

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: 912013-0001
Claimant	: Northstar Marine
Type of Claimant	: OSRO
Type of Claim	: Removal Costs
Claim Manager	: [REDACTED]
Amount Requested	: \$13,535.85

FACTS:

Oil Spill Incident: On January 19, 2011, the P/C *Flagship IV* sunk at its mooring within the Up the Creek Marina on Brandywine Creek in Wilmington, Delaware. An oily sheen was reported to be emanating from the vessel, which was determined to be diesel fuel. Coast Guard Sector Delaware Bay Marine Environmental Response (MER) team arrived on scene and placed boom around the vessel to contain the pollution. The cause of the vessel sinking was speculated to be due to approximately 2 inches of ice surrounding the vessel.

Description of Removal Actions: The vessel owner contacted Sea Tow for salvage, who was scheduled to arrive on scene at first light on January 20, 2011. Upon Sea Tow's arrival, the salvage plan was to deploy a diver into the water and use bags in an attempt to float the vessel while awaiting arrival of Northstar Marine to perform oil removal activities.¹ This initial effort was unsuccessful due to high tide and as a result, delayed the refloat until low tide. The second attempt to float the vessel at low tide was successful; as a result, 1200 gallons of oily/water mixture was removed from the vessel by Northstar Marine.² The vessel remained pier side subsequent to the refloating and offloading period.

The Claim: On October 31, 2011, Northstar Marine presented a removal cost claim to the National Pollution Funds Center (NPFC) seeking reimbursement of their uncompensated removal costs in the amount of \$13,535.85.

The claim consists of OSLTF Optional Claim Form, Northstar Marine Invoice #6538, disposal manifests, and daily work logs.

Upon further investigation, the NPFC was able to obtain the Northstar Marine rate schedule in effect during the time of this response, a complete copy of the MISLE Case created by the Coast Guard, and all Pollution Reports.

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".

¹ See, USCG Case History Report, dated 3 November 2011.

² Ibid.

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 OF LOSS:

Overview:

1. FOSC coordination was made by Sector Delaware Bay via MISLE Case Number # 535379.
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 has certified no suit has been filed in court for the claimed uncompensated removal 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 that the majority of 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.

Analysis:

NPFC CA reviewed the actual cost invoices and dailies to confirm that 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 NPFC has determined that some of the removal costs presented and incurred were billed appropriately based on the rate schedule in place at the time the services were rendered. The NPFC performed independent research into the incident and obtained copies of the Coast Guard Pollution Reports and a copy of all evidence in the Coast Guard MISLE system.

The Claimant billed personnel time in the amount of \$5,212.50 from January 19, 2011 through January 21, 2011, and Equipment and Operational Expenses in the amount of \$7,577.50 which includes subcontractor billing for waste disposal and sales tax on the invoice in the amount of \$745.00. The NPFC confirmed the presence of the Claimant throughout the incident response and activities.

The daily field logs for January 19, 20, and 21, 2011 each contain entries for Equipment Operators that are billed as Foreman positions on the invoice presented in the claim. The NPFC allows the Equipment Operator rate, which is the same as the Foreman rate of \$90.00 per hour but makes this identification in order to identify that the Claimant billed the position as a Foreman on the invoice and as an Operator on the daily field log and it is important to note that the contemporaneous daily field log governs the positions allowed by the NPFC in this adjudication.

The NPFC denies \$45.00 in personnel time incurred on January 20, 2011. The Claimant's invoice billed for an Equipment Operator when the daily field log for this date lists two Cleanup Technicians, therefore the NPFC will allow reimbursement at the Technician rate based on the daily field log which renders a difference of \$45.00 which is denied.³

The NPFC denies \$48.00 in equipment costs incurred on January 20, 2011. The daily field log lists 1 unit of 30' of 3" hose (total of 30') where the invoice lists 5 units of 30' of 3" hose (total of 150'). The NPFC has determined that the daily field log quantity governs and as such, 120 ft @ \$0.40 is denied.

The NPFC denies \$18.00 for the purchase of duct tape on the Claimant's invoice for January 20, 2011 because the Claimant does not have tape listed on his rate schedule therefore it is presumed that the Claimant bought this as a consumable with markup applied pursuant to the rate schedule and as such, the Claimant must provide the receipt to substantiate the purchase price and that the markup was calculated appropriately.

The NPFC denies \$810.00 in solid waste disposal fees billed on January 20, 2011 and \$90.00 in QA/QC lab fees billed on January 20, 2011 because the Claimant has not provided a copy of the invoices billed to Northstar and paid for the disposal and lab analysis nor has the Claimant provided proof of payment of those third party invoices.

