

CLAIM SUMMARY / DETERMINATION¹

Claim Number:	UCGPM23040-URC001
Claimant:	NORBULK SHIPPING UK LTD
Type of Claimant:	CORPORATE
Type of Claim:	REMOVAL COSTS
Claim Manager:	(b) (6)
Amount Requested:	\$28,330.41
Action Taken:	Offer in the amount of \$21,761.41

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.² The United States Coast Guard (USCG) Sector St. Petersburg Incident Management Division (IMD) personnel responded to the scene and determined that approximately 3,500 gallons³ of heavy fuel oil discharged into the water from an unknown source.⁴ 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.⁵

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).⁶ 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.⁷ 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).⁸ 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.⁹ The SEASTAR VICTORY's hull and mooring lines were oiled.

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 National Response Center (NRC) Report #1377869 dated September 1, 2023.

³ 42 gallons = 1 barrel and 3,500 gallons = 83.333333 barrels of oil.

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

⁵ USCG SITREP Two dated September 10, 2023.

⁶ USCG SITREP Two, section 1A, dated September 10, 2023.

⁷ *Id.*

⁸ Marine Safety Lab case #23-068 and case #23-073.

⁹ USCG SITREP Six and FINAL.

The vessel hull cleaning was completed on September 9, 2023¹⁰, but the mooring lines remained ruined by the oil.

The claimant seeks reimbursement of \$21,761.41 paid to Gallagher Marine Systems, Inc. for the services of an Incident Commander and a Qualified Individual, and \$6,569.00 paid to B.S.T. Marine, Inc. for the services of a marine surveyor.¹¹

The NPFC thoroughly reviewed all documentation submitted with the claim, analyzed the applicable laws and regulations, and after careful consideration determined that claimant should be compensated for its removal costs in the amount of \$21,761.41 for Gallagher Marine's services. The NPFC denies \$6,569.00 for the surveyor's services.

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.¹² 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 gallons¹³ of what appeared to be heavy fuel oil at berth nine of Port Manatee.¹⁴

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, including three 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.¹⁵

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.¹⁶ For this incident, no responsible party has been identified.

¹⁰ Gallagher Marine Systems (GMS) Daily Sitrep 9 and Final provided with email dated February 19, 2024.

¹¹ Norbulk Shipping Uk Ltd claim submission dated January 10, 2024.

¹² USCG SITREP One dated September 6, 2023.

¹³ 42 gallons = 1 barrel and 3,500 gallons = 83.333333 barrels of oil.

¹⁴ USCG SITREP Two dated September 10, 2023.

¹⁵ Marine Safety Lab case #23-068.

¹⁶ 33 U.S.C. § 2701(32).

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.¹⁷

The oil spill in the Port Manatee turning basin occurred before the SEASTAR VICTORY arrived in port at 2300 EST on August 31, 2023.¹⁸ The crew did not notice the oil until the vessel was already moored.¹⁹ Once they observed the oil in the water they contacted the U.S. Coast Guard.²⁰ 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 (QI) and Incident Commander.

On September 1, 2023, contractors arrived on scene and deployed containment boom and sorbent materials.²¹ The FOSC oversaw the response and removal actions. USCG conducted safety and operation briefings daily.²² 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, 2023.²³ The SEASTAR VICTORY required hull cleaning, which was completed by a cleaning crew on September 9, 2023 at 1530 EST.²⁴

II. CLAIMANT AND NPFC:

On January 19, 2024, the NPFC received Norbulk's removal cost claim submission in the amount of \$28,330.41 in uncompensated removal costs.²⁵ The claim included a signed cover letter from Norbulk's attorney, a signed OSLTF claim form, the NPFC Public Notice, B.S.T. Marine, Inc. invoice for services, GMS invoice for services, Supplement to Norbulk's OPA 90 claim, and Witness statement from the Master of the Seastar Victory.²⁶

III. DETERMINATION PROCESS:

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).²⁷ 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

¹⁷ USCG SITREP Two, section 1A, dated September 10, 2023.

¹⁸ Summary attached to initial claim submission.

¹⁹ Summary attached to initial claim submission.

²⁰ Summary attached to initial claim submission.

²¹ USCG SITREP One dated September 6, 2023.

²² USCG SITREP Six dated September 22, 2023.

²³ *Id.*

²⁴ Gallagher Marine Systems Sitrep 9 and Final provided with email dated February 19, 2024.

²⁵ *See*, Norbulk's claim submission to the NPFC dated January 10, 2024.

²⁶ *Id.*

²⁷ 33 CFR Part 136.

evidence obtained independently by the NPFC, and weighs its probative value when determining the facts of the claim.²⁸ The NPFC may rely upon, is not bound by the findings of fact, opinions, or conclusions reached by other entities.²⁹ 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.³⁰ An RP's liability is strict, joint, and several.³¹ 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."³² 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."³³ 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."³⁴

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan (NCP).³⁵ The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.³⁶ 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.³⁷

²⁸ 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)).

²⁹ 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).

³⁰ 33 U.S.C. § 2702(a).

³¹ See, H.R. Rep. No 101-653, at 102 (1990), reprinted in 1990 U.S.C.C.A.N. 779, 780.

³² *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).

³³ 33 U.S.C. § 2701(31).

³⁴ 33 U.S.C. § 2701(30).

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

³⁶ 33 CFR Part 136.

³⁷ 33 CFR 136.105.

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.
- (d) That the removal costs were uncompensated and reasonable.³⁸

The claimant seeks reimbursement of \$21,761.41 paid to Gallagher Marine³⁹ and \$6,569.00 allegedly paid to B.S.T. Marine.⁴⁰ The claimant alleges that these costs consist of removal costs incurred because of the mystery oil spill that contaminated its hull and mooring lines.

Gallagher Marine provided the services of an Incident Commander and a Qualified Individual to coordinate the vessel's hull cleaning with the USCG and its contractors hired to clean the spill. In support of the Gallagher Marine costs, the claimant provided time sheets⁴¹ and Gallagher Marine's daily situation reports (Sitreps).⁴² NPFC communicated with the FOSC, who verified that the actions taken by the Gallagher's Qualified Individual and Incident Commander were removal actions in accordance with the NCP.⁴³ FOSC representative personnel stated that they worked with the Incident Commander during the vessel cleaning, and communicated with the Qualified Individual.⁴⁴ NPFC verified the Gallagher Marine labor hours invoiced⁴⁵ and the labor rate of \$200 per hour charged for the Qualified Individual and Incident Commander.⁴⁶ The total Gallagher Marine labor cost of \$3,646.00 for 18.23 hours of labor for the Qualified Individual and \$17,234.00 for 86.17 hours of labor for the Incident Commander are payable to the claimant.

Additionally, Gallagher Marine charged \$881.41 (\$766.44 mileage plus a 15% administrative fee) for miscellaneous costs related to the mileage of the Incident Commander to drive to and from the vessel during the response. The NPFC verified the mileage (65 miles each way)⁴⁷ per day for nine days and that it was charged appropriately at the IRS mileage allowance of \$0.655 (65.5 cents) per mile,⁴⁸ plus the contracted administrative fee of 15%.⁴⁹ The NPFC finds that the full \$881.41 is payable to the claimant.

³⁸ 33 CFR 136.203; 33 CFR 136.205.

³⁹ See Payment transfer confirmation provided with email dated February 19, 2024.

⁴⁰ See, February 21, 2024 email from Mr. (b) (6), Claimant Counsel, stating proof of payment for B.S.T. Marine to follow however was never provided in support of costs claimed.

⁴¹ GMS Time sheets provided with initial claim submission.

⁴² GMS Sitreps provided with email dated February 19, 2024.

⁴³ Email from Sector St. Petersburg to NPFC dated February 5, 2024, confirming telcon of January 31, 2024.

⁴⁴ *Id.*

⁴⁵ GMS Time sheets provided with initial claim and GMS Sitreps provided with email dated February 19, 2024.

⁴⁶ 2015 GMS USA Services Agreement p.18, provided with email dated February 19, 2024.

⁴⁷ GMS employee (b) (6) home address with Google Map link showing route to Seaport Manatee provided with email dated February 19, 2024.

⁴⁸ IRS standard mileage rates for 2023 found at IRS.gov.

⁴⁹ 2015 GMS USA Services Agreement p.18.

Regarding the actions of the marine surveyor, he appears to have been on scene to protect the vessel's interests and to observe and assist the master as necessary.⁵⁰ Specifically, the surveyor's invoice was for a survey and reporting as well as some administrative costs.⁵¹ These costs are not oil removal costs because the USCG Sector personnel stated that they did not work with the marine surveyor and did not require or request his presence.⁵² They stated that he was on scene taking photos, but did not work with the USCG FOSC.⁵³ Thus, his actions do not constitute reimbursable removal costs under OPA. Because the marine surveyor's actions were not directed by the FOSC and were not determined by the FOSC to be performed in accordance with the NCP, the claimed costs of \$6,569.00 for the marine surveyor's services are denied.⁵⁴

For the reasons stated above, the NPFC finds that the \$21,761.41 the claimant paid to Gallagher Marine is the compensable amount of the claimant's removal costs under OPA. The remaining \$6,569.00 for the surveyor's costs are denied.

VI. 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 removal costs is approved in the amount of **\$21,761.41**.⁵⁵

This determination is a settlement offer,⁵⁶ the claimant has 60 days in which to accept this offer. Failure to do so automatically voids the offer.⁵⁷ The NPFC reserves the right to revoke a settlement offer at any time prior to acceptance.⁵⁸ Moreover, this settlement offer is based upon the unique facts giving rise to this claim and is not precedential.

⁵⁰ BST Marine report provided with email dated February 19, 2024, pp. 7-8.

⁵¹ BST Marine invoice provide with initial claim submission.

⁵² Email exchange between Sector St. Petersburg and NPFC dated February 5, 2024.

⁵³ Email exchange between Sector St. Petersburg and NPFC dated February 5, 2024.

⁵⁴ In conjunction with the denial that the marine surveyor costs are not deemed determined by the FOSC to be consistent with the NCP, the Claimant also has not provided proof of payment for the BST Marine invoiced costs.

⁵⁵ The claimed property damage costs are being addressed as a separate claim UCGPM23040-DRP003.

⁵⁶ 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).

⁵⁷ 33 CFR § 136.115(b).

⁵⁸ 33 CFR § 136.115(b).

Claim Supervisor:

(b) (6)

(b) (6)

Date of Supervisor's review: *5/17/24*

Supervisor Action: *Offer Approved*

Supervisor's Comments: