

CLAIM SUMMARY / DETERMINATION¹

Claim Number:	UCGPB22012-URC002
Claimant:	Syracuse Marine Ltd.
Type of Claimant:	Corporate
Type of Claim:	Removal Cost
Claim Manager:	(b) (6)
Amount Requested:	\$53,792.87
Action Taken:	Offer in the amount of \$42,117.85

EXECUTIVE SUMMARY:

On September 10, 2022, the National Response Center notified United States Coast Guard Sector New York of an unknown amount of dark oil in the vicinity of the CONTSHIP LEO, moored at the Maher Terminal in the Elizabeth Channel of Port Newark. Elizabeth Channel is a navigable waterway of the United States.² The exact source and quantity of oil discharged are both unknown but estimated to be between 100 - 200 gallons. When Coast Guard pollution responders arrived on scene, they identified 11 vessels that had been impacted by the spill. They were unable to determine the source of the oil, so they federalized the incident and accessed the Oil Spill Liability Trust Fund (OSLTF or Fund) to hire clean-up contractors. National Response Corporation (NRC), with the help of four subcontractors, was hired to clean up the spill and decontaminate the vessels. In addition to the Coast Guard-funded cleanup, a few of the impacted vessels activated their vessel response plans and hired NRC and subcontractors to get their vessels cleaned using their own funds. The claimant, Syracuse Marine Ltd. (Syracuse or Claimant) did so for their vessel, the CONTSHIP LEO.³

Oil samples were taken from the water and the suspected vessels. The results came back from the lab as a heavy fuel oil; however, there were no matches to any of the suspected vessels.⁴ No responsible party was identified for this incident.⁵ Syracuse submitted its claim directly to the OSLTF for reimbursement of claimed costs totaling \$53,792.87.

The NPFC has thoroughly reviewed all documentation submitted with the claim, analyzed the applicable law and regulations, and after careful consideration has determined that

¹ This determination is written for the sole purpose of adjudicating a claim against the Oil Spill Liability Trust Fund (OSLTF). This determination adjudicates whether the claimant is entitled to OSLTF reimbursement of claimed removal costs or damages under the Oil Pollution Act of 1990. This determination does not adjudicate any rights or defenses any Responsible Party or Guarantor may have or may otherwise be able to raise in any future litigation or administrative actions, to include a lawsuit or other action initiated by the United States to recover the costs associated this incident. After a claim has been paid, the OSLTF becomes subrogated to all of the claimant's rights under 33 U.S.C. § 2715. When seeking to recover from a Responsible Party or a Guarantor any amounts paid to reimburse a claim, the OSLTF relies on the claimant's rights to establish liability. If a Responsible Party or Guarantor has any right to a defense to liability, those rights can be asserted against the OSLTF. Thus, this determination does not affect any rights held by a Responsible Party or a Guarantor.

² See, SITREP-POL ONE dated September 13, 2022.

³ CG Memo from FOSCR dated February 22, 2023

⁴ See, MISLE Case Report #1321402 pages 35-51 of 75, See also, MSL Oil Sample Analysis Report.

⁵ See, SITREP-POL TWO and Final dated September 13, 2022.

\$42,117.85 of the requested amount is compensable and offers this amount as full and final compensation of the claim.

I. INCIDENT, RESPONSIBLE PARTY AND RECOVERY OPERATIONS:

Incident

On September 10, 2022, at 0614 hrs, the National Response Center notified United States Coast Guard Sector New York of an unknown amount of dark oil in the vicinity of the CONTSHIP LEO, moored at the Maher Terminal in the Elizabeth Channel of Port Newark. Elizabeth Channel is a navigable waterway of the United States. The exact source and quantity of oil discharged are both unknown but estimated to be between 100 - 200 gallons.⁶

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.⁷ No responsible party has been identified for this incident.⁸

Recovery Operations

When Coast Guard pollution responders arrived on scene, they identified 11 vessels that had been impacted by the spill. The pollution responders were unable to determine the source of the oil, so they federalized the incident and accessed the Oil Spill Liability Trust Fund (OSLTF or Fund) to hire clean-up contractors. National Response Corporation (NRC), with the help of four subcontractors, was hired to clean up the spill and decontaminate the vessels. In addition to the Coast Guard-funded cleanup, a few of the impacted vessels activated their vessel response plans and hired NRC and subcontractors to get their vessels cleaned using their own funds.⁹ The claimant, Syracuse Marine Ltd. (Syracuse or Claimant) did so for their vessel, the CONTSHIP LEO.¹⁰ Claimant's vessel was cleared to depart on September 11, at 0018hrs.¹¹ The response ended on September 113, 2022.¹²

II. CLAIMANT AND NPFC:

On March 21, 2023, the claimant submitted their claim to the NPFC for \$53,792.57¹³. On a couple of occasions, the NPFC requested additional information from the claimant, and they promptly provided the information back to the NPFC, as requested.¹⁴

⁶ See, SITREP-POL ONE; See also, MISLE Case Report #1321402.

⁷ 33 U.S.C. § 2701(32).

⁸ See, SITREP-POL TWO and Final dated September 13, 2022.

⁹ See, SITREP-POL ONE; See also, MISLE Case Report #1321402.

¹⁰ CG Memo from FOSCR dated February 22, 2023.

¹¹ MISLE Case Report #1321402 at p.5 of 75.

¹² See, SITREP-POL TWO and Final dated September 13, 2022..

¹³ Original claim submission dated March 20, 2023.

¹⁴ Additional information included: Letter authorizing HMMS to represent Syracuse Marine, and a June 6, 2023 email explaining the nature of the services provided by Freehill, Hogan & Mahar and Martin-Ottaway.

III. DETERMINATION PROCESS:

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).¹⁵ 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.¹⁶ The NPFC may rely upon, is not bound by the findings of fact, opinions, or conclusions reached by other entities.¹⁷ 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.¹⁸ An RP's liability is strict, joint, and several.¹⁹ 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."²⁰ OPA was intended to cure these deficiencies in the law.

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."²¹ 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."²²

¹⁵ 33 CFR Part 136.

¹⁶ 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)).

¹⁷ 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).

¹⁸ 33 U.S.C. § 2702(a).

¹⁹ See, H.R. Rep. No 101-653, at 102 (1990), reprinted in 1990 U.S.C.C.A.N. 779, 780.

²⁰ *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).

²¹ 33 U.S.C. § 2701(31).

²² 33 U.S.C. § 2701(30).

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan (NCP).²³ The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.²⁴ 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.²⁵

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 (NCP).²⁶
- (d) That the removal costs were uncompensated and reasonable.²⁷

The NPFC analyzed each of these factors and determined that the majority of the costs incurred and submitted by the claimant are compensable removal costs based on the supporting documentation provided. All costs approved for payment were verified as being invoiced at the appropriate contractors' published rate schedule for personnel, equipment, and materials.

Based on the location of this incident, the FOSC is the United States Coast Guard Sector New York.²⁸ All approved costs were supported by adequate documentation and were determined by the FOSC to be consistent with the National Contingency Plan (NCP), while denied costs did not meet these criteria.²⁹

Upon adjudication of the costs, the NPFC has determined that the amount of compensable removal costs is \$42,117.85 while \$11,675.02 are deemed non-compensable for the following reasons:³⁰

1. The claimed costs of \$7,536.79 for legal services provided by Freehill, Hogan & Mahar LLC (FHM) are denied in full. The claimant has not shown that the claimed legal costs were necessary to prevent, minimize, or mitigate the effects of the incident. Despite the

²³ See generally, 33 U.S.C. § 2712 (a) (4); 33 U.S.C. § 2713; and 33 CFR Part 136.

