

CLAIM SUMMARY / DETERMINATION¹

Claim Number:	UCGPM23040-DRP002
Claimant:	(b) (6)
Type of Claimant:	Individual
Type of Claim:	Real or Personal Property
Claim Manager:	(b) (6)
Amount Requested:	\$1,850.00
Action Taken:	Denial

EXECUTIVE SUMMARY:

On September 1, 2023, the National Response Center (NRC) received a report of a mystery sheen that discharged into Tampa Bay, Port Manatee, FL, a navigable waterway of the United States.² The United States Coast Guard (USCG) Sector St. Petersburg responded to the scene and determined that 3,500 gallons of heavy fuel oil discharged into the water from an unknown source.³ The USCG Sector St. Petersburg, in its capacity as the Federal On Scene Coordinator (FOSC), opened Federal Project Number UCGPM2340 and hired contractors for oil removal/decontamination operations.⁴ No responsible party has been identified for this incident.

Mr. (b) (6) and his clients were fishing when oil moved into the area where they were in Port Manatee, FL.⁵ The oil left an oil residue on all sides of the boat and the shaft of the trolling motor.⁶ Mr. (b) (6) alleged it also got on four fishing reels and line. He provided a photo of an oiled scrub brush, for which he also claims damage. Claimant submitted a claim to the National Pollution Funds Center (NPFC) in the amount of \$1,850.00 on September 20, 2023.⁷ The NPFC requested additional information from the claimant, such as proof of damage to the fishing gear and valuations of the damages in accordance with applicable regulations. The claimant has not provided the requested information to date. The NPFC has thoroughly reviewed all documentation submitted with the claim, analyzed the applicable laws and regulations, and after careful consideration has determined that the claim must be denied.

¹ This determination is written for the sole purpose of adjudicating a claim against the Oil Spill Liability Trust Fund (OSLTF). This determination adjudicates whether the claimant is entitled to OSLTF reimbursement of claimed removal costs or damages under the Oil Pollution Act of 1990. This determination does not adjudicate any rights or defenses any Responsible Party or Guarantor may have or may otherwise be able to raise in any future litigation or administrative actions, to include a lawsuit or other action initiated by the United States to recover the costs associated this incident. After a claim has been paid, the OSLTF becomes subrogated to all of the claimant's rights under 33 U.S.C. § 2715. When seeking to recover from a Responsible Party or a Guarantor any amounts paid to reimburse a claim, the OSLTF relies on the claimant's rights to establish liability. If a Responsible Party or Guarantor has any right to a defense to liability, those rights can be asserted against the OSLTF. Thus, this determination does not affect any rights held by a Responsible Party or a Guarantor.

² National Response Center (NRC) Report #1377869

³ United States Coast Guard Situation Report (SITREP) Two dated September 10, 2023.

⁴ USCG SITREP Two dated September 10, 2023.

⁵ OSLTF Optional Claim Form provided by claimant with initial claim submission dated September 6, 2023..

⁶ Claim submission received September 20, 2023.

⁷ Claim submission received September 20, 2023.

I. INCIDENT, RESPONSIBLE PARTY AND RECOVERY OPERATIONS:

Incident

On September 1, 2023, the NRC received a report of a mystery sheen that discharged into Tampa Bay, Port Manatee, FL, a navigable waterway of the United States.⁸ Sector St. Petersburg dispatched a response team immediately to the scene and found approximately 3,500 gallons of what appeared to be heavy fuel oil at berth nine of Port Manatee.⁹

Responsible Party

In accordance with the Oil Pollution Act of 1990, the owner/operator of the source which caused the oil spill is the Responsible Party (RP) for the incident.¹⁰ Oil samples were taken by the USCG in attempt to determine the source and responsible party of the incident, but no responsible party has been identified. In 2006, there was another large oil spill of 900 gallons in Port Manatee that was from the Florida Power & Light (FPL) pipeline. Samples from vessels and pipelines previously used by FPL were taken as FPL was a potential responsible party for this spill. The samples were sent to the Coast Guard Marine Safety Lab for oil classification analysis and to verify potential sources.¹¹ The oil sample results revealed the spilled oil was heavy fuel oil and the suspected source samples were non-matches.¹²

Recovery Operations

USCG Sector St. Petersburg, in its capacity as the Federal On Scene Coordinator (FOSC), opened Federal Project Number UCGPM23040 and hired contractors to contain the discharge and to commence oil removal/decontamination operations.¹³

On September 1, 2023, contractors arrived on scene and deployed containment boom and sorbent materials.¹⁴ The FOSC oversaw the response and removal actions. USCG conducted safety and operation briefings daily.¹⁵ Recovery operations continued from September 1 to September 21, 2023. All pressure washing and cleaning of the sea wall and decontamination/demobilization was completed on September 21, 2023.¹⁶

III. CLAIMANT AND NPFC:

The claimant runs a fishing charter company in the Tampa Bay area of Florida.¹⁷ Since no responsible party has been identified for the spill, he submitted his claim directly to the NPFC, which was received on September 20, 2023. He seeks alleged damages to his boat, trolling

⁸ USCG SITREP One dated September 6, 2023.

⁹ USCG SITREP Two dated September 10, 2023.

¹⁰ 33 U.S.C. § 2701(32).

¹¹ USCG SITREP Two dated September 10, 2023.

¹² United States Coast Guard Marine Safety Laboratory Cases #23-068 & #23-073.

¹³ Id.

¹⁴ USCG SITREP One dated September 6, 2023.

¹⁵ USCG SITREP Six dated September 22, 2023.

¹⁶ Id.

¹⁷ <https://www.relmemoriesfishingcharter.com/> last visited on November 27, 2023

motor, fishing gear and a cleaning brush in the amount of \$1,850.00. The claimant provided the OSLTF Optional Claim form, his vessel registration and some photographs of the allegedly damaged property.

IV. DETERMINATION PROCESS:

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).¹⁸ As a result, 5 U.S.C. § 555(e) requires the NPFC to provide a brief statement explaining its decision. This determination is issued to satisfy that requirement.

When adjudicating claims against the OSLTF, the NPFC acts as the finder of fact. In this role, the NPFC considers all relevant evidence, including evidence provided by claimants and evidence obtained independently by the NPFC, and weighs its probative value when determining the facts of the claim.¹⁹ The NPFC may rely upon, is not bound by the findings of fact, opinions, or conclusions reached by other entities.²⁰ If there is conflicting evidence in the record, the NPFC makes a determination as to what evidence is more credible or deserves greater weight, and makes its determination based on the preponderance of the credible evidence.

V. DISCUSSION:

Under OPA, a RP is liable for all removal costs and damages resulting from either an oil discharge or a substantial threat of oil discharge into a navigable water of the United States. An RP's liability is strict, joint, and several. When enacting OPA, Congress "explicitly recognized that the existing federal and states laws provided inadequate cleanup and damage remedies, required large taxpayer subsidies for costly cleanup activities and presented substantial burdens to victim's recoveries such as legal defenses, corporate forms, and burdens of proof unfairly favoring those responsible for the spills." OPA was intended to cure these deficiencies in the law.

OPA provides a mechanism for compensating parties who have incurred damages where the responsible party has failed to do so. The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims. The claimant bears the burden of providing all evidence, information, and documentation deemed relevant and necessary by the Director of the NPFC, to support and properly process the claim.

Real or Personal Property Damages

33 CFR 136.215 requires proof of:

¹⁸ 33 CFR Part 136.

¹⁹ See, e.g., *Boquet Oyster House, Inc. v. United States*, 74 ERC 2004, 2011 WL 5187292, (E.D. La. 2011), "[T]he Fifth Circuit specifically recognized that an agency has discretion to credit one expert's report over another when experts express conflicting views." (Citing, *Medina County v. Surface Transp. Bd.*, 602 F.3d 687, 699 (5th Cir. 2010)).

²⁰ See, e.g., *Use of Reports of Marine Casualty in Claims Process by National Pollution Funds Center*, 71 Fed. Reg. 60553 (October 13, 2006) and *Use of Reports of Marine Casualty in Claims Process by National Pollution Funds Center* 72 Fed. Reg. 17574 (concluding that NPFC may consider marine casualty reports but is not bound by them).

- (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 states:

- (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.

NPFC Analysis

To prove ownership of the damaged property, Mr. (b) (6) provided an active Florida Vessel Registration which proved he owned the vessel at the time of the incident²¹ as well as a photograph of his vessel showing the matching registration number.²²

Regarding proof of damage, the claimant provided a photograph of the oil-stained vessel and evidence that his vessel was underway during this incident.²³ He also provided a photograph of the oil-stained trolling motor shaft, and an oil-stained cleaning brush. The NPFC finds that the claimant proved that those three items were damaged by the oil discharge. As for the rods, reels and line, oil was not discernable in the photographs he provided. Via email on September 26, 2023, the NPFC requested evidence of such damage, but the claimant has not provided it. Thus, the claimant has not proven damage to these items of property.

Regarding proof of valuation of the losses, the claimant did not provide any documentation. He merely claimed \$1,850.00 with no itemization of how he arrived at that amount and no documentation to support it. Via the September 26, 2023 email to the claimant, the NPFC requested evidence of damage valuations as required by the regulations. To date, the claimant has not provided any evidence of valuation.

The NPFC attempted to remind the claimant of the missing documentation on several occasions,²⁴ but the claimant has not provided the requested documentation to date.

²¹ Florida Vessel Registration # (b) (6).

²² Email from claimant to NPFC dated September 27, 2023.

²³ Photograph provided with initial claim submission.

²⁴ Emails from NPFC to claimant dated September 26, 2023, October 6, 2023, October 12, 2023, November 6, 2023, and November 9, 2023.

The claimant has failed to sufficiently document his claimed damages. Given the evidence provided, the NPFC must deny the claim.

VI. CONCLUSION:

Based on a comprehensive review of the record, the applicable law and regulations, and for the reasons outlined above, (b) (6) claim for property damages is denied.

<p>(b) (6)</p> <p>Claim Supervisor: (b) (6)</p> <p>Date of Supervisor's review: 11/28/2023</p> <p>Supervisor Action: <i>Denial Approved</i></p>
