

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
United States Coast Guard
National Pollution Funds Center

4200 Wilson Blvd. Suite 1000
Arlington, VA 20598-7100
Staff Symbol: (CA)
Phone: 202-493-6891
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5890
1/31/2012

VIA EMAIL: [REDACTED]@comcast.net

Southern Marine Towing
ATTN: Shane O'Neal
83 East Circle Dr
Rossville, GA 30741

Re: Claim Number 912003-0001

Dear Mr. O'Neal:

The National Pollution Funds Center (NPFC) in accordance with the Oil Pollution Act (OPA) (33 U.S.C. 2701 et seq.), has determined that \$10,750.00 is compensable for OPA claim number 912003-0001.

This reconsideration determination is based on an analysis of information submitted.

All costs that are not determined compensable are considered denied. Disposition of this reconsideration constitutes final agency action.

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

Director (ca)
U.S. Coast Guard
National Pollution Funds Center
4200 Wilson Boulevard, Suite 1000
Arlington, VA 20598-7100

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, your payment will be mailed within 30 days of receipt of the Release Form.

[REDACTED]
Chief, Claims Adjudication Division

ENCL: Claim Determination/Summary
Acceptance/Release Form

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: 912003-0001
Claimant	: Southern Marine Towing
Type of Claimant	: OSRO
Type of Claim	: Removal Costs
Claim Manager	: Robert Rioux
Amount Requested	: \$12,250.00

FACTS:

A. Oil Spill Incident:

On July 26, 2011, Claimant was contacted by the Tennessee Wildlife Resources Agency (TWRA) to respond to a 43 foot Stardust cruising house boat (registration number TN 5744 EB) sinking at B&B Marina, located on the Hiwassee River, Tennessee, a navigable waterway of the United States. National Response Center (NRC) report number 983913 was taken at 1425 on July 26, 2011. An unknown quantity was reported, but the sheen was noted to be 200 yards long by 50 feet wide.

B. The Claimant:

Southern Marine Towing conducted emergency towing/salvage work.

C. Claim History:

On October 5, 2011, the National Pollution Funds Center (NPFC) received a claim from Southern Marine Towing for reimbursement of its uncompensated removal costs in the amount of \$12,250.00. The Claimant is seeking "salvage" (raising/refloating the vessel) costs of \$10,750.00 (\$43.00 feet x \$250.00 per foot) and loading/removal costs of \$1,500.00.

On November 29, 2011, the NPFC denied the claim. The Claimant had not provided proof of FOSC coordination. Additionally, the Claimant did not provide sufficient documentation to prove the FOSC required the removal of the vessel from the water after it had been raised from the river bottom.

D. Claim Reconsideration:

The Claimant requested reconsideration of their claim, which was received by email at the NPFC on December 20, 2011.¹ They submitted the following documentation in support of their reconsideration request:

1. Tennessee Emergency Management Agency Report #2031.
2. NRC Report # 983913.

The Claimant requested the NPFC reconsider the denial of its claim, but provided no reason to justify their request.

¹ See, towboatuschick@aol.com email dated December 20, 2011.

APPLICABLE LAW:

Under 33 CFR § 136.115(d) The Director, NPFC, upon written request of the claimant or of a person duly authorized to act on the claimant's behalf, reconsiders any claim denied. The request for reconsideration must be in writing and include the factual or legal grounds for the relief requested, providing any additional support for the claim. The request must be received by the Director, NPFC, within 60 days after the date the denial was mailed to the claimant or within 30 days after receipt of the denial by the claimant, whichever date is earlier. Reconsideration may only be requested once for each claim denied. This written decision is final. The failure of the Director, NPFC, to make final disposition of a reconsideration within 90 days after it is received shall, at the option of the claimant any time thereafter, be deemed a final denial of the reconsideration.

The Fund shall be available to the President for the payment of claims in accordance with section 2713 for *uncompensated* removal costs determined by the President to be consistent with the National Contingency Plan or uncompensated damages. 33 U.S.C. § 2712 (a)(4). (Emphasis added.)

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."

I. NPFC RECONSIDERATION ANALYSIS:

The NPFC performed a *de novo* review of the entire claim submission upon reconsideration.

As noted above, the denial was based on the Claimant's failure to provide FOSC coordination for raising the vessel, along with no evidence the FOSC required the vessel to be hauled out of the water in order to mitigate the release of oil. Additionally, the Claimant had only provided an unsigned letter from the State determining that raising the vessel was necessary to stop the fuel from continuing to be released into the water.

The documentation provided by the Claimant upon reconsideration did not provide FOSC coordination or state need for the Claimant's services.

After emailing its reconsideration request, the Claimant contacted the NPFC by phone on December 20, 2011 to ask if we had received their email. The Claims Manager discussed with the Claimant that the information provided did not satisfy the deficiencies noted in the NPFC's original Claim Determination. Specifically, the lack of FOSC coordination precluded the NPFC from paying this claim. See Claims Regulations at 33 CFR 136.205. The Claims Manager recorded this conversation by email sent to Claimant on December 20, 2011, which included an extension until January 29, 2012 to provide the missing documentation.²

On January 26, 2012, Claimant emailed the NPFC, forwarding correspondence sent by Mr. Jordan Garrard of the Environmental Protection Agency (EPA). Mr. Garrard states that he reviewed the Claimant's package referenced in NRC report # 983913 (which is the same NRC report attached to this claim). He stated, "it appears the actions [were] conducted in accordance with [the] National Contingency Plan in order to prevent, minimize, and mitigate the spill of

² See, NPFC email to Claimant dated December 20, 2011.

oil.”³ Additionally, the Claimant faxed a signed copy of the letter from the TWRA dated November 22, 2011, stating they requested Claimant raise the vessel after it was determined to be necessary in order to keep “toxic chemicals” from being released into the marina’s waters.⁴

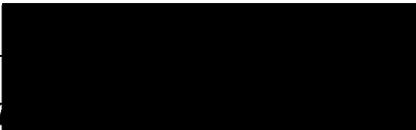
In its January 26, 2012 email to the NPFC, Claimant also withdrew their \$1,500.00 claimed cost for removing the houseboat from the water once it was raised to the waters surface. This brings Claimant’s total claimed costs to \$10,750.00 for raising the vessel off the marina’s bottom.

The NPFC finds the EPA email provides FOSC coordination. Additionally, the signed TWRA letter justifies Claimants actions of raising the vessel in order to mitigate more oil from being released into the marina. The NPFC reviewed Claimant’s rate schedule provided and confirmed that the costs claimed are documented and therefore approved.

Accordingly, the NPFC has determined that the Claimant, Southern Marine Towing has \$10,750.00 in uncompensated removal costs for this claim under reconsideration

The NPFC has determined \$10,750.00 is OPA compensable pursuant to the governing claims regulations.

RECOMMENDATION: \$10,750.00

Claim Supervisor: 

Date of Supervisor’s Review: *1/31/12*

Supervisor Action: *Approved upon reconsideration*

Supervisor’s Comments:

³ See, EPA email dated January 26, 2012.

⁴ See, TWRA letter dated November 22, 2011.

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Claim Number: 912003-0001	Claimant Name: Southern Marine Towing ATTN: Shane O'Neal 83 East Circle Dr Rossville, GA 30741
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I, the undersigned, ACCEPT the determination of \$10,750.00 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)), arising from the houseboat sinking at B&B Marina on or about July 26, 2011. 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

_____	_____	_____
EIN / SSN Required for Payment	Bank Routing Number	Bank Account Number