

CLAIM SUMMARY / DETERMINATION FORM

Date	: 10/12/2011
Claim Number	: N11025-0001
Claimant	: Bradford Johnson
Type of Claimant	: Private (US)
Type of Claim	: Removal Costs
Claim Manager	: Donna Hellberg
Amount Requested	: \$2,950.12

FACTS:

Oil Spill Incident: On March 30, 2011, Sector Mobile Incident Management Division (IMD) received NRC notification via report # 971263 of a vessel sinking and a discharge of diesel fuel into a navigable waterway. The vessel is a 43 ft cabin cruiser (formerly named "ACCEPTANCE", hull number AUL43156M80L) that was moored at Fly Creek Marina when it sank for unknown reasons. Fly Creek Marina is located on Fly Creek, a tributary of Mobile Bay and a navigable waterway of the US.

Sector Mobile responded to the scene and discovered a red diesel film and sheen covering approximately 300 ft x 50 ft. The Responsible Party (RP) and owner of the vessel causing the oil pollution incident is Mr. Michael Kent. The USCG reported that Mr. Kent was on scene and stated that there was approximately 100 gallons of diesel fuel in the starboard tank. Mr. Kent advised the USCG that he could not pay for cleanup and removal of the discharged diesel fuel.

Sector Mobile issued a Notice of Federal Assumption and hired United States Environmental Services (USES) to contain and remove all of the diesel fuel that was discharged into the environment. The vessel settled and was partially submerged with a 30 degree list to starboard. After several attempts to raise the vessel, the owner and RP, was able to refloat the vessel with intentions to remove and repair the vessel.

Description of removal actions for this Claimant: On March 30, 2011, the Claimant, Mr. Bradford Johnson, owner of a 22 ft Catalina sailboat that was moored at Fly Creek Marina, traveled from his residence in Houston, Texas along with his wife and grandson for a family outing on their boat. Upon arrival at the Marina, USCG and oil spill response personnel were on site tending to the vessel sinking of the ACCEPTANCE.

The Claimant boarded his sailboat to see if it had sustained any damage which it had. Sailboats frequently take on small amounts of water in the hull and when they opened the cabin door, they were overcome with the smell of fumes from the oil contaminated water that was in the bottom of the vessel. The Claimant had customized cushions which were on the floorboard of the vessel and were subsequently damaged beyond repair.

The Claimant took photos at the scene and met with LT Jesse Harms from Sector Mobile. LT Harms spoke to his Pollution Investigators and recommended to the Claimant to have his vessel out of the water and have the fuel removed. The Claimant then spoke with Ed of Eastern Shore Marine about taking down the mast and removing his vessel from the water. East Shore Marine accepted the engagement to take down the mast and remove the vessel from the water once the Claimant could go back to Houston and obtain his

trailer to have the vessel placed on it. The Claimant then went and rented a dry space for the boat for three months (it was a company minimum standard) so that the Claimant could drain the contaminated water from the vessel and clean it appropriately.

On April 21, 2011, the Claimant traveled back to Fly Creek Marina from his home in Houston, TX to meet Eastern Shore Marine who was taking down the mast and loading the vessel on the Claimant's trailer. The Claimant then transported the boat to the dry storage location where boat was cleaned and repaired.

The Claim: On May 13, 2011, Mr. Johnson (Claimant) submitted a claim to the NPFC for a total amount of \$2,950.12. The Claimant broke down his claim in separate claim components identified as removal costs, public services and real or property damage based on his limited knowledge of how his claim should be categorized. Upon further review of the claim submission, the NPFC has determined that this claim is a removal cost claim.

Upon receipt of the claim submission, the NPFC provided the RP's information to the Claimant and advised that the Claimant must first present all costs to the RP pursuant to 33 CFR 136.103(a) which states that all claims for removal costs or damages must be presented first to the responsible party (RP). The Claimant made proper presentment to the RP and received a letter from Mr. Kent dated October 6, 2011 whereby the RP stated he cannot pay due to his personal financial situation.

The Claimant presented copies of all lodging, food, gas, and store receipts in support of his response costs as well as a copy of his invoice from East Shore Marine removing the vessel from the waterway and a copy of his dry storage contract for where he moved his vessel in order to clean his vessel. The Claimant provided a copy of his presentment and RP response, photos taken on the day of the incident and a copy of his valid vessel registration.

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].

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. NPFC has determined that the actions undertaken by the claimant are deemed consistent with the NCP. This determination is made in accordance with the Delegation of Authority for Determination of Consistency with the NCP for the payment of uncompensated removal cost claims and is consistent with the provisions of sections 1002(b)(1)(B) and 1012(a)(4) of OPA, 33 U.S.C. §§ 2702(b)(1)(B) and 2712(a)(4)."
2. The incident involved the report of a discharge of “oil” as defined in OPA 90, 33 U.S.C. § 2701(23);
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)(2)
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.