²⁴ 33 CFR Part 136.

²⁵ 33 CFR 136.105.

²⁶ Via Memo dated March 22, 2023 and in a telcon with the NPFC on April 18, 2023, the FOSCR for the incident confirmed that the work of Hudson Marine Management Services, NRC, ACV Enviro and Miller's Launch complied with this requirement.

²⁷ 33 CFR 136.203; 33 CFR 136.205.

²⁸ 40 CFR 300.120(a)(2).

²⁹ See, Original claim submission dated March 20, 2023; See also, MISLE Case Report; Oil Sample Analysis; SITREP-POL ONE; SITREP-POL TWO-FINAL; CG Memo from FOSCR dated March 22, 2023 acknowledging that the actions taken by the vessel's Qualified Individual were consistent with the National Contingency Plan; and Email from MST1 (b) (6) dated June 16, 2023 affirming that the actions of the attorneys and surveyor were not required or directed by the FOSC.

³⁰ Enclosure 3 to this determination provides a detailed analysis of the amounts approved and denied by the NPFC.

claimant's explanation of the services provided by FHM,³¹ the NPFC finds that those services were not compensable removal costs under OPA. The FOSCR's Representative (FOSCR) did not direct the actions of the attorneys nor did she request the services of this firm for the incident response. The FOSCR also has not determined that the actions taken were consistent with the NCP.³² Also, despite the NPFC's request via email dated May 22, 2023, the claimant has not provided an hourly breakdown of the costs, detailing time spent on each activity.

2. The claimed costs of \$3,032.00 for professional services provided by Martin-Ottaway at the request of Freehill, Hogan & Mahar are denied in full. The claimant has not shown that costs were for actions necessary to prevent, minimize, or mitigate the effects of the incident. Despite the claimant's explanation of the services provided by Martin-Ottaway,³³ the NPFC finds that those services were not compensable removal costs under OPA. The FOSCR did not direct the actions of the surveyor nor did she request the services of this firm for the incident response. Further, the FOSCR also has not determined that the actions taken were consistent with the NCP.³⁴
3. The NPFC denies \$209.05 of the \$265.88 claimed Hudson Marine Management travel expenses for (b) (6) and (b) (6) on invoice 18750. These are undocumented. The remaining \$56.83 that is supported by receipts and documentation has been allowed.
4. The NPFC denies the \$35.00 wire transfer charges on the Hudson Marine Management invoice 18750. There is no documentation of these charges and no allowance for them on the rate schedule.
5. The NPFC denies \$468.00 of the \$1,053.00 claimed for an ACV Enviro field technician on September 10, 2022, on NRC invoice 779743. This is the result of an adjustment of hours down to 5 hours from 9 hours as the ACV Billing T&M sheet showed work from 4:30pm-9:30pm. The 4-hour difference is denied. Four hours at \$117/hr is \$468.00.³⁵
6. The NPFC denies \$45.50 of the \$560.00 claimed for a Miller's Launch 35-45ft workboat on NRC invoice 779743. The vessel was listed as a 32ft workboat on Miller's Launch Daily Job Report #342108 dtd September 10, 2022. The rate was reduced to \$147.00 for a 25-34ft workboat in accordance with the Miller's Launch rate schedule.³⁶
7. The NPFC denies \$13.65 of the corresponding \$168.00 fuel surcharge on NRC invoice 779743 for the Miller's Launch workboat above as the 30% fuel surcharge is calculated on the invoiced amount for the vessel.³⁷

³¹ Email from Hudson Marine Management to NPFC dated June 6, 2023.

³² Email from FOSCR dated May 2, 2023 and telcon with NPFC on April 18, 2023.

³³ Email from Hudson Marine Management to NPFC dated June 6, 2023.

³⁴ Email from FOSCR dated May 2, 2023 and telcon with NPFC on April 18, 2023.

