to the RP for costs claimed; and
6. An explanation of Office Administration costs claimed.

M & G Harbor Services has responded to the requests for information and it has provided the following documentation:

1. A copy of the invoices presented to the RP via the Norfolk Sherriff's Department service;
2. A copy of the Continental Marine invoice, rate schedule and proof of payment;
3. A copy of the Moran Environmental invoice, disposal manifests, and proof of payment;
4. A copy of the M & G invoice, narrative, equipment list, and timeline of events for response/salvage; and
5. The name of the USCG FOSC Point of Contact, (b) (4), from the incident response; and
6. The claimant provided an explanation of the 12 hours invoiced for Office Administration as including writing of the bills, phone calls, and emails with people involved in the job (i.e. the RP, subcontractors, local authorities and USCG).

Upon receipt of all information, the NPFC has determined that all costs approved are supported by adequate documentation and have been coordinated with the FOSCR who has determined that the actions performed are consistent with the NCP.<sup>38</sup>

The amount of compensable costs is \$24,800.00, while \$750.00 is deemed denied for the following reasons:

1. The claimant invoiced Office Administration costs at \$125.00 per hour for a total of 12 hours between December 24, 2020 and December 26, 2020. The entire response only lasted 17 hours total and the invoicing of 12 hours for admin work is excessive. The NPFC can only allow administrative time associated with the payment of the Moran invoicing, the Continental Marine invoicing and the time it took to create the M & G Harbor invoice. On May 2, 2021, the claimant provided a response to the NPFC about the duties performed by the Office Administration person and in summary, the claimant stated that the hours included writing of the bills, phone calls, and emails with people involved in the job (i.e. the RP, subcontractors, local authorities and USCG). Based on the overall general description of duties performed, the NPFC denies 50% of the time claimed for Office Administration as not an OPA compensable response activity. The NPFC denies \$750.00 for costs incurred between December 24<sup>th</sup> and December 26<sup>th</sup>, 2020.

**Overall Denied Costs = \$750.00**<sup>39</sup>

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<sup>38</sup> Certification of Response Actions Being Consistent with the NCP Memo from the Commander of Sector Boston to NPFC dated April 8, 2021.

<sup>39</sup> See, Enclosure 3 for a detailed analysis of the amounts approved and denied by the NPFC

**VI. CONCLUSION:**

Based on a comprehensive review of the record, the applicable law and regulations, and for the reasons outlined above, SCDHEC request for uncompensated removal costs is approved in the amount of **24,800.00**.

This determination is a settlement offer,<sup>40</sup> the claimant has 60 days in which to accept this offer. Failure to do so automatically voids the offer.<sup>41</sup> The NPFC reserves the right to revoke a settlement offer at any time prior to acceptance.<sup>42</sup> Moreover, this settlement offer is based upon the unique facts giving rise to this claim and is not precedential.

Claim Supervisor: (b) (6) (b) (6)
Date of Supervisor's review: <i>6/17/21</i>
Supervisor Action: <i>Approved</i>

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<sup>40</sup> 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.

<sup>41</sup> 33 CFR § 136.115(a).

<sup>42</sup> 33 CFR § 136.115(b).