

## CLAIM SUMMARY / DETERMINATION<sup>1</sup>

<b>Claim Number:</b>	UCGPM23040-DRP003
<b>Claimant:</b>	NORBULK SHIPPING UK LTD
<b>Type of Claimant:</b>	CORPORATE
<b>Type of Claim:</b>	PROPERTY DAMAGE
<b>Claim Manager:</b>	(b) (6)
<b>Amount Requested:</b>	\$23,327.99
<b>Action Taken:</b>	Offer in the amount of \$15,899.72

### **EXECUTIVE SUMMARY::**

On September 1, 2023, the National Response Center (NRC) received a report of a mystery sheen that discharged into Tampa Bay, Port Manatee, FL, a navigable waterway of the United States.<sup>2</sup> The United States Coast Guard (USCG) Sector St. Petersburg Incident Management Division (IMD) personnel responded to the scene and determined that approximately 3,500 gallons<sup>3</sup> of heavy fuel oil discharged into the water from an unknown source.<sup>4</sup> The USCG Sector St. Petersburg, in its capacity as the Federal On Scene Coordinator (FOSC), opened Federal Project Number UCGPM2340 and hired American Compliance Technologies (ACT) and Republic Services to perform oil removal/decontamination operations.<sup>5</sup>

Heavy oil staining was present on the sides of two vessels berthed at the port (SEASTAR VICTORY, which is Norbulk's vessel as managing operator, and CANELO ARROW).<sup>6</sup> As of September 5, 2023, the majority of the discharge in the water had been recovered; however, the heavy staining on the sea wall and on the vessels remained and needed to be cleaned.<sup>7</sup> In an attempt to determine a source, oil samples were taken -- composed of samples of the spill itself as well as several potential sources within the port, including three vessels and pipelines previously used by Florida Power & Light (FPL).<sup>8</sup> The claimant's vessel, SEASTAR VICTORY was ruled out as the source of the spill. Ultimately, no responsible party has been identified for this incident.<sup>9</sup> The SEASTAR VICTORY's hull and mooring lines were oiled.

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<sup>1</sup> 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.

<sup>2</sup> National Response Center (NRC) Report #1377869 dated September 1, 2023.

<sup>3</sup> 42 gallons = 1 barrel and 3,500 gallons = 83.333333 barrels of oil.

<sup>4</sup> United States Coast Guard Situation Report (SITREP) Two dated September 10, 2023.

<sup>5</sup> USCG SITREP Two dated September 10, 2023.

<sup>6</sup> USCG SITREP Two, section 1A, dated September 10, 2023.

<sup>7</sup> *Id.*

<sup>8</sup> Marine Safety Lab case #23-068 and case #23-073.

<sup>9</sup> USCG SITREP Six and FINAL.

The vessel hull cleaning was completed on September 9, 2023<sup>10</sup>, but the mooring lines remained ruined by the oil.

The SEASTAR VICTORY's mooring lines were oiled when the vessel was moored within the oil.<sup>11</sup> The claimant seeks reimbursement for the 12 damaged mooring lines.

The NPFC has thoroughly reviewed all documentation submitted with the claim, analyzed the applicable laws and regulations, and after careful consideration has determined that the claimant should be compensated for its damaged mooring lines in the amount of \$15,899.72.

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

### ***Incident***

On September 1, 2023, the NRC received a report of a mystery sheen that discharged into Tampa Bay, Port Manatee, FL, a navigable waterway of the United States.<sup>12</sup> Sector St. Petersburg dispatched an Incident Management Division (IMD) response team immediately to the scene. Upon arriving on scene, IMD personnel noted a thick, black sludge with the consistency of a heavy oil within the Port, and found approximately 3,500 gallons of what appeared to be heavy fuel oil at berth nine of Port Manatee.<sup>13</sup>

As of September 5, 2023, the majority of the discharge in the water had been recovered; however, the heavy staining on the sea wall and on vessels remained and needed to be cleaned. In an attempt to determine a source, a total of 11 oil samples were taken -- including samples of the spill itself as well as several potential sources within the port, both from vessels and pipelines previously used by Florida Power & Light (FPL). The claimant's vessel, SEASTAR VICTORY was ruled out as the source of the spill.

### ***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>14</sup> Oil samples were taken by the USCG in attempt to determine the source and responsible party of the incident. Samples from vessels and pipelines previously used by FPL were taken. The samples were sent to the Coast Guard Marine Safety Lab for oil classification analysis and to verify potential sources.<sup>15</sup> The oil sample results revealed the spilled oil was heavy fuel oil and the suspected source samples were non-matches.<sup>16</sup> Thus, no responsible party has been identified.

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<sup>10</sup> GMS Daily Sitrep 9 and Final provided with email dated February 19, 2024.

<sup>11</sup> Email from Sector St. Petersburg to NPFC dated January 31, 2024.

<sup>12</sup> USCG SITREP One dated September 6, 2023.

<sup>13</sup> USCG SITREP Two dated September 10, 2023.

<sup>14</sup> 33 U.S.C. § 2701(32).

<sup>15</sup> USCG SITREP Two dated September 10, 2023.

<sup>16</sup> United States Coast Guard Marine Safety Laboratory Cases #23-068 & #23-073.

## ***Recovery Operations***

USCG Sector St. Petersburg, in its capacity as the Federal On Scene Coordinator (FOSC), opened Federal Project Number UCGPM23040 and hired contractors to contain the discharge and to commence oil removal/decontamination operations.<sup>17</sup> The claimant initially thought its vessel might be the source of the discharge, so it brought on a surveyor and an OSRO to provide a Qualified Individual and Incident Commander.

On September 1, 2023, contractors arrived on scene and deployed containment boom and sorbent materials.<sup>18</sup> The FOSC oversaw the response and removal actions. USCG conducted safety and operation briefings daily.<sup>19</sup> Recovery operations continued from September 1 to September 21, 2023. All pressure washing and cleaning of the sea wall and decontamination/demobilization was completed on September 21, 2023.<sup>20</sup>

## **II. CLAIMANT AND NPFC:**

The NPFC received the claim seeking reimbursement of \$23,327.99 for mooring line replacement on January 19, 2024.

## **III. DETERMINATION PROCESS:**

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).<sup>21</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>22</sup> The NPFC may rely upon, is not bound by the findings of fact, opinions, or conclusions reached by other entities.<sup>23</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.

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

<sup>18</sup> USCG SITREP One dated September 6, 2023.

<sup>19</sup> USCG SITREP Six dated September 22, 2023.

<sup>20</sup> *Id.*

<sup>21</sup> 33 CFR Part 136.

<sup>22</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>23</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).

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

Under OPA, a 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. An RP's liability is strict, joint, and several. 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." OPA was intended to cure these deficiencies in the law.

OPA provides a mechanism for compensating parties who have incurred damages where the responsible party has failed to do so. The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims. 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.

##### ***Real or Personal Property Damages***

33 CFR 136.215 requires proof of:

- (1) An ownership or leasehold interest in the property;
- (2) That the property was injured or destroyed;
- (3) The cost of repair or replacement; and
- (4) The value of the property both before and after injury occurred.

33 CFR 136.217 states:

- (a) The amount of compensation allowable for damaged property is the lesser of—
  - (1) Actual or estimated net cost of repairs necessary to restore the property to substantially the same condition which existed immediately before the damage;
  - (2) The difference between value of the property before and after the damage; or
  - (3) The replacement value.

##### ***NPFC Analysis***

The claimant seeks reimbursement for the replacement value of its mooring lines. The oil spill in the Port Manatee turning basin occurred before the SEASTAR VICTORY arrived in port

at 2300ET.<sup>24</sup> The crew did not notice the oil until the vessel was already moored.<sup>25</sup> Once they noticed the oil in the water they contacted the U.S. Coast Guard.<sup>26</sup> The NPFC verified that the lines were oiled. The claimant had twelve mooring lines that were damaged beyond repair.<sup>27</sup>

Claimant provided an invoice for 12 coils of replacement line at a price of \$23,327.99.<sup>28</sup> The claims regulations require a claimant to provide the cost of repair or replacement; and the value of the property both before and after injury occurred.<sup>29</sup> The OSLTF may only pay the lower of the cost of repair, replacement, or the difference between the value of the property before and after the injury. The lines could not be repaired or cleaned, so the claimant provided the replacement value of \$23,327.99 based on its invoice for the purchase of 12 new mooring lines.

The claimant did not provide the value of the property both before and after the injury occurred. The NPFC requested this value, but the claimant did not provide it. The NPFC also requested the initial purchase price information, age and life expectancy of the damaged lines. The claimant provided these via email dated February 19, 2024. Since the OSLTF may only pay the lesser of the values required by the regulations, the NPFC used the original mooring line purchase information to calculate the depreciated value of the different lines at the time of the injury. This resulted in a value before the injury of \$15,899.72. The attached spreadsheet<sup>30</sup> shows the NPFC's calculations using data provided by the claimant and appended to the spreadsheet provided by the claimant. Given that the lines were probably worth nothing once they were ruined by the oil, the difference between the value before the injury and a value of zero after the injury is \$15,899.72.

The NPFC found issues with using the replacement cost of the mooring lines provided by the claimant. First, the new lines were not the same type as the damaged lines. The damaged lines were of different sizes, type and of unknown length. Second, the OSLTF does not provide new values for old property unless the new values prove to be the lowest value evidenced. In this case, the NPFC's calculation of the difference between the depreciated value of the twelve damaged lines before and after the injury resulted in a value that was lower than the replacement cost sought by the claimant. Therefore, the NPFC may only offer the lower amount of \$15,899.72.

## **V. CONCLUSION:**

Based on a comprehensive review of the record, the applicable law and regulations, and for the reasons outlined above, Norbulk Shipping UK, Ltd.'s request for uncompensated property damages is approved in the amount of **\$15,899.72**.<sup>31</sup>

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<sup>24</sup> Summary attached to initial claim submission.

<sup>25</sup> Summary attached to initial claim submission.

<sup>26</sup> Summary attached to initial claim submission.

<sup>27</sup> Verified by Sector St. Petersburg during January 31, 2024 telcon and confirmed via email February 5, 2024.

<sup>28</sup> Ship Services of Texas LLC invoice dated 9/13/2023, provided with claim submission.

<sup>29</sup> 33 CFR 136.215

<sup>30</sup> NPFC mooring line calculation spreadsheet.

<sup>31</sup> The claimed removal costs are being addressed in a separate claim UCGPM23040-URC001.

This determination is a settlement offer,<sup>32</sup> the claimant has 60 days in which to accept this offer. Failure to do so automatically voids the offer.<sup>33</sup> The NPFC reserves the right to revoke a settlement offer at any time prior to acceptance.<sup>34</sup> Moreover, this settlement offer is based upon the unique facts giving rise to this claim and is not precedential.

Claim Supervisor:	(b) (6)
Date of Supervisor's review:	May 17, 2024
Supervisor Action:	<i>Offer Approved</i>

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<sup>32</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>33</sup> 33 CFR § 136.115(b).

<sup>34</sup> 33 CFR § 136.115(b).