The NPFC denies \$745.00 in New Jersey state sales tax billed by the Claimant on its invoice. Sales tax may only be reimbursed for that which is paid in the course of acquiring third party consumable materials necessary for the performance of prescribed oil spill response duties. Third party receipts for these items have not been provided, specifically the duct tape, disposal fees, and QA/QC lab fees, and as such, the NPFC denies the sales tax associated with these services. Additionally, labor and equipment charges for services charged by the Claimant are not eligible for sales tax remuneration from the Fund and are also denied unless the Claimant can provide documentation on reconsideration that it paid the State of New Jersey sales tax on such services requested of the NPFC. Please see Enclosure 1 – Summary spreadsheet of costs for an itemization of all costs presented.

³See, Enclosure 1.

On that basis, the Claims Manager hereby determines that the Claimant did in fact incur \$11,796.25 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 #912013-0001.

Determined Amount:

The NPFC hereby determines that the OSLTF will pay \$11,796.25 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # 912013-0001. 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.

Claim Supervisor:

Date of Supervisor's review: *6/12/12*

Supervisor Action: *Approved*

Signed:



Cynthia E Oliver
Claims Manager

ENCL: Claim Summary / Determination Form
Acceptance/Release Form
(1) Summary Spreadsheet of Costs

U.S. Department of
Homeland Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd. Suite 1000
Arlington, VA 20598-7100
Staff Symbol: (CA)
Phone: 800-280-7118
E-mail: [REDACTED]@uscg.mil
Fax: 703-872-6113

Claim Number: 912013-0001	Claimant Name: Northstar Marine 36 Clermont Drive Clermont, NJ 08210
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I, the undersigned, ACCEPT this settlement offer of \$11,796.25 as full and final compensation for the removal costs arising from the specific claim number identified above. With my signature, I also acknowledge that I accept as final agency action all costs submitted with subject claim that were denied in the determination and for which I received no compensation.

This settlement represents full and final release and satisfaction of the amounts paid from the Oil Spill Liability Trust Fund under the Oil Pollution Act of 1990 for this claim. 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 amounts paid for which I have been compensated under this claim. 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 and associated with those amounts paid for which I am compensated for with this settlement offer. 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 amounts paid which is the subject of this claim against the Oil Spill Liability Trust Fund (Fund).

This settlement is not an admission of liability by any party. With my signature, I acknowledge that I accept as final agency action all amounts paid for this claim and amounts denied in the determination for which I received no compensation.

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 for any compensation received from any other source for those amounts paid for which the Fund has provided compensation, by 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
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Contractor	Contractor Invoice No.	Date	Classification / Description	UNIT	Invoice ST Rate	Invoice OT Rate	Invoice ST Hrs / Qty	Invoice OT Hrs	Invoice ST AMT	Invoice OT AMT	Invoice Total	NPFC ST Rate	NPFC OT Rate	NPFC ST HRS/QTY	NPFC OT HRS	NPFC ST AMT	NPFC OT AMT	NPFC TOTAL	OVER (UNDER)	NPFC COMMENTS
Northstar	6538	1/19/2011	Foreman, man hrs, OT	1		90.00		7	-	630.00	630.00		\$90.00		7	\$0.00	\$630.00	\$630.00	\$0.00	The daily field log shows this person as an Equipment Operator, not a Foreman. NPFC is going to allow the Equipment Operator rate, which is the same as the Foreman rate at \$90.00/hr.
Northstar	6538	1/19/2011	Cleanup Technician, man hrs, OT	5		82.50		18.5	-	1,526.25	1,526.25		\$82.50		19	\$0.00	\$1,526.25	\$1,526.25	\$0.00	
Northstar	6538	1/19/2011	14'-16' Boxtruck w/liftgate, hrs	1	20.00		7		140.00	-	140.00	\$20.00		7		\$140.00	\$0.00	\$140.00	\$0.00	
Northstar	6538	1/19/2011	Field Vehicle w/Reusable Tools, hrs	1	15.00		1.5		22.50	-	22.50	\$15.00		2		\$22.50	\$0.00	\$22.50	\$0.00	
Northstar	6538	1/19/2011	Pollution Response Trailer, day	1	200.00		1		200.00	-	200.00	\$200.00		1		\$200.00	\$0.00	\$200.00	\$0.00	
Northstar	6538	1/19/2011	14-17' Workboat, day	1	360.00		1		360.00	-	360.00	\$360.00		1		\$360.00	\$0.00	\$360.00	\$0.00	
Northstar	6538	1/19/2011	18" Containment Boom, per ft, day	200	1.25		200		250.00	-	250.00	\$1.25		200		\$250.00	\$0.00	\$250.00	\$0.00	
Northstar	6538	1/19/2011	Absorbent Boom, 5", per bale	8	135.00		8		1,080.00	-	1,080.00	\$135.00		8		\$1,080.00	\$0.00	\$1,080.00	\$0.00	
Northstar	6538	1/19/2011	Absorbent pads, per bale	2	89.00		2		178.00	-	178.00	\$89.00		2		\$178.00	\$0.00	\$178.00	\$0.00	
Northstar	6538	1/19/2011	PPE Level D, per man per day	3	45.00		3		135.00	-	135.00	\$45.00		3		\$135.00	\$0.00	\$135.00	\$0.00	
									-	-	-					\$0.00	\$0.00	\$0.00	\$0.00	
Northstar	6538	1/20/2011	Foreman, man hrs, OT	1		90.00		6	-	540.00	540.00		90.00		6	\$0.00	\$540.00	\$540.00	\$0.00	The daily field log shows this person as an Equipment Operator, not a Foreman. Therefore NPFC is going to allow Equipment Operator rate, which is same as Foreman rate at \$90.00/hr.
Northstar	6538	1/20/2011	Equipment Operator, man hrs, OT	1		90.00		6	-	540.00	540.00		82.50		6	\$0.00	\$495.00	\$495.00	(\$45.00)	Claimant's invoice billed for an Equipment Operator when the daily field log lists two Cleanup Technicians. Therefore, this line item has been changed to Cleanup Technician and the NPFC approved rate changed accordingly.
Northstar	6538	1/20/2011	Cleanup Technician, man hrs, OT	2		82.50		6	-	495.00	495.00		82.50		6	\$0.00	\$495.00	\$495.00	\$0.00	
Northstar	6538	1/20/2011	14-16' Boxtruck w/liftgate, hrs	1	20.00		6		120.00	-	120.00	\$20.00		6		\$120.00	\$0.00	\$120.00	\$0.00	
Northstar	6538	1/20/2011	Portable Light Tower, day	1	200.00		1		200.00	-	200.00	\$200.00		1		\$200.00	\$0.00	\$200.00	\$0.00	
Northstar	6538	1/20/2011	3,500gal Vacuum Truck, hrs	1	95.00		6		570.00	-	570.00	\$95.00		6		\$570.00	\$0.00	\$570.00	\$0.00	
Northstar	6538	1/20/2011	Hose, 2", per ft, day	1	0.30		30		9.00	-	9.00	\$0.30		150		\$45.00	\$0.00	\$45.00	\$36.00	The daily field log shows 5 units of 30', 2" hose (total 150') where the invoice shows 1 unit of 30', 2" hose (total 30'). Therefore the feet of hose has been adjusted to reflect the daily field log.
Northstar	6538	1/20/2011	Hose, 3", per ft, day	1	0.40		150		60.00	-	60.00	\$0.40		30		\$12.00	\$0.00	\$12.00	(\$48.00)	The daily field log shows 1 unit of 30', 3" hose (total 30'), where the invoice shows 5 units of 30', 3" hose (150'). Therefore, the feet of hose has been adjusted to reflect the daily field log.
Northstar	6538	1/20/2011	Duct Tape, roll	2	9.00		2		18.00	-	18.00	\$0.00		0		\$0.00	\$0.00	\$0.00	(\$18.00)	Claimant has not provided receipt documenting purchase of 2 rolls of duct tape equalling amount claimed.
Northstar	6538	1/20/2011	Poly Bags, roll, per box	1	95.00		1		95.00	-	95.00	\$95.00		1		\$95.00	\$0.00	\$95.00	\$0.00	
Northstar	6538	1/20/2011	18" Containment Boom, per ft, day	200	1.25		200		250.00	-	250.00	\$1.25		200		\$250.00	\$0.00	\$250.00	\$0.00	
Northstar	6538	1/20/2011	Absorbent pads, bale	2	89.00		2		178.00	-	178.00	\$89.00		2		\$178.00	\$0.00	\$178.00	\$0.00	
Northstar	6538	1/21/2011	PPE Level D	3	45.00		3		135.00	-	135.00	\$45.00		3		\$135.00	\$0.00	\$135.00	\$0.00	
Northstar	6538	1/20/2011	Drum, open top, ea	6	45.00		6		270.00	-	270.00	\$45.00		6		\$270.00	\$0.00	\$270.00	\$0.00	
Northstar	6538	1/20/2011	Disposal of solid waste, per drum	6	135.00		6		810.00	-	810.00	\$0.00		0		\$0.00	\$0.00	\$0.00	(\$810.00)	Claimant has not provided receipt documenting disposal of solid waste/sludge per drum equalling amount claimed.
Northstar	6538	1/20/2011	Disposal, wastewater, gallons	1700	0.65		1700		1,105.00	-	1,105.00	\$0.65		1700		\$1,105.00	\$0.00	\$1,105.00	\$0.00	
Northstar	6538	1/20/2011	QA/QC Lab Fee, >1500gal, per load	1	90.00		1		90.00	-	90.00	\$0.00		0		\$0.00	\$0.00	\$0.00	(\$90.00)	Claimant has not provided receipt documenting QA/QC lab fee equalling amount claimed.
									-	-	-					\$0.00	\$0.00	\$0.00	\$0.00	
Northstar	6538	1/21/2011	Foreman, man hrs, OT	1		90.00		2.5	-	225.00	225.00		\$90.00		2.5	\$0.00	\$225.00	\$225.00	\$0.00	The daily field log shows this person as an Equipment Operator, not a Foreman. Therefore NPFC is going to allow Equipment Operator rate, which is same as Foreman rate at \$90.00/hr.
Northstar	6538	1/21/2011	Equipment Operator, man hrs, OT	1		90.00		2.5	-	225.00	225.00		\$82.50		2.5	\$0.00	\$206.25	\$206.25	(\$18.75)	The daily field log shows this person as a Cleanup Technician, not an Equipment Operator. Therefore, this line item has been changed to Cleanup Technician and the NPFC approved rate changed accordingly.
Northstar	6538	1/21/2011	Cleanup Technician, man hrs, ST	1	-	82.50		2.5	-	206.25	206.25	\$0.00	\$82.50		2.5	\$0.00	\$206.25	\$206.25	\$0.00	
Northstar	6538	1/21/2011	Cleanup Technician, man hrs, OT	5	55.00		15		825.00	-	825.00	\$55.00		15		\$825.00	\$0.00	\$825.00	\$0.00	
Northstar	6538	1/21/2011	14-16' Boxtruck w/liftgate, hrs	2.5	20.00		2.5		50.00	-	50.00	\$20.00		2.5		\$50.00	\$0.00	\$50.00	\$0.00	
Northstar	6538	1/21/2011	Portable Light Tower, day	1	200.00		1		200.00	-	200.00	\$200.00		1		\$200.00	\$0.00	\$200.00	\$0.00	
Northstar	6538	1/21/2011	HP Steam Cleaner, hot, day	1	250.00		1		250.00	-	250.00	\$250.00		1		\$250.00	\$0.00	\$250.00	\$0.00	
Northstar	6538	1/21/2011	3,500gal Vacuum Truck, hrs	2.5	95.00		2.5		237.50	-	237.50	\$95.00		2.5		\$237.50	\$0.00	\$237.50	\$0.00	
Northstar	6538	1/21/2011	18" Containment Boom, per ft, day	200	1.25		200		250.00	-	250.00	\$1.25		200		\$250.00	\$0.00	\$250.00	\$0.00	
Northstar	6538	1/21/2011	Absorbent pads, bale	0.5	89.00		0.5		44.50	-	44.50	\$89.00		0.5		\$44.50	\$0.00	\$44.50	\$0.00	
Northstar	6538	1/21/2011	Cleaner/Degreaser, Citra Clean, gal	5	26.00		5		130.00	-	130.00	\$26.00		5		\$130.00	\$0.00	\$130.00	\$0.00	
Northstar	6538	1/21/2011	Poly bags, ea	4	1.25		4		5.00	-	5.00	\$1.25		4		\$5.00	\$0.00	\$5.00	\$0.00	
Northstar	6538	1/21/2011	PPE Level D	3	45.00		3		135.00	-	135.00	\$45.00		3		\$135.00	\$0.00	\$135.00	\$0.00	
									-	-	-					\$0.00	\$0.00	\$0.00	\$0.00	
Northstar	6538	1/28/2011	Sales Tax (NJ)	1	745.85		1		745.85	-	745.85	\$0.00		0		\$0.00	\$0.00	\$0.00	(\$745.85)	Sales taxes may be reimbursed only for that which has been paid in the course of acquiring third party consumable materials necessary for the performance of prescribed OSRO duties. As receipts for duct tape or lab fee have not been provided, taxes pertaining to these amounts are denied. Further, labor and equipment charges are not eligible for sales tax remuneration from the Fund, and are also denied.
									9,148.35	4,387.50	13,535.85							\$11,796.25	(\$1,739.60)	