

CLAIM SUMMARY / DETERMINATION¹

Claim Number:	UCGP924029-URC001
Claimant:	Elco Fisherman's Marina
Type of Claimant:	Corporate
Type of Claim:	Removal Costs
Claim Manager:	(b) (6)
Amount Requested:	\$8,700.00
Action Taken:	Denial

EXECUTIVE SUMMARY:

On January 6, 2024, the United States Coast Guard's ("USCG") National Response Center ("NRC") received notification that a vessel sank at the Elco Fisherman's Marina ("Elco" or "Claimant") in Bayonne, New Jersey, causing the discharge of gasoline and oil into Newark Bay; a navigable waterway of the United States.² USCG Sector New York Incident Management Division, in its capacity as the Federal On Scene Coordinator for the incident, ("Sector New York IMD" or "FOSC") received notification of the partially submerged recreational vessel tied up at the Elco Fisherman's Marina, and responded on scene.³

The FOSC and Elco were unable to verify vessel ownership at the time of the incident.⁴ Elco activated their own resources and hired Brooklyn Marine Services ("Brooklyn Marine") to raise the vessel and ensure any pollution potential was mitigated in accordance with the National Contingency Plan ("NCP").⁵

Mr. (b) (6) ("Mr. (b) (6)" or "RP"), owner of the recreational vessel, GRAY GOOSE, was later verified as the responsible for the oil spill and identified as the Responsible Party (RP),⁶ as defined by the Oil Pollution Act of 1990.⁷

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 with 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, National Response Center Report #1388336 dated January 6, 2024.

³ Elco Fisherman's Marina Original Claim Submission received March 7, 2024. See, Federal On Scene Coordinator's Representative (FOSCR's) Signed Memorandum.

⁴ See, Email from FOSC to NPFC dated March 18, 2024.

⁵ Elco Fisherman's Marina Original Claim Submission received March 7, 2024. See, FOSCR's Signed Memorandum.

⁶ See, Email from FOSC to NPFC dated July 15, 2024. See also, Phone Conversation Summary between NPFC and (b) (6) dated March 18, 2024.

⁷ 33 U.S.C. § 2701 (32).

Brooklyn Marine Invoice # INV-000143 suggests Brooklyn Marine arrived on scene for the purpose of pollution prevention and spill mitigation. The invoice also alleges that the vessel was refloated and raised. The invoice indicates that boom was deployed around the vessel and absorbents were used to remove contaminants from inside the vessel. Finally, Brooklyn Marine reportedly pumped the bilge to a near minimum level.⁸

The FOSC determined the incident posed a substantial threat of discharge of oil into a navigable waterway of the United States, and determined all actions taken by the Brooklyn Marine were consistent with the National Contingency Plan (“NCP”).⁹

On March 5, 2024, Elco presented the Brooklyn Marine Invoice # INV-000143 in the amount of \$8,700.00 to Mr. (b) (6).¹⁰ On March 7, 2024, Elco presented its removal costs to the National Pollution Funds Center (NPFC) for \$8,700.00.¹¹ The NPFC has thoroughly reviewed all documentation submitted with the claim, analyzed the applicable law and regulations, and after careful consideration has determined that all costs are denied.

I. INCIDENT, RESPONSIBLE PARTY AND RECOVERY OPERATIONS:

Incident

On January 6, 2024, the NRC received notification that a vessel sank at the Elco Fisherman’s Marina in Bayonne, New Jersey, causing the discharge of gasoline and oil in Newark Bay; a navigable waterway of the United States.¹² USCG Sector New York Incident Management Division, in its capacity as the Federal On Scene Coordinator for the incident, (“Sector New York IMD” or “FOSC”) received notification of the partially submerged recreational vessel tied at the Elco Fisherman’s Marina, and responded on scene.¹³

The FOSC and Claimant were unable to verify ownership of the vessel at the time of the incident.¹⁴ Due to their inability to confirm the vessel’s ownership, Elco activated its own resources and hired Brooklyn Marine Services to raise the vessel and ensure any pollution potential was mitigated in accordance with the NCP.¹⁵

Responsible Party

⁸ See, Email from Elco Fisherman’s Marina to NPFC dated March 17, 2024. See, Brooklyn Marine Invoice # INV-000143 pg. 1 of 1.

⁹ See, Email from FOSC to NPFC dated March 18, 2024. Also see, Elco Fisherman’s Marina Original Claim Submission received March 7, 2024. See, FOSCR’s Signed Memorandum.

¹⁰ Email from NPFC to Mr. (b) (6) dated March 18, 2024, recaps a phone conversation between NPFC and Mr. (b) (6) confirming presentment of costs made by Elco to Mr. (b) (6) on March 5, 2024. As such, the NPFC did not adjudicate the merits of the claim until the expiration of the 90-day presentment period.

¹¹ Elco Fisherman’s Marina Original Claim Submission received March 7, 2024.

¹² See, National Response Center Report #1388336 dated January 6, 2024.

¹³ Elco Fisherman’s Marina Original Claim Submission received March 7, 2024. See, Federal On Scene Coordinator’s Representative (FOSCR’s) Signed Memorandum.

¹⁴ See, Email from FOSC to NPFC dated March 18, 2024.

¹⁵ Elco Fisherman’s Marina Original Claim Submission received March 7, 2024. See, FOSCR’s Signed Memorandum.

OPA defines the Responsible Party (RP) for a discharge from a vessel as “any person owning, operating, or demise chartering the vessel.”¹⁶ Mr. (b) (6) (“Mr. (b) (6)” or “RP”), is the confirmed owner of the vessel, the GRAY GOOSE, on the date the incident occurred.¹⁷ As such, Mr. (b) (6) is identified as the responsible party (RP), as defined by the Oil Pollution Act of 1990.¹⁸

On March 11, 2024, the NPFC issued a RP Notification Letter to Mr. (b) (6) via email.¹⁹ A RP Notification letter notifies the owner/operator that a claim was presented to the NPFC seeking reimbursement of uncompensated removal costs incurred as result of a discharge of oil to navigable waters of the United States.

Recovery Operations

Brooklyn Marine’s Invoice # INV-000143 notes the contractor arrived on scene on January 12, 2024²⁰, for the purpose of pollution prevention, spill mitigation, to refloat and raise the sunken vessel, surround the vessel with containment boom, use absorbents to remove contaminants from inside the vessel, and pump bilge levels to near minimum.²¹ Lastly, the final invoice entry states that the contractor attended the vessel daily for seven (7) days, inclusive of pump rental.²²

II. CLAIMANT AND NPFC:

On March 7, 2024, Elco presented its removal costs to the National Pollution Funds Center (NPFC) for \$8,700.00.²³ Their submission included Elco’s signed OSLTF form, Brooklyn Marine’s Invoice #INV-000143, and an official memorandum signed by the Federal On Scene Coordinator’s Representative (FOSCR).²⁴

On March 7, 2024, the NPFC requested Elco provide proof of presentment of costs to the responsible party.²⁵ On March 9, 2024, Elco provided photographs of the driver’s licenses of two potential responsible parties who were believed to have been owners of the vessel.²⁶ On March 11, 2024, the NPFC explained the need for proof of presentment of costs to the RP, and requested Elco also provide the proof of payment of costs to Brooklyn Marine Services. The NPFC also requested any rate sheet or contract agreement between Elco and Brooklyn Marine

¹⁶ 33 U.S.C. § 2701(32).

¹⁷ See, Email from FOSC to NPFC dated July 15, 2024. See also, Phone Conversation Summary between NPFC and (b) (6), dated March 18, 2024.

¹⁸ 33 U.S.C. § 2701(32).

¹⁹ See, NPFC RP Notification Letter dated March 11, 2024.

²⁰ See, Brooklyn Marine Invoice # INV-000143 pg. 1 of 1 that was received on March 17, 2024, via email from the Claimant. The first invoice entry indicates the date of service as 1/12/25 which is clearly a typo and intended to be 1/12/24.

²¹ Email from Elco Fisherman’s Marina to NPFC dated March 17, 2024. See, Brooklyn Marine Invoice # INV-000143 pg. 1 of 1.

²² *Id.*

²³ Elco Original Claim Submission received March 7, 2024.

²⁴ *Id.* with Attachments.

