

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: S12010-0001
Claimant	: Dunlap Towing Company
Type of Claimant	: OSRO
Type of Claim	: Removal Costs
Claim Manager	: [REDACTED]
Amount Requested	: \$9,367.00

INCIDENT FACTS¹:

On January 24, 2012, the former CGC ACUSHNET, attempted to tow the MADISON HUNTER from Friday Harbor in route to Anacortes, Washington. The ACUSHNET suffered an engine casualty, dropped anchors, which then became fouled. The ACUSHNET recovered its anchor and the MADISON HUNTER began towing the ACUSHNET. At about 8:00am the CG contacted Dunlap Towing Company (Dunlap or Claimant) to request a tug for the ACUSHNET. Dunlap sent a tug to the ACUSHNET's location.

Dunlap and the ACUSHNET's owner agreed to the tow around 8:24am. Dunlap's tug ROSARIO was on scene around 10:31am. At about 4pm, the Tug ROSARIO crew determined that they could not complete the tow due to unsafe conditions during rough weather. They towed the ACUSHNET to a lee location. The Captain of the Port directed the ROSARIO to maintain the tow setup until relieved by a larger tug late in the evening. At about 1:11am, the ROSARIO was free from the ACUSHNET as it was replaced by another tug. Dunlap states that its tug returned to the dock at 2:30am on the 25th.

The Coast Guard Federal On-Scene Coordinator from Sector Puget Sound opened the Oil Spill Liability Trust Fund on January 24th, thereby determining that an OPA incident was occurring. The responsible party for the ACUSHNET has been identified as either Mr [REDACTED] or [REDACTED] in the CG case report.

CLAIMANT and CLAIM:

Claimant is Dunlap Towing Company. It is the operator of the tug ROSARIO that was dispatched to aid the ACUSHNET. Dunlap seeks reimbursement of its response costs related to the tug services provided by the ROSARIO for which the RP refused to pay. These costs include 19 hours of tug operating costs at \$425.00 per hour, which equals \$8,075.00, plus \$1,292.00 of fuel costs. Total Claimed costs are \$9,367.00.

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).

¹ Facts taken from CG MISLE case report #582369 and Claim submission.

"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 136.105(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. MST1 Manow of Sector Puget Sound provided FOSC coordination.
2. The incident involved the report of a substantial threat of a 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 has certified no suit has been filed in court for the claimed uncompensated removal costs;
4. The claim was submitted within the six-year period of limitations for claims. 33 U.S.C. § 2712(h)(1);
5. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined which 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:

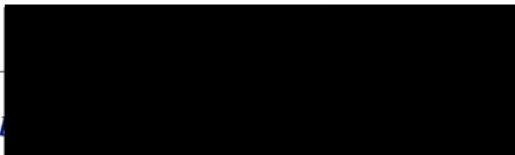
The Claims Manager reviewed the invoices and associated other documentation and the Claimant's rate sheets in support of the uncompensated costs as claimed. The Claims Manager focused on: (1) whether the actions taken were compensable "removal actions" under OPA and its regulations at 33 CFR 136 (e.g., 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 FOOSC, to be consistent with the NCP or directed by the FOOSC, and (4) whether the costs were adequately documented and reasonable.

The Claims Manager verified that the CG initiated contact with Dunlap and the FOOSC directed the Claimant to remain on scene, maintaining the tow setup, and not to leave the ACUSHNET until a stronger tug arrived. The ACUSHNET posed a risk of grounding and presented a substantial threat of discharging oil into the waters of the U.S. The use of Dunlap's tug was to prevent or minimize that risk and threat. The ROSARIO's pilot house log book verifies that the vessel was called out at 0800 on January 24th and returned to the dock at 0239 on the 25th. The NPFC reviewed Coast Guard records and Claimant's documents and verified that the Claimant's vessel operated for a total of 18 hours 39 minutes.

The rate schedule calls for hourly rates with no pro-rating. Therefore, according to the Claimant's rate schedule, 19 hours were charged and the NPFC finds it reasonable. The Claimant also invoiced a fuel surcharge, which is provided for on its rate schedule. The Claimant emailed the NPFC stating that the current fuel surcharge at the time was 18%. Thus, the 16% charged is reasonable and within customary industry standards. The Claimant attempted to present its claim and invoice to the RP.

The Claims Manager hereby determines that the OSLTF should pay \$9,367.00 as full compensation for the uncompensated removal costs incurred by the Claimant and submitted to the NPFC under claim # S12010-0001. All costs claimed were incurred by the Claimant for removal actions taken, as defined under OPA and payable by the OSLTF as compensable removal costs.

AMOUNT: \$9,367.00

Claim Supervisor: 

Date of Supervisor's review: *5/9/12*

Supervisor Action: *Approved*

Supervisor's Comments: