

CLAIM SUMMARY / DETERMINATION¹

Claim Number:	UCGPP22005-DRP001
Claimant:	(b) (6)
Type of Claimant:	Individual
Type of Claim:	Real or Personal Property
Claim Manager:	(b) (6)
Amount Requested:	\$6,854.95
Action Taken:	Offer in the amount of \$1,935.38

EXECUTIVE SUMMARY:

On December 23, 2021 at approximately 8:00am, the National Response Center (NRC) was notified by an anonymous party of an unknown oil released at the Oriental Marina located in the Neuse River, a navigable waterway of the United States.² USCG Federal On Scene Coordinator (FOSC) Sector North Carolina, confirmed the fishing vessel PREACHER MAN ((b) (6)) had sunk at the dock in the immediate area prior to the notification and was considered to be the suspected source of the discharge.³ Pollution Responders from Marine Safety Detachment at Fort Macon conducted an initial assessment of the area and noted a recoverable amount of oil in a heavily trafficked area. The Federal On Scene Coordinator (FOSC), hired Atlantic Coast Marine Group to clean the recoverable oil from the marina and mitigate further environmental impacts.⁴

(b) (6) (also known as "Claimant") was the owner of the vessel DAY DREAM ((b) (6)) at the time of the incident. His vessel was moored at the Oriental Marina⁵ during the incident and was affected by the spill. Mr. (b) (6) presented his removal costs claim to the National Pollution Funds Center (NPFC) for \$6,854.95 on March 22, 2023; the NPFC corrected the type of claim to a Real or Personal Property claim and notified the claimant.⁶ The NPFC has thoroughly reviewed all documentation submitted with the claim, analyzed the applicable law and regulations, and after careful consideration has determined that \$1,935.38 is compensable and offers this amount as full and final compensation of this claim.

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 NRC Report # 1325620 dated December 23, 2021.

³ USCG SITREP-Pol One dated January 1, 2022.

⁴ USCG SITREP-Pol One dated January 1, 2022.

⁵ Email Re Additional Information Received Claimant dated April 17, 2023

⁶ Email from NPFC to Claimant Re Claim Update dated June 7, 2023

I. INCIDENT, RESPONSIBLE PARTY AND RECOVERY OPERATIONS:

Incident

On December 29, 2021, Sector North Carolina received a NRC notification of a mystery sheen in the Neuse River at the Oriental Marina and Inn in Oriental, NC. Upon arrival, Pollution Responders from MSD Fort Macon observed what appeared to be dark oil in the water.⁷ The F/V PREACHER MAN was the suspected source at the time because it had sunk at the pier on December 22, 2021 and was submerged nearby, but no discharge was apparent.⁸ The FOSCR opened the fund and hired Atlantic Coast Marine Group to contain and recover the product.⁹

Responsible Party

No responsible party was identified. According to the FOSCR, the USCG team “collected samples from F/V SAVANNAH GIRL, F/V PREACHER MAN, and two other vessels (CAPT JEFF, MISS KAYDEN) in the vicinity on January 3, 2022 and shipped them to the Coast Guard Marine Safety Lab for testing. None of the samples matched the product identified on December 30, 2021.”¹⁰

Recovery Operations

On December 31, 2021, Atlantic Coast Marine Group (ACMG) was hired, arrived on scene and deployed boom to prevent further oil movement and reduce the environmental impact. The FOSCR monitored the removal and cleanup operations.¹¹ ¹² On December 31, ACMG recovered 19 bags of oil saturated sorbent pads and on January 1, an additional 13 bags were collected bringing the total to 32 bags.

II. CLAIMANT AND NPFC:

On March 22, 2023, the claimant submitted a removal cost claim to the NPFC for \$6,854.95¹³. After reviewing Mr. (b) (6) claim, it was corrected to be a Real and Personal Property claim. The claim included a written estimate to have the vessel’s hull sides cleaned, bottom sandblasted and bottom repainted. Claimant also included the USCG Certificate of Documentation for the vessel DAY DREAM.

On April 4, 2023, the NPFC requested additional information from the claimant regarding the condition of the vessel before and after the spill, evidence that demonstrated the value of the vessel before and after the spill, and an explanation of the location where the vessel was docked. On April 17, 2023 the claimant provided the NPFC photos VH001-VH006 that showed the injury to the vessel due to the incident. Photo VH007 showed where the vessel was moored

⁷ Email from FOSC to NPFC Re Additional Information dated April 18, 2023.

⁸ Email from FOSC to NPFC Re Additional Information dated April 18, 2023.

⁹ USCG SITREP-Pol One dated January 1, 2022.

¹⁰ Oil Sample Analysis Report, Marine Safety Laboratory Case Number 22-025 dated January 12, 2022.

¹¹ USCG SITREP-Pol One dated January 1, 2022.

¹² Email from FOSC to NPFC Re Additional Information dated April 18, 2023.

¹³ NPFC OSLTF Claim Form dated March 10, 2023.

during the two-night period when the spill occurred.¹⁴ On May 3, 2023, the NPFC requested additional information to include the assessed value of the vessel, photo VH008 and evidence of the last time the vessel was hauled out of the water and when the bottom was cleaned and painted. On May 4, 2023 the claimant provided the vessel's State Farm Insurance policy but did not provide evidence of when the vessel was last painted or cleaned.¹⁵ On May 24, 2023, the NPFC requested evidence of when the claimant bought the vessel since the prior owner of the vessel was shown on the Certificate of Documentation for the vessel in the system and the claimant provided the Bill of Sale effective July 29, 2021.

IV. DETERMINATION PROCESS:

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).¹⁶ 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.¹⁷ The NPFC may rely upon, is not bound by the findings of fact, opinions, or conclusions reached by other entities.¹⁸ 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.

¹⁴ Additional Information Email from Mr. (b) (6) to NPFC dated April 17, 2023.

¹⁵ Emails between NPFC and Claimant Re Additional information dated April 4, 2023, April 17, 2023, May 3, 2023, May 4, 2023 and May 24, 2023.

¹⁶ 33 CFR Part 136.

¹⁷ 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)).

¹⁸ 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).

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.

OPA defines a “claim” to mean “a request made in writing for a sum certain, for compensation for damages or removal resulting from an incident.” An “incident” under OPA is defined as any occurrence or series of occurrences having the same origin, involving one or more vessels, facilities, or any combination thereof, resulting in the discharge or substantial threat of discharge of oil.

OPA defines “oil” as “oil of any kind or in any form, including petroleum, fuel oil, sludge, oil refuse, and oil mixed with the wastes other than dredged spoil, but does not include any substance which is specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of section 101 (14) of the Comprehensive Environmental Response, Compensation, and Liability Act (42 USC § 9601) and which is subject to the provisions of that Act [42 USCA Section 9601 et seq.]”

Property Damage Claim

Mr. (b) (6) claimed \$6,854.95 in removal costs and after reviewing the claim submission the NPFC corrected the type of claim to a Real or Personal Property claim and notified the claimant.¹⁹ As discussed above, the NPFC requested additional information multiple times in order to validate the claimant’s alleged damages.

33 CFR 136.215 requires proof of:

- (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.

¹⁹ Email to Claimant Re Claim Update dated June 7, 2023.

NPFC Analysis

To prove ownership of the vessel, Mr. (b) (6) provided the Certificate of Documentation and Bill of Sale which proved he owned the vessel DAY DREAM at the time of the incident. Claimant provided pictures that proved the vessel was sitting inside the boomed area of the marina, with oil and floating absorbents in the water.²⁰ Additionally, Coast Guard records list the claimant's vessel as one of the vessels oiled during the incident.²¹ Thus, NPFC finds that the claimant's vessel was damaged by the oil discharge.

To prove the cost of repairs, claimant provided an invoiced estimate from McCotter's Marina Boatyard that itemized costs for labor and materials to clean the hull sides and sandblast and paint the bottom of the vessel.²² Mr. (b) (6) also provided the vessel's insurance Declaration Renewal Page which verified the value of the vessel before and after the spill.

The NPFC reviewed all the evidence provided by the claimant. It is clear the hull sides of the vessel, which are gel coat (not painted) were stained by oil. Claimant stated he had since attempted to remove the oil, but staining remained, and the gel coat is dulled. Some of the claimed costs on the invoice submitted relate to correcting these issues. The NPFC created the table below to note the claimed costs and what was approved. The parts, labor and haul