Upon adjudication of this claim, the NPFC contacted the Claimant on October 12, 2011 to discuss the facts of the claim and the details associated with the costs incurred. The Claimant confirmed that the cushioned seats were on the floor of the vessel at the time the oil contamination water entered the vessel. Due to the customized cushions containing foam, they are unable to be cleaned and require replacement. The Claimant does not have the original purchase receipt for the customized cushions but advised that they received the replacement pricing from the boat manufacturer, Catalina. The NPFC went to the Catalina Direct website and also called the manufacturer to discuss the replacement cost of the customized cushions. Based on the information received, the NPFC had determined full replacement is warranted.

With respect to the food, lodging and gas charges, the NPFC has determined that these costs have been proven by way of receipt and support the Claimant's actions while traveling to AL from Houston, TX in order to perform proper cleanup of his vessel.

The NPFC hereby determines that the OSLTF will pay **\$2,950.12** as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # N11025-0001. All costs claimed are for charges paid for 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.

AMOUNT: \$2,950.12

Claim Supervisor: ***Thomas Morrison***

Date of Supervisor's review: ***10/12/11***

Supervisor Action: ***Approved***

Supervisor's Comments:

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
United States Coast Guard
National Pollution Funds Center

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5890
10/12/2011

VIA EMAIL: [REDACTED]

Bradford Johnson
[REDACTED]

Re: Claim Number N11025-0001

Dear Mr. Johnson:

The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act (OPA) (33 U.S.C. 2701 et seq.), has determined that \$2,950.12 is full compensation for OPA claim number N11025-0001.

This determination is based on an analysis of the information submitted. Please see the attached determination for further details regarding the rationale for this decision.

If you accept this determination, please sign the enclosed Acceptance/Release Form where indicated and return to the above address.

If we do not receive the signed original Acceptance/Release Form within 60 days of the date of this letter, the determination is void. If the determination is accepted, an original signature and a valid tax identification number (EIN or SSN) are required for payment. If you are a Claimant that has submitted other claims to the National Pollution Funds Center, you are required to have a valid Central Contractor Registration (CCR) record prior to payment. If you do not, you may register free of charge at www.ccr.gov. Your payment will be mailed or electronically deposited in your account within 60 days of receipt of the Release Form.

If you have any questions or would like to discuss the matter, you may contact me at the above address or by phone at 202-493-6839.

Sincerely,

Donna Hellberg
Lead Program Analyst

ENCL: Claim Summary / Determination Form
Acceptance/Release Form

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
United States Coast Guard
National Pollution Funds Center

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E-mail: [REDACTED]@uscg.mil
Fax: 202-493-6937

Claim Number: N11025-0001	Claimant Name: Bradford Johnson [REDACTED]
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I, the undersigned, ACCEPT the determination of \$2,950.12 as full compensation for the removal costs incurred.

This determination represents full and final release and satisfaction of all removal costs incurred under the Oil Pollution Act of 1990 (33 U.S.C. 2712(a)(4)), associated with the above referenced claim. This determination is not an admission of liability by any party. I hereby assign, transfer, and subrogate to the United States all rights, claims, interest and rights of action, that I may have against any party, person, firm or corporation that may be liable for the loss. I authorize the United States to sue, compromise or settle in my name and the United States fully substituted for me and subrogated to all of my rights arising from the incident. I warrant that no legal action has been brought regarding this matter and no settlement has been or will be made by me or any person on my behalf with any other party for costs which are the subject of the claim against the Oil Spill Liability Trust Fund (Fund).

I, the undersigned, agree that, upon acceptance of any compensation from the Fund, I will cooperate fully with the United States in any claim and/or action by the United States against any person or party to recover the compensation. The cooperation shall include, but is not limited to, immediately reimbursing the Fund any compensation received from any other source for the same claim, providing any documentation, evidence, testimony, and other support, as may be necessary for the United States to recover from any other person or party.

I, the undersigned, certify that to the best of my knowledge and belief the information contained in this claim represents all material facts and is true. I understand that misrepresentation of facts is subject to prosecution under federal law (including, but not limited to 18 U.S.C. 287 and 1001).

_____	_____
Title of Person Signing	Date of Signature
_____	_____
Typed or Printed Name of Claimant or Name of Authorized Representative	Signature

_____	_____
Title of Witness	Date of Signature
_____	_____
Typed or Printed Name of Witness	Signature

_____	_____	_____
TIN Required for Payment	Bank Routing Number	Bank Account Number