

CLAIM SUMMARY / DETERMINATION

Claim Number:	S18010-0002
Claimant:	[REDACTED]
Type of Claimant:	Private
Type of Claim:	Removal Costs and Property Damage
Claim Manager:	[REDACTED] [REDACTED]
Amount Requested:	\$2,032.00

FACTS:

On January 18, 2018, an oil discharge was discovered in the vicinity of a pier west of Cannery Pier Hotel and Spa at 10 Basin Street, Astoria, Oregon. The discharge emanated from a 16' X 6' oil tank beneath the hotel's pier on the Columbia River, a navigable water of the U.S.

The oil spill was reported to the United States Coast Guard and Sector Columbia River personnel responded. The oil escaped the tank and migrated west toward the West End Mooring Basin marina, and eastward along the shoreline. Containment booms were placed to prevent migration of the oil, but the oil affected vessels and shorelines in the vicinity of the Cannery Pier Hotel.

The Cannery Pier Hotel assumed initial responsibility as a "responsible party" for the spill.

CLAIMANTS:

The Claimants are [REDACTED], alleged owners of a 42ft ketch named BAGHEERA.

CLAIM:

The [REDACTED] seek compensation for haulout and boatyard fees, labor and materials to clean their boat of oil, and costs to replace line and fenders for a total claim of \$2,032.00.

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).

"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].

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].

Damage claims must be presented within 3 years after the date on which the injury and its connection with the discharge in question were reasonably discoverable with the exercise of due care. 33 U.S.C. §2712(h)(2).

The pertinent provisions of the regulations specifically relating to property damage claims follow:

33 CFR §136.213 Authorized claimants.

- (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.
- (b) 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.

33 CFR §136.215 Proof.

- (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.

33 CFR §136.217 Compensation allowable.

- (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.

DETERMINATION:

The Claimants seek compensation for costs to remove oil from their boat and for costs to replace oiled property attached to their boat. In support of their claim, they provided correspondence between them and the responsible party, and they provided three photographs of a sailboat. This documentation is insufficient to support payment of the claim.

By letter dated June 7, 2018, the NPFC requested additional information from the claimants. On June 19, 2018, Mr. [REDACTED] called and left a voice message stating that he'd need more time to respond. The claims manager returned his call on July 3, and left a message informing Mr. [REDACTED] that he could have more time to respond provided that he let us know how much time he needed and a justification for the time. No further contact was made until July 6, 2018, when Mr. [REDACTED] left a voice message stating that he was going to withdraw his claim and try to work with the hotel to resolve his losses. On July 10, the claims manager again called and spoke with Mr. [REDACTED] to explain that the withdrawal request needed to be in writing and that Mr. [REDACTED] should email the claims manager stating that he wanted to withdraw the claim. The claims manager informed Mr. [REDACTED] that he could resubmit the claim within the statutory period of limitations. To date, the NPFC has not received a withdrawal request. On July 17, 2018, the claims manager called and left a voice message requesting Mr. [REDACTED] to email his request to withdrawal the claim.¹

¹ All correspondence after the June 7, NPFC letter requesting additional information have been telephonic. The claimant has not provided an email address for communication purposes.

Since the claimants have not provided documentation to support the valuation of their claimed losses and have not formally withdrawn the claim in writing, the NPFC finds the claim must be denied. The claimants have not met their burden of demonstrating entitlement to compensation for damages to their property. Should the claimants seek reconsideration of the claim, they must provide the items requested in the NPFC's June 7, 2018 letter.

Claim Supervisor: [REDACTED]

Date of Supervisor's review: 7/19/2018 [REDACTED]

Supervisor Action: *Approved*

Supervisor's Comments: