

## CLAIM SUMMARY / DETERMINATION

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| <b>Claim Number:</b>     | 916068-0001                      |
| <b>Claimant:</b>         | Atlantic Coast Marine Group Inc. |
| <b>Type of Claimant:</b> | Corporation                      |
| <b>Type of Claim:</b>    | Removal Costs                    |
| <b>Claim Manager:</b>    | (b) (6)(b) (6)                   |
| <b>Amount Requested:</b> | \$7,352.50                       |

### FACTS:

On or about October 24, 2015, the Coast Guard Federal On-Scene Coordinator (FOSC) responded to an oil discharge from the F/V MISS TRISTA, which sank at the Homer Smith Seafood Docks and Marina. The discharge created a sheen in Town Creek, a navigable waterway of the United States. The FOSC issued a Notice of Federal Interest to the vessel's owner, [REDACTED]. Mr. [REDACTED] is the responsible party (RP) under the Oil Pollution Act of 1990 (OPA). Mr. Guthrie hired Atlantic Coast Marine Group (ACMG) to remove the discharged oil from the water and prevent further discharge and environmental impact. The National Pollution Funds Center (NPFC) issued an RP Notification letter to Mr. [REDACTED] on August 30, 2016. To date, no response has been received.

### CLAIMANT AND THE CLAIM:

ACMG is an oil spill removal organization. ACMG seeks reimbursement of its uncompensated removal costs in the total amount of \$7,352.50 in order to contain and remove discharged oil from the water. The RP has not paid ACMG for its services.

### 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 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. See also, 33 USC §2713(c) and 33 CFR 136.103(c)(2) [claimant election].

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:**

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

1. The FOSCR at Coast Guard MSD Fort Macon, NC verified which of the removal activities were consistent with the National Contingency Plan (NCP). 3 U.S.C. §§ 2702(b)(1)(B) and 2712(a)(4);
2. The incident involved the discharge of “oil” as defined in OPA 90, 33 U.S.C. § 2701(23), to navigable waters;
3. In accordance with 33 CFR § 136.105(e)(12), the claimant certified that it has not filed an action in court for the claimed costs;
4. The claim was submitted within the six year statute of limitations. 33 U.S.C. § 2712(h)(1);
5. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined which of the removal costs presented were for actions in accordance with the NCP and that the costs for these actions were indeed reasonable and allowable under OPA and 33 CFR § 136.205.

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

NPFC CA reviewed the cost invoices and supporting documentation to confirm that the claimant had incurred the 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 NPFC confirmed that most of the actions undertaken were reasonable and necessary and that the services were billed in accordance with the Claimant’s records. The NPFC also obtained verification from the FOSCR that the activities were consistent with the NCP. However, the

FOSCR determined that the Claimant's response used excessive sorbents and left the containment boom in the water a day longer than what was determined to be reasonable and/or necessary. For that reason, he determined that only 50% of the claimed amount for sorbent material and disposal costs were reasonable, necessary and consistent with the NCP. He further determined that the boom left in the water on October 25 should have been removed on October 24.

On that basis, the Claims Manager hereby determines that the Claimant may be paid \$4,773.00 of uncompensated removal costs and that that amount is payable by the OSLTF as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim #916068-0001. The NPFC denies \$2,579.50 of the claimed costs. The denied costs include \$279.50 for Supervisor Sykes' labor, which was reduced in accordance with the \$47 rate per hour for a supervisor in the Basic Ordering Agreement to which he referred us; \$1,100.00 for the excess sorbent material, which was reduced by 50% because the FOSCR determined it was not consistent with the NCP and therefore not eligible for payment in accordance with 33 CFR §136.203 & 205; \$900.00 for drum disposal as there was no disposal manifest for drums and no basis for the rate charged; and \$300.00 for the unnecessary boom deployed on October 25.

**C. Determined Amount:**

The NPFC hereby determines that the OSLTF will offer \$4,773.00 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # 916068-0001. All costs offered are for charges incurred by the Claimant for removal actions as that term is defined in OPA and, are compensable removal costs, payable by the OSLTF as presented by the Claimant.

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| Claim Supervisor:            |          |
| Date of Supervisor's review: | 9/22/16  |
| Supervisor Action:           | Approved |
| Supervisor's Comments:       |          |