²⁵ See, NPFC Acknowledgement Letter dated March 7, 2024.

²⁶ See, Email from Elco to NPFC dated March 9, 2024, with Attachments.

Services that may support the costs claimed. Lastly, the NPFC also requested any timesheets, activity logs, and/or daily records associated with the response and cleanup.²⁷ On March 12, 2024, Elco agreed to provide proof of payment and a more detailed invoice, while also submitting screen shots of multiple group text messages with the alleged RP's regarding the costs and vessel ownership.²⁸

On March 17, 2024, Elco provided a more detailed invoice from Brooklyn Marine Services outlining the specific tasks associated with each of the costs claimed.²⁹ On March 19, 2024, Elco provided proof of payment to Brooklyn Marine for all services noted on Invoice #INV-000143.³⁰

On July 2, 2024, Mr. (b) (6) submitted an email to the NPFC explaining his sale of the vessel to Mr. (b) (6) which included a hand-written bill of sale, signed registration, and insurance verification as evidence.³¹ Mr. (b) (6) asserted that he sold the vessel to Mr. (b) (6) after receiving a deposit of \$500.00 on September 8, 2023, and receiving additional payment, leading to a final payment totaling \$975.00 on September 13, 2023.³² Mr. (b) (6) has since confirmed purchasing the vessel from Mr. (b) (6)..³³

Upon confirming that the owner of the vessel was Mr. (b) (6), and after the passage of the 90 day timeframe for presentment of costs to the RP, Elco's submission became an official removal costs claim, and the NPFC moved forward with adjudication.³⁴

IV. DETERMINATION PROCESS:

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).³⁵ 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.³⁶ The NPFC may rely upon, is not bound by the findings of fact, opinions,

²⁷ See, Email from NPFC to Elco dated March 11, 2024.

²⁸ See, Email from Elco to NPFC dated March 12, 2024, with Attachments.

²⁹ See, Email from Elco Fisherman's Marina to NPFC dated March 17, 2024. See, Brooklyn Marine Services Invoice #INV-000143 breakdown, pg. 1 of 1.

³⁰ See, Email from Elco Fisherman's Marina to NPFC dated March 19, 2024. See also, Check 2060 Payment Processing, and See also, Check 2060 Payment to Contractor.

³¹ See, Email from (b) (6) to NPFC dated July 2, 2024, with Attachments.

³² See, Email from Elco Fisherman's Marina to NPFC dated March 9, 2024. See, Message from (b) (6) to Claimant.

³³ See, Phone Conversation Summary between NPFC and (b) (6), dated March 18, 2024.

³⁴ See, Email from NPFC to Elco dated July 3, 2024, confirming submission was converted to an official removal costs claim.

³⁵ 33 CFR Part 136.

³⁶ 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)).

or conclusions reached by other entities.³⁷ 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:

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.³⁸ An RP's liability is strict, joint, and several.³⁹ 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."⁴⁰ 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."⁴¹ 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."⁴²

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan (NCP).⁴³ The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.⁴⁴ 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.⁴⁵

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;

³⁷ 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).

³⁸ 33 U.S.C. § 2702(a).

³⁹ See, H.R. Rep. No 101-653, at 102 (1990), reprinted in 1990 U.S.C.C.A.N. 779, 780.

⁴⁰ *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).

⁴¹ 33 U.S.C. § 2701(31).

⁴² 33 U.S.C. § 2701(30).

⁴³ See generally, 33 U.S.C. § 2712 (a)(4); 33 U.S.C. § 2713; and 33 CFR Part 136.

⁴⁴ 33 CFR Part 136.

⁴⁵ 33 CFR 136.105.

- (c) That the actions taken were directed by the FOSC or determined by the FOSC to be consistent with the National Contingency Plan.⁴⁶
- (d) That the removal costs were uncompensated and reasonable.⁴⁷

The NPFC analyzed each of these factors and determined the costs incurred and submitted by Elco Fisherman's Marina are not OPA compensable removal costs based on the supporting documentation and explanation of the costs claimed.

Proof of payment from SNV LLC to Brooklyn Marine Services in the amount of \$8,700.00 has been provided.⁴⁸ However, Elco has not established that the check from SNV LLC is the official corporate bank account for Elco Fisherman's Marina. Elco has failed to provide information from the bank that services SNV LLC's checking account issuing payment to Brooklyn Marine Services. Elco has not demonstrated that SNV LLC and Elco Fisherman's Marina are the same corporate entity; or at a minimum, a joint account between these two business entities.

Until Elco establishes it is listed on the checking account belonging to SNV LLC that made the \$8,700.00 payment to Brooklyn Marine Services via check # 2060 dated March 13, 2024, the record does not establish that Elco has incurred uncompensated removal costs in the amount of \$8,700.00 nor has Elco established that it possesses the rights to submit a claim for \$8,700.00 in the name of SNV LLC.

Additionally, Elco has failed to provide a contractual agreement with Brooklyn Marine Services or rate sheet pricing to support the costs of services provided and charged via Brooklyn Marine Services invoice # INV-000143. Finally, Elco has failed to provide detailed daily field logs that outline the name(s), positions, hours, labor rates, labor categories, and start and stop times of each qualified responder associated with the services provided in the performance of environmental response services associated with the handling and disposal of petroleum and/or hazardous substances.

In consideration of all costs claimed, responses to the NPFC's request for additional information, and/or lack of proper support, the NPFC has determined that all costs must be denied.⁴⁹ Elco has failed to provide valid employee timesheets in place of a published rate sheet for Brooklyn Marine Services, daily reports with details from Brooklyn Marine Services, or any other document to support the date(s) and hours noted on the invoice affiliated with the costs claimed.⁵⁰ The Brooklyn Marine Services invoice submitted by Elco is the sole means of time

⁴⁶ After analyzing the incident and the actions taken by Brooklyn Marine, the FOSC opined that the response actions undertaken by Brooklyn Marine were consistent with the National Contingency Plan. *See*, Email from USCG Sector New York IMD to the NPFC dated March 18, 2024.

⁴⁷ 33 CFR 136.203; 33 CFR 136.205.

⁴⁸ *See*, March 19, 2024, email from Elco to NPFC with check # 2060 dated March 13, 2024, in the amount of \$8,700.00, from SNV LLC to Brooklyn Marine Services attached. It is important to note that the SNV LLC has not been linked to Elco Fisherman's Marina therefore any uncompensated costs and subrogable rights between SNV LLC and Elco Fisherman's Marina in the amount of \$8,700.00 has not been established.

⁴⁹ *See*, Enclosure 3 provides a detailed analysis of the amounts approved by the NPFC.

⁵⁰ *See*, Email from Elco Fisherman's Marina to NPFC dated March 11, 2024. *See also*, Email from Brooklyn Marine Services to NPFC dated June 10, 2024.

and activity documentation submitted with the claim.⁵¹ The contractor, Brooklyn Marine Services, has confirmed that none of their personnel on-scene had an active Hazwoper certification as required by the Occupational Safety & Health Administration (OSHA) for employers whose employees respond to emergencies involving hazardous substances.⁵² Furthermore, disposal of petroleum and/or hazardous substances must be demonstrated in accordance with applicable state laws and the Area Contingency Plan (ACP) governing the disposal of petroleum contaminated products. No proof of payment for disposal activities and no disposal manifests were provided upon request.⁵³

VI. CONCLUSION:

Based on a comprehensive review of the record, the applicable law and regulations, and for the reasons outlined above, Elco Fisherman Marina's request for uncompensated removal costs is denied.

Should the Claimant decide to request reconsideration of this denial they need to provide evidence to support the costs claimed as discussed above.

(b) (6)

Claim Supervisor: (b) (6)

Date of Supervisor's review: 7/18/24

Supervisor Action: *Denial approved*

⁵¹ See, Email from Elco Fisherman's Marina to NPFC dated March 17, 2024. See, Brooklyn Marine Services Invoice INV-000143, pg. 1 of 1 for costs breakdown.

⁵² See, Email from Brooklyn Marine Services to NPFC dated June 10, 2024. See also, 29 CFR 1910.120(q). The paragraph requires employers to develop, implement, and keep a written emergency response plan available before starting emergency response operations.

⁵³ See, Email from Brooklyn Marine Services to NPFC dated June 10, 2024.