³⁵ See, NRC Invoice page 3 of 6, ACV T&M Rate Sheet page 1 of 10, and ACV Billing T&M page 1 of 2.

³⁶ See, NRC Invoice page 3 of 6, Miller's Launch T&M Rate Sheet page 12 of 22, and Miller's Launch Daily Job Report.

³⁷ See, NRC Invoice page 3 of 6, Miller's Launch T&M Rate Sheet pages 4 and 21 of 22, and Miller's Launch Daily Job Report.

8. The NPFC denies \$59.50 of \$1,235.50 charged for ACV's absorbent boom on NRC invoice 779743. The reduction is due to the amount charged being above the allowed rate on ACV's rate schedule. The NPFC reduced the \$176.50 per bale charge to the rate schedule amount of \$168.00 per bale.³⁸
9. The NPFC denies \$59.50 of \$1,074.50 charged for ACV's absorbent sweep on NRC invoice 779743. The reduction is due to the amount charged being above the allowed rate on ACV's rate schedule. The NPFC reduced the \$153.50 per bale charge to the rate schedule amount of \$145.00 per bale.³⁹
10. The NPFC denies \$6.00 of \$63.00 charged for ACV's 12" PVC gloves on NRC invoice 779743. The reduction is due to the amount charged being above the allowed rate on ACV's rate schedule. The NPFC reduced the \$21.00 per pair of gloves to the rate schedule amount of \$19.00 per pair.⁴⁰
11. The NPFC denies \$4.00 of \$38.00 charged for ACV's 8oz sample jars on NRC invoice 779743. The reduction is due to the amount charged being above the allowed rate on ACV's rate schedule. The NPFC reduced the \$19.00 per jar charge to the rate schedule amount of \$17.00 per jar.⁴¹
12. The NPFC denies \$131.23 of the \$4,487.16 of markup NRC charged on invoice 779743 for the Miller's Launch and ACV subcontractor costs. This reduction is as result of the overall reductions in total subcontractor charges allowed by the NPFC.⁴²
13. The NPFC denies \$74.80 of the \$2,675.24 for NRC's Energy, Security, Insurance and Compliance fee charged, based on the NRC invoice 779743 total costs. This reduction is a result of the net reductions of the amounts NPFC allowed in its adjudication of NRC's invoiced costs.⁴³

Overall Denied Costs = \$11,675.02⁴⁴

V. CONCLUSION:

Based on a comprehensive review of the record, the applicable law and regulations, and for the reasons outlined above, Syracuse Marine Ltd.'s request for uncompensated removal costs is approved in the amount of **\$42,117.85**.

³⁸ See, NRC Invoice page 3 of 6, ACV T&M Rate Sheet page 2 of 10, and ACV Billing T&M page 2 of 2.

³⁹ *Id.*

⁴⁰ See, NRC Invoice page 3 of 6, ACV T&M Rate Sheet page 3 of 10, and ACV Billing T&M page 2 of 2.

⁴¹ See, NRC Invoice page 3 of 6, ACV T&M Rate Sheet page 8 of 10, and ACV Billing T&M page 2 of 2.

⁴² See, NRC Rate sheet page 16 of 17 indicating subcontractor costs will be charged at cost plus 20%.

⁴³ See, NRC Invoice page 2 of 6, NRC Rate sheet page 16 of 17 explaining the ESIC fee.

⁴⁴ Enclosure 3 to this determination provides a detailed analysis of the amounts approved and denied by the NPFC.

This determination is a settlement offer,⁴⁵ the claimant has 60 days in which to accept this offer. Failure to do so automatically voids the offer.⁴⁶ The NPFC reserves the right to revoke a settlement offer at any time prior to acceptance.⁴⁷ 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: *7/13/23*

Supervisor Action: *Offer Approved*

⁴⁵ 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).

⁴⁶ 33 CFR § 136.115(b).

⁴⁷ 33 CFR § 136.115(b).