

## CLAIM SUMMARY / DETERMINATION

<b>Claim Number:</b>	UCGP922004-URC001
<b>Claimant:</b>	Atlantic Coast Marine Group, Inc.
<b>Type of Claimant:</b>	OSRO
<b>Type of Claim:</b>	Removal Costs
<b>Claim Manager:</b>	(b) (6)
<b>Amount Requested:</b>	\$4,368.77
<b>Action Taken:</b>	Offer in the amount of \$4,200.00

### EXECUTIVE SUMMARY:

On July 10, 2019, the 28-foot Wellcraft vessel, *Lady Di III*, sank in the Brown Creek behind [REDACTED], in Whortonsville, North Carolina.<sup>1</sup> The incident resulted in the release of diesel fuel into Brown Creek; a navigable waterway of the United States.<sup>2</sup> Coast Guard (CG) Marine Safety Detachment (MSD) Fort Macon was dispatched to serve as Federal On Scene Coordinator (FOSC).<sup>3</sup> The owner of *Lady Di III*, Mr. (b) (6) (Mr. (b) (6) or RP), was identified as the responsible party (RP), as defined by the Oil Pollution Act of 1990.<sup>4</sup>

On July 10, 2019, Atlantic Coast Marine Group, Inc. (ACMG or Claimant) was directed by the RP to recover and remove all oil from the identified spill location.<sup>5</sup> ACMG submitted all expenses to Mr. (b) (6) on July 11, 2019.<sup>6</sup> ACMG has received no notification or response to date from the RP, Mr. (b) (6).

On December 7, 2021, ACMG presented its removal costs claim to the National Pollution Funds Center (NPFC) for \$4,368.77.<sup>8</sup> The NPFC has thoroughly reviewed all documentation submitted with the claim, analyzed the applicable law and regulations, and after careful consideration has determined that \$4,200.00 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 July 10, 2019, a caller reported the sinking of a privately owned vessel docked at a rental property located at (b) (6), in Whortonsville, North Carolina.<sup>9</sup> The 28-foot Wellcraft vessel named *Lady Di III*, owned by Mr. (b) (6), was partially submerged in Brown Creek and discharged oil into the waterway causing a silvery sheen on Brown Creek, a navigable waterway of the United States.<sup>10</sup>

<sup>1</sup> National Response Center (NRC) Report #1251516 dated July 10, 2019.

<sup>2</sup> United States Coast Guard Situation Report (SITREP) dated July 10, 2019.

<sup>3</sup> United States Coast Guard Situation Report (SITREP) dated July 10, 2019.

<sup>4</sup> 33 U.S.C. § 2701(32).

<sup>5</sup> ACMG Standard Form Marine Salvage Contract dated July 10, 2019.

<sup>6</sup> Original Claim Submission dated November 10, 2021.

<sup>7</sup> Email from Claimant's Legal Representative to the NPFC dated January 4, 2022.

<sup>8</sup> Original Claim Submission dated November 10, 2021.

<sup>9</sup> NRC Report #1251516 dated July 10, 2019.

<sup>10</sup> USCG Pollution Investigator statement dated July 10, 2019.

On July 10, 2019, the United States Coast Guard (USCG) Marine Safety Detachment (MSD) Fort Macon responded to the incident in its capacity as the Federal On Scene Coordinator (FOSC) for the incident. The FOSC contacted the homeowner, Mr. (b) (6), who indicated the vessel owner, Mr. (b) (6), was a former renter of the property. At 1522 hours, the homeowner contacted MSD Fort Macon to notify Coast Guard that the vessel owner was on scene.<sup>11</sup>

FOSC personnel arrived on scene at 1526 hours and issued a Notice of Federal Interest to Mr. (b) (6).<sup>12</sup> On July 10, 2019, the RP signed a contract with Atlantic Coast Marine Group, "Doing Business as" (dba) Tow Boat US,<sup>13</sup> to remove the vessel and cleanup the oil discharge.<sup>14</sup> The FOSC monitored all cleanup activities.<sup>15</sup>

### ***Responsible Party***

In accordance with the Oil Pollution Act of 1990, the owner/operator of the source which caused the oil spill is the Responsible Party (RP) for the incident.<sup>16</sup> The FOSC identified Mr. (b) (6) as the owner of the *Lady Di III*.<sup>17</sup> The NPFC issued a Responsible Party Notification Letter to the RP on December 14, 2021.<sup>18</sup> The NPFC has received no response from Mr. (b) (6). Mr. (b) (6) also has not responded to ACMG regarding payment of the invoiced costs.

### ***Recovery Operations***

On July 10, 2019, Mr. (b) (6) hired ACMG and signed a contract with ACMG dba Tow Boat US, to assist with cleanup of the oil spill and removal of the vessel.<sup>19</sup> ACMG arrived on-site and began oil cleanup and vessel removal operations on December 17, 2019.

ACMG boomed off the area surrounding the *Lady Di III* and deployed absorbents to remove the discharged oil.<sup>20</sup> The FOSC confirmed that not all fuel was removed by ACMG due to non-payment by the RP.<sup>21</sup> The FOSCR agreed with ACMG leaving all contaminated absorbent materials inside the vessel for the RP to dispose of along with the remainder of the fuel that Mr. (b) (6) was directed to remove by the FOSC.<sup>22</sup> The RP was ordered to remove all remaining fuel and mitigate the threat. Removal of the vessel and all oils was completed on July 10, 2019.

## **II. CLAIMANT AND RP:**

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<sup>11</sup> USCG Investigator statement dated July 10, 2019.

<sup>12</sup> Notice of Federal Interest dated July 10, 2019.

<sup>13</sup> See, North Carolina Certificates of Assumed Name state filing information.

<sup>14</sup> ACMG Standard Form Marine Salvage Contract dated July 10, 2019.

<sup>15</sup> USCG Investigator statement dated July 10, 2019.

<sup>16</sup> 33 U.S.C. § 2701(32).

<sup>17</sup> Notice of Federal Interest dated July 10, 2019.

<sup>18</sup> RP Notification Letter dated December 14, 2021.

<sup>19</sup> ACMG Standard Form Marine Salvage Contract dated July 10, 2019.

<sup>20</sup> Original Claim Submission dated November 10, 2021.

<sup>21</sup> Email from FOSC dated December 22, 2021 providing FOSC coordination of actions performed by ACMG.

<sup>22</sup> USCG Investigator statement dated July 10, 2019.

Absent limited circumstances, the federal regulations implementing the Oil Pollution Act of 1990 (OPA)<sup>23</sup> require all claims for removal costs or damages must be presented to the responsible party before seeking compensation from the NPFC.<sup>24</sup>

ACMG submitted its request for compensation to Mr. (b) (6) for \$4,368.77 on July 11, 2019.<sup>25,26</sup> ACMG has received no response or payment from the RP.<sup>27</sup>

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

When a RP denies payment on a claim or fails to reply to a request for compensation within 90 days of the claims receipt, a claimant may elect to present its claim to the NPFC.<sup>28</sup> ACMG submitted its costs to the RP on July 11, 2019, and has received no reply from the RP. On December 7, 2021, the NPFC received a claim for \$4,368.77 from ACMG, dated November 10, 2021.<sup>29</sup>

ACMG provided the NPFC with a contract agreement signed by both the Claimant and the RP, an invoice associated with the costs claimed, photo documentation of the spill incident and a fully filled-out, signed and dated copy of an OSLTF form.

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

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).<sup>30</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>31</sup> The NPFC may rely upon, is not bound by the findings of fact, opinions, or conclusions reached by other entities.<sup>32</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.

### **V. DISCUSSION:**

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

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<sup>23</sup> 33 U.S.C. § 2701 et seq.

<sup>24</sup> 33 CFR 136.103(c)(1).

<sup>25</sup> Original Claim Submission dated November 10, 2021.

<sup>26</sup> Email from Claimants Legal Representative to the NPFC dated January 4, 2022.

<sup>27</sup> See, OSLTF Claim Form, question #6 dated November 10, 2021.

<sup>28</sup> 33 CFR 136.103.

<sup>29</sup> Original Claim Submission received December 7, 2021.

<sup>30</sup> 33 CFR Part 136.

<sup>31</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>32</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).

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>33</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>34</sup>

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan (NCP).<sup>35</sup> The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.<sup>36</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>37</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>38</sup>
- (d) That the removal costs were uncompensated and reasonable.<sup>39</sup>

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 \$4,200.00, while \$168.77 is deemed non-compensable for the following reasons:

1. ACMG submitted a Standard Form Marine Salvage Contract signed by the Responsible Party; Mr. (b) (6),<sup>40</sup> in support of the costs submitted with the claim.<sup>41</sup> The contract specifies ACMG will perform salvaging of discharged fuel on a no cure/no pay agreement for the fixed rate of \$4,200.00. ACMG invoiced \$4,368.77 in costs associated with the fuel spill cleanup from the sunken vessel on July 10, 2019.<sup>42</sup> In accordance with the terms of the contract agreement between ACMG and the RP for fixed rate price of \$4,200.00, the NPFC approves payment of \$4,200.00 for the response costs determined by the FOSC to be consistent with the NCP<sup>43</sup>, but denies payment of all additional unsupported costs, totaling \$168.77.

**Overall Denied Costs: \$168.77**

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<sup>33</sup> 33 U.S.C. § 2701(31).

<sup>34</sup> 33 U.S.C. § 2701(30).

<sup>35</sup> See generally, 33 U.S.C. §2712 (a) (4); 33 U.S.C. § 2713; and 33 CFR Part 136.

<sup>36</sup> 33 CFR Part 136.

<sup>37</sup> 33 CFR 136.105.

<sup>38</sup> USCG Investigator statement dated July 10, 2019.

<sup>39</sup> 33 CFR 136.203; 33 CFR 136.205.

<sup>40</sup> ACMG Standard Form Marine Salvage Contract, dated July 10, 2019.

<sup>41</sup> Original Claim Submission dated November 10, 2021.

<sup>42</sup> ACMG Invoice #2019-S0656 dated July 11, 2019.

<sup>43</sup> FOSC coordination statement letter dated December 22, 2021.

**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 \$4,200.00.

This determination is a settlement offer,<sup>44</sup> the claimant has 60 days in which to accept this offer. Failure to do so automatically voids the offer.<sup>45</sup> The NPFC reserves the right to revoke a settlement offer at any time prior to acceptance.<sup>46</sup> Moreover, this settlement offer is based upon the unique facts giving rise to this claim and is not precedential.

(b) (6)

Claim Supervisor: (b) (6)

Date of Supervisor's review: *1/20/2022*

Supervisor Action: *Approved*

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<sup>44</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. 33 CFR § 136.115(a).

<sup>45</sup> 33 CFR § 136.115(b).

<sup>46</sup> 33 CFR § 136.115(b).