

CLAIM SUMMARY / DETERMINATION

Claim Number:	M17011-0001
Claimant:	[REDACTED]
Type of Claimant:	Individual
Type of Claim:	Real or Personal Property
Claim Manager:	[REDACTED]
Amount Requested:	\$32,574.91

BACKGROUND:

On October 28, 2016, the T/V ATLANTIC RAIDER began to lean unexpectedly to the port side while transiting west of Blount Island, in Jacksonville, FL. In response, a crewman aboard the vessel began a transfer of fuel from the port tanks to the aft tanks. However, the listing became progressively worse, resulting in the sinking of the ATLANTIC RAIDER from the stern. The mate then made the decision to push the vessel to shore, and intentionally ground it onto the west bank of the St. Johns River.

During this time, Coast Guard (CG) Sector Jacksonville received a call from the master of ATLANTIC RAIDER, notifying the USCG that the vessel was taking on water. No visible pollution was reported at that time. As a result, Sector Jacksonville opened Federal Project Number (FPN) M17011 to track Coast Guard indirect costs used to monitor the removal of petroleum products from the ATLANTIC RAIDER. The owner of the vessel hired Moran Environmental Recovery for all pollution removal operations. Approximately 26,000 gallons of diesel fuel were removed from the vessel, with a potential of approximately 1,000 gallons remaining. On November 18, 2016, the Atlantic Raider was towed and placed into dry dock to further assess the damage and causes of the incident.¹ The CG estimated that approximately 2,000 gallons of fuel/oil on board the ATLANTIC RAIDER discharged into the waterway.²

CLAIM:

On March 22, 2017, [REDACTED], Esq. (Mr. [REDACTED]), on behalf of his client, [REDACTED] submitted documentation to the NPFC requesting reimbursement for Ms. [REDACTED] loss of profits and earning capacity (\$24,026.29), and real or personal property damage costs (\$8,548.62), for a total sum certain of \$32,574.91. Claimant notes in its initial submission letter that it saved \$200.00 in routine cleaning supplies because she did not have to rent out the vessels during that time frame.³ This reduces the total claim to \$32,374.91.

Claimant made presentment to the responsible party (RP), Gore Marine Transportation Co., by letter dated March 9, 2017.

¹ See USCG SITREP-POL 2 dated November 16, 2016.

² See USCG FOSCR Statement Form dated January 31, 2017.

³ See Anderson & Miller letter dated March 9, 2017, page 8.

APPLICABLE LAW:

"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".

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

Under 33 CFR 136.213(a) a claim for injury to, or economic losses resulting from the destruction of, real or personal property may be presented only by a claimant either owning or leasing the property. Any claim for loss of profits or impairment of earning capacity due to injury to, destruction of, or loss of real or personal property must be included as subpart of the claim under this section and must include the proof required under § 136.233.

Under 33 CFR 136.215(a) In addition to the requirements of Subparts A and B of this part, a claimant must establish—

- (1) An ownership or leasehold interest in the property;
- (2) That the property was injured or destroyed;
- (3) The cost of repair or replacement; and
- (4) The value of the property both before and after injury occurred.

(b) In addition, for each claim for economic loss resulting from destruction of real or personal property, the claimant must establish -

- (1) That the property was not available for use and, if it had been, the value of that use;
- (2) Whether or not substitute property was available and, if used, the costs thereof; and
- (3) That the economic loss claimed was incurred as the result of the injury to or destruction of the property.

Under 33 CFR 136.217(a) the amount of compensation allowable for damaged property is the lesser of –

- (1) Actual or estimated net cost of repairs necessary to restore the property to substantially the same condition which existed immediately before the damage;
- (2) The difference between value of the property before and after the damage; or
- (3) The replacement value

Compensation for economic loss resulting from the destruction of real or personal property may be allowed in an amount equal to the reasonable costs actually incurred for use of substitute commercial property or, if substitute commercial property was not reasonably available, in an amount equal to the net economic loss which resulted from not having use of the property. When substitute commercial property was reasonably available, but not used, allowable compensation for loss of use is limited to the cost of the substitute commercial property, or the property lost, whichever is less. Compensation for loss of use of noncommercial property is not allowable. (33 CFR 136.217(b))

Under 33 CFR 136.217(c) compensation for a claim for loss of profits or impairment of earning capacity under § 136.213(b) is limited to that allowable under § 136.235.

A claim for loss of profits or impairment of earning capacity due to the injury to, destruction of, or loss of real or personal property or natural resources may be presented by a claimant sustaining the loss or impairment. The claimant need not be the owner of the damaged property or resources to recover for lost profits or income. A claim for loss of profits or impairment of earning capacity that also involves a claim for injury to, or economic losses resulting from destruction of, real or personal property must be claimed under § 136.213. (33 CFR 136.231(a-b)).

Under 33 CFR 136.233, in addition to the requirements of subparts A and B of this part, a claimant must establish the following:

- (a) That real or personal property or natural resources have been injured, destroyed, or lost.
- (b) That the claimant's income was reduced as a consequence of injury to, destruction of, or loss of the property or natural resources, and the amount of that reduction.
- (c) The amount of the claimant's profits or earnings in comparable periods and during the period when the claimed loss or impairment was suffered, as established by income tax returns, financial statements, and similar documents. In addition, comparative figures for profits or earnings for the same or similar activities outside of the area affected by the incident also must be established.
- (d) Whether alternative employment or business was available and undertaken and, if so, the amount of income received. All income that a claimant received as a result of the incident must be clearly indicated and any saved overhead and other normal expenses not incurred as a result of the incident must be established.

The amount of compensation allowable under 33 CFR 235 is limited to the actual net reduction or loss of earnings or profits suffered. Calculations for net reductions or losses must clearly reflect adjustments for -

- (a) All income resulting from the incident;
- (b) All income from alternative employment or business undertaken;
- (c) Potential income from alternative employment or business not undertaken, but reasonably available;
- (d) Any saved overhead or normal expenses not incurred as a result of the incident; and
- (e) State, local, and Federal taxes

NPFC DETERMINATION :

This claim includes two types of damages; \$8,548.62 for actual physical damage to the claimant’s property, which may be compensable under OPA as Real and Personal Property damage and \$24,026.29 in alleged loss of profits due to the spill incident. Under the claims regulations located at 33 CFR 136.231(a-b) a claim for loss of profits or impairment of earning capacity that also involves a claim for injury to, or economic losses resulting from destruction of, real or personal property must be claimed under § 136.213. Therefore, both of these damages are under a Real and Personal Property damage claim.

The NPFC completed a thorough review of all documents provided by the claimant, while also conducting research on our own, including reaching out to the Federal On-Scene Coordinator Representative (FOSCR) to better understand the full impact of the spill. The record is clear that oil entered and impacted the St. Johns River and may have impacted the marina where claimant’s business is located. However, the evidence provided by the claimant to document the impact of damage to the vessels and loss of income because of the spill is not persuasive and does not allow the NPFC to provide compensation. The evidence and our findings are discussed below.

Real or Personal Property:

The claim submission states that Ms. [REDACTED] owns Coastal Boat and Trailer Rentals, a charter boat company located in Jacksonville, FL. At the time of the incident, Ms. [REDACTED] alleges that she charters three (3) boats that were docked at the Dames Point Marina, located along the Blount Island Channel, a part of the St. Johns River running west of Blount Island. Claimant asserts that all 3 boats were damaged as a result of oil sheen present around the marina. The damages being claimed include: the cost of cleaning supplies, the cost to lift and block, the cost to repaint, the cost to repair and move a boat to a different location, and labor costs for cleaning the boats.

Claimant’s sum certain, \$8,548.62, is based on the following summary of damages:

Boat Name	Description	Costs	Comments
Sand Piper	Linens	\$100.00	
Sand Piper	Cleaning Supplies	\$500.00	
Sand Piper	Time Spent Cleaning	\$1,400.00	\$25/hour x 8 hours x 7 days
Sea Ray	Cleaning Supplies	\$44.27	
Sea Ray	Time Spent Cleaning	\$1,400.00	\$25/hour x 8 hours x 7 days
Racquel	Cleaning Supplies	\$44.27	
Racquel	Time Spent Cleaning	\$1,400.00	\$25/hour x 8 hours x 7 days
Sand Piper	Cost to Lift Boat and Block	\$335.00	
Sand Piper	Cost to Repaint Bottom	\$200.00	
Sea Ray	Bottom Paint	\$288.84	

Sea Ray	Propellers	\$247.00	
Sea Ray	Lift	\$604.55	
Sea Ray	Oil/Fuel Filters, Belts	\$133.23	
Sea Ray	Hoses	\$291.72	
Sea Ray	Misc. Parts	\$119.88	
Sea Ray	Moving Boat	\$546.47	
Racquel	Bottom Paint	\$288.84	
Racquel	Lift	\$604.55	
Total Claimed:		\$8,548.62	

NPFC Request for Additional Information

The NPFC reviewed claimant's submission, which contained a discussion of the spill, loss amounts and some black and white photographs of what appeared to be sorbents in the water, and dirty, torn boat seats. The NPFC requested additional information on June 13, 2017.⁴ Specific to the claimant's real and personal property claim, the NPFC requested the following documents: Proof of ownership of the allegedly damaged vessels, business licenses, boat registrations, Coast Guard certificates and records, and state certificates allowing the boats to be operated as marine passenger vessels. The NPFC also requested proof that the oil spill damaged the vessels, including documentation demonstrating the condition of the boats prior to the spill and after they were damaged, photographs of the boats before the damage, while damaged and after the damage was removed. We requested proof of the cost to lift, block and repaint the bottom of the boats, receipts for claimed linens, and cleaning costs and evidence showing why such extensive cleaning efforts were performed. In order to document claimed hourly wages, the NPFC requested payroll records documenting the hourly rate of \$25.00 an hour as the claimed cost of time spent cleaning both the Sea Ray and the Sand Piper. Concerning the movement of the Sea Ray to another marina, the NPFC requested receipts and documentation relating to this effort, including financial documentation to prove the \$392.40 difference in rent for the three month period the boat was at the other marina and receipts and evidence explaining why the Sea Ray required propeller, engine work and parts. The NPFC requested evidence that oil in the water became a mist that entered the interior surfaces of the boats. We also requested the claimant provide the net cost of repair necessary to restore the property to substantially the same condition which existed immediately before the damage, the value of the property before and after the damage for each vessel or the replacement value.

On July 28, 2017, the NPFC received a response to its request for additional information via letter from Mr. [REDACTED] dated July 20, 2017. On behalf of Ms. [REDACTED] Mr. [REDACTED] submitted documents and photographs, including vessel registrations, titles, insurance documents, invoices, and receipts.

NPFC Analysis of Real and Personal Property Loss

Claimant's request for reimbursement of the real and personal property claim relates to actual physical damage to its vessels and contents. Under 33 CFR 136.215(a)(2) a claimant must

⁴ See email from Mr. [REDACTED], NPFC, to [REDACTED], Esq., dated June 13, 2017.

establish that the property was injured or destroyed. And 33 CFR 136.215(b)(3) requires that the economic loss claimed was incurred as the result of the injury to or destruction of the property.

To satisfy these regulations, the NPFC requested proof that the oil spill damaged the vessels, because the few photos that were provided in the initial claim submission were black and white and unclear. We also requested the claimant demonstrate the condition of the boats prior to the spill and after they were damaged, including photographs of the boats before the damage, while damaged and after the damage was removed. Claimant provided photographs that allegedly documented the boats before, during and after the spill.⁵ The NPFC's review of the photographs finds many pictures of oil in the water. The location of these pictures is unknown. There is only one picture that may be related to a vessel in this claim, the Racquel. The picture shows the stern of a vessel with the word "Rac...." written across it. There appears to be oil in the water, but no damage to the vessel is noted. The claimant's houseboat may also be pictured, but it is unknown since no name is attached and no oiling of the vessel is identified. Claimant provided several pictures of the interior of what appears to be a couple of vessels. There are some grease/oil stains noted on the seats in some of these pictures. However, it is unknown the condition of the seats just prior to the spill. Therefore, the NPFC cannot determine the damage caused by the spill.

The NPFC finds the claimant failed to provide evidence that the three vessels claimed were damaged by the oil spill. Claimant did not provide pictures of each vessel's condition prior to the spill, during the spill and after the damage was removed as requested.

The NPFC finds the claimed costs of \$8,548.62 denied.⁶ Because actual physical damage to each vessel due to the spill has not been proven, the underlying costs associated with this claim are denied. If the claimant requests reconsideration of its claim, it will need to provide clear pictures of each vessel just prior to the spill and after the damage has occurred, which note physical oiling due to this incident.

Additionally, while reviewing the underlying costs of this portion of the claim, the NPFC notes there is no evidence of physical oiling of the linens, which could have been washed instead of being thrown away. Also, any claimed costs for cleaning time would also need to be clearly documented with contact names of people who helped clean the vessels along with receipts of payment.

Loss of Profits & Earning Capacity:

Claimant asserts that her charter boat company, Coastal Boat and Trailer Rentals, suffered a loss of profits and earning capacity as a direct result of the ATLANTIC RAIDER spill incident. Specifically, at the time of the spill incident, Ms. [REDACTED] offered two boats for rent, the Sand Piper (a houseboat) and the Sea Ray.⁷ Ms. [REDACTED] alleges that the Sand Piper was booked

⁵ See Anderson & Miller letter dated July 20, 2017, page 3, number 11.

⁶ If claimant comes back on reconsideration of the claim, the claimed \$1,338.30 for moving the Sea Ray, and the costs of associated parts including propellers, oil filters, hoses, belts and other misc parts required to get the vessel underway would be more appropriately included in the loss of profits portion of the claim below, since the costs are not incurred because of the damage to the vessel.

⁷ See page 3 of the letter from Mr. [REDACTED], Esq. to Gore Marine Transportation Co., RP, dated March 9, 2017.

on the night of the spill incident at a cost of \$250.00 per night. “The Sea Ray was also booked that night and the next night at a cost of \$129/night.”⁸ Claimant claims that due to the “horrid smell” resulting from oil present near the marina, guests arrived and immediately canceled their reservations. This is claimed to have resulted in additional cancellations for the remaining six (6) booked nights. As evidence for the claim, Claimant submitted several black and white photographs reportedly showing oil present in the water and damages sustained to the rental boats. Unfortunately, the initial photographs provided to the NPFC were unclear and of low quality. The Claimant asserts that “Due to the property damage and the persistent smell at the marina, Ms. [REDACTED] has not been able to rent the Sand Piper since this incident.”⁹

Claimant alleges that it lost \$2,532.00 in income for the Sand Piper and Sea Ray from 10/28-11/5/2016, which occurred during the week of the annual Florida/Georgia football game.

Claimant is also seeking \$12,742.86 in lost rent for the Sand Piper for eight (8) weekend nights occurring between November 6 through December 1, 2016 (8 weekend nights x \$200.00 per weekend night for a total of \$1,600.00). Additionally, the \$12,742.86 includes 63 weekday nights at a daily rate of \$150.00 per weekday night and 26 weekend nights at a rate of \$200.00 per weekend night.

Claimant is requesting \$4,328.57 in “Future Lost Rent” for the Sand Piper.¹⁰ Claimant lists 23 weekday nights at the rate of \$150.00 per weekday night and 8 weekend nights at the rate of \$200.00 per weekend night, for a total of \$4,328.57. Claimant asserts that “The lost rent damages are continuing in nature” and that the smell associated with the spill incident became dramatically worse.

Finally, claimant asserts that due to oil present at the marina, the Sea Ray had to be moved to a separate marina located in downtown Jacksonville, FL, where she was unable to find a renter until December 11, 2016. Claimant is seeking the loss of rental income for 30 weekday nights and 10 weekend nights at a nightly rate of \$129.00, totaling \$4,422.86.

NPFC Request for Additional Information:

Upon review of the claim submission, the NPFC contacted Mr. [REDACTED], requesting additional information in support of their request for reimbursement.¹¹ Specifically, the NPFC requested the following documents: Proof of ownership, business licenses, boat registrations, Coast Guard certificates and records, sales brochures and advertisements, rental and/or charter agreements, scheduling/booking records, executed rental/charter agreements, contact information for customers, proof of cancellations, proof of damages to vessels, receipts for damaged items and costs related to the movement of the Sea Ray, payroll records, financial documentation for rent differences, evidence of the damaged propeller/engine, financial records for comparable periods before and after the incident; several months before and after the spill and for similar periods in previous years. Finally, as the claimant claims that the odor continued into March of 2017, but

⁸ Id.

⁹ Id.

¹⁰ See page 5 of the letter from Mr. [REDACTED], Esq. to Gore Marine Transportation Co., RP, dated March 9, 2017.

¹¹ See email from Mr. [REDACTED], NPFC, to [REDACTED], Esq., dated June 13, 2017.

Coast Guard records indicate that the vessel was towed away on November 18, 2016, the NPFC requested the claimant explain how the incident continued to smell and cause headaches for months even though the vessel had been removed and the oil collected.

On July 28, 2017, the NPFC received a response to its request for additional information via letter from Mr. [REDACTED] dated July 20, 2017. On behalf of Ms. [REDACTED] Mr. [REDACTED] submitted numerous documents and photographs, including vessel registrations, titles, insurance documents, rental history, invoices, and receipts.

NPFC Analysis of Loss of Profits

The NPFC finds claimant's main argument for the claimed loss of profits is the smell in the marina that accompanied the oil spill. Claimant argues that the smell turned away customers who had already booked the Sea Ray and Sandpiper while also impacting earnings after the spill was cleaned up. As evidence of the smell, claimant submitted a statement dated July 25, 2017, from Ms. [REDACTED] (Ms. [REDACTED]), an employee of the Dames Point Marina Bar. Ms. [REDACTED] states:

My name is [REDACTED] and I frequent the Dames Point Marina. I was working at the Dames Point Marina Bar which is part of the Marina prior to, during, and after the oil spill. During the time of and after the oil spill on October 28, 2016, there was often a terrible stench in the air of fuel oil which gave me, and numerous patrons of the bar, a headache along with burning eyes. This continued extensively for several weeks and lingered for several months. The stench would resurface every time it would rain. After a while, I became used to the smell but customers would come in and ask what the smell was that they were noticing. This did not help business.

The NPFC reached out to the USCG Sector Jacksonville Federal On-Scene Coordinator Representative (FOSCR), MST1 [REDACTED] (MST1 [REDACTED]), specifically to address the scope of the spill, and the probability of an odor lingering in the air due to the spill incident. MST1 [REDACTED] reported that some sheen might have entered the marina, but any oil that got on the hulls would likely have washed off during the tide cycles or with minimal cleaning. MST1 [REDACTED] also stated that he received no reports of anyone getting sick or being taken to the hospital from either the marina or the response site. MST1 [REDACTED] stated that no responders, who were working in close proximity to the oil became ill due to any fumes or odor. The FOSCR also stated that the spill site was located a couple of hundred yards north of the Dames Point Marina.¹²

The NPFC finds the Coast Guard FOSCR statement significantly reduces the claimed impact to the marina, regarding both smell and oil. Additionally, as discussed below, claimant failed to provide evidence of a loss of profit or earning capacity through its financials provided.

33 CFR 136.233(c) requires that the amount of the claimant's profits or earnings in comparable periods and during the period when the claimed loss or impairment was suffered, must be

¹² See NPFC phone record between Mr. [REDACTED], NPFC, and MST1 [REDACTED], USCG FOSCR, dated June 9, 2017.

established by income tax returns, financial statements, and similar documents. In addition, comparative figures for profits or earnings for the same or similar activities outside of the area affected by the incident also must be established.

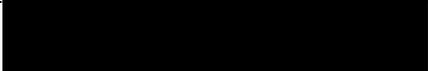
The NPFC reviewed all of the financial documents provided by the claimant. They included a VRBO booking from February 14-17, 2017 for \$580.87, an Airbnb “paid out” document totaling \$7437 with a handwritten note at the top of the page stating “Jan 1st-Apr 20th earnings”, an Airbnb statement page with “pending payouts: \$1488”, a VRBO booking from May 4-7, 2017 totaling \$711.19, a VRBO booking from May 25-29, 2017 for \$670.26, and two pages of spreadsheet data with 50 entries intermittently dated from 12/12/16 through 4/29/2017. This data appears to contain reservation confirmations during this date range.

The NPFC does not find the financial documents claimant provided as evidence of a loss of profits convincing. The NPFC requested claimant provide proof that clients cancelled their bookings due to the oil spill through rental agreements and names, addresses and phone numbers. Claimant could not provide any of this information, stating that AirBNB deletes these entries when clients cancel reservations, and claimant has no way of contacting the clients from that point on.¹³ Additionally, the spreadsheet data provided is not comparable by either date or location. The reservation documents do not include documents related to vessel rental records for the Dames Point Marina, where the vessels are claimed to be docked at the time of the spill incident. Also, there is no evidence of which vessel is being rented. Finally, claimant failed to provide financial records documenting the rental history of its three vessels prior to the spill and during the oil spill incident time period in other years.

The claimant failed to comply with 33 CFR 136.233 (c). They did not prove a loss of profit or earning capacity during the spill incident by providing comparable income tax returns, financial statements and similar documents prior to the spill incident, during the incident and after the spill in 2016 and other comparable years. If the claimant comes back in on reconsideration of its claim, these documents will need to be provided. In addition, if continuing to be claimed, proof of cancellation of guests during the spill incident will need to be proven. Additionally, it appears that these vessels were going through overhauls throughout the time period surrounding the oil spill. Evidence of each vessel’s maintenance schedule will need to be provided to compare with the rental history.

This claim is denied in its entirety.

AMOUNT: \$0.00

Claim Supervisor:		
Date of Supervisor’s review:	9/18/2017	
Supervisor Action:	<i>Denial Approved</i>	
Supervisor’s Comments:		

¹³ See Anderson & Miller letter dated July 20, 2017, page 3, items 8-10.