

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: 915077-0001
Claimant	: Atlantic Coast Marine Group, Inc.
Type of Claimant	: Corporate
Type of Claim	: Removal Costs
Claim Manager	: [REDACTED]
Amount Requested	: \$4,634.00

**FACTS:**

1. Coast Guard MISLE Case # 719680 states that on March 19, 2015, the Atlantic Beach North Carolina Fire Department (ABFD) responded to a sunken vessel that was actively discharging fuel. The vessel—a 32' Cris Craft—sunk in Atlantic Beach Causeway, part of Onslow Bay, that drains directly into the Atlantic Ocean, navigable waterways of the US.

On March 19, 2015, notification was made to the National Response Center (NRC) via Report # 1111132.

2. **Description of removal actions performed:** The Atlantic Beach Fire Department did not have enough boom on hand to handle the spill and called upon ACMG for assistance with boom and clean up. The owner Mr. [REDACTED], the named Responsible Party (RP) acknowledged that he wished to contract with ACMG to clean up the fuel spill and his friend would recover the vessel. ACMG crews began work cleaning up the waterway.

3. **The Claim:** On April 30, 2015, ACMG submitted a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of removal costs in the amount of \$4,634.00 for the services provided on or about March 19, 2015. A copy of the vendor rate schedule is provided in the claim submission.

The review of the actual cost invoicing and dailies focused on: (1) whether the actions taken were compensable “removal actions” under OPA and the claims regulations at 33 CFR 136 (e.g., actions to prevent, minimize, mitigate the effects of the incident); (2) whether the costs were incurred as a result of these actions; (3) whether the actions taken were consistent with the NCP or directed by the FOSC, and (4) whether the costs were adequately documented.

**APPLICABLE LAW:**

Under OPA 90, at 33 USC § 2702(a), responsible parties are liable for removal costs and damages resulting from the discharge of oil into navigable waters and adjoining shorelines, as described in Section 2702(b) of OPA 90. A responsible party’s liability will include “removal costs incurred by any person for acts taken by the person which are consistent with the National Contingency Plan”. 33 USC § 2702(b)(1)(B).

"Oil" is defined in relevant part, at 33 USC § 2701(23), to mean “oil of any kind or in any form, including petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil”.

The Oil Spill Liability Trust Fund (OSLTF), which is administered by the NPFC, is available, pursuant to 33 USC §§ 2712(a)(4) and 2713 and the OSLTF claims adjudication regulations at 33 CFR Part 136, to pay claims for uncompensated removal costs that are determined to be consistent with the National Contingency Plan and uncompensated damages. 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”.

Under 33 CFR 136.103(c)(2), if the claim is not settled by any person by payment within 90 days after the date upon which (A) the claim was presented, or (B) advertising was begun pursuant to § 136.309(d), whichever is later, the claimant may elect to commence an action in court against the responsible party or guarantor or to present the claim to the Fund.

Under 33 USC §2713(b)(2) and 33 CFR 136.103(d) no claim against the OSLTF may be approved or certified for payment during the pendency of an action by the claimant in court to recover the same costs that are the subject of the claim.

33 U.S.C. §2713(d) provides that “If a claim is presented in accordance with this section, including a claim for interim, short-term damages representing less than the full amount of damages to which the claimant ultimately may be entitled, and full and adequate compensation is unavailable, a claim for the uncompensated damages and removal costs may be presented to the Fund.”

Under 33 CFR 136.105(a) and 136.105(e)(6), the claimant bears the burden of providing to the NPFC, all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim.

Under 33 CFR 136.105(b) each claim must be in writing, for a sum certain for each category of uncompensated damages or removal costs resulting from an incident. In addition, under 33 CFR 136, the claimant bears the burden to prove the removal actions were reasonable in response to the scope of the oil spill incident, and the NPFC has the authority and responsibility to perform a reasonableness determination.

Specifically, under 33 CFR 136.203, “a claimant must establish -

- (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 determined by the FOSC to be consistent with the National Contingency Plan or were directed by the FOSC.”

Under 33 CFR 136.205 “the amount of compensation allowable is the total of uncompensated *reasonable* removal costs of actions taken that were determined by the FOSC

to be consistent with the National Contingency Plan or were directed by the FOSC. Except in exceptional circumstances, removal *activities* for which costs are being claimed must have been coordinated with the FOSC.” [Emphasis added].

### **DETERMINATION OF LOSS:**

#### **A. Overview:**

1. FOSC coordination for this incident has been established via USCG Marine Safety Detachment Fort Macon. 33 U.S.C. § 1321(d)(2)(K).
2. The incident involved the report of a discharge of “oil” as defined in OPA 90, 33 U.S.C. § 2701(23); however, it did not pose a substantial threat to navigable waters.
3. A Responsible Party was determined and subsequently notified by the NPFC. However, no response has been received from the RP to date. 33 U.S.C. § 2701(32).
4. The claim was submitted within the six year statute of limitations. 33 U.S.C. § 2712(h)(1)
5. In accordance with 33 CFR § 136.105(e)(12), the claimant has certified no suit has been filed in court for the claimed uncompensated removal costs.

#### **B. Analysis:**

NPFC CA reviewed the actual cost invoices and dailies to confirm whether or not the claimant had incurred all costs claimed. The review focused on: (1) whether the actions taken were compensable “removal actions” under OPA and the claims regulations at 33 CFR 136 (e.g., actions to prevent, minimize, mitigate the effects of the incident); (2) whether the costs were incurred as a result of these actions; (3) whether the actions taken were determined by the FOSC, to be consistent with the NCP or directed by the FOSC, and (4) whether the costs were adequately documented and reasonable.

The Claims Manager was unable to validate that the approximately 75 gallons of oily water waste was disposed of properly and in accordance with the National Contingency Plan (NCP). Though requested,<sup>1</sup> the documentation received by the Claimant is insufficient to demonstrate proper disposal. The Claimant’s Bio Remediation and Collection Form is an in-house log of what was collected and when. There is no additional documentation or invoicing that would support that the product was in fact disposed of in accordance with governing regulations.

Based on a preponderance of the evidence, the claim is denied because actual disposal manifests that would validate that the oiled water and petroleum contaminated debris (sorbents/pads) were properly disposed, have not been provided. Should the claimant seek reconsideration, it would need to provide proper documentation that clearly shows the proper disposal for the oily water (approximately 75 gallons) and the 4 drums of petroleum contaminated boom as referenced on the Claimant’s Bio Remediation and Collection Form.

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<sup>1</sup> See emails sent by Ms. [REDACTED] NPFC, and Capt [REDACTED] ACMG, dated 6/05/2015 and 6/30/2015.

**C. Determined Amount:**

The NPFC hereby determines that the OSLTF will pay \$0.00 as full compensation for the claimed removal costs incurred by the Claimant and submitted to the NPFC under claim 915077-0001.

**AMOUNT: \$0.00**

Claim Supervisor

Date of Supervisor's review: *7/9/15*

Supervisor Action: *Denial approved*

Supervisor's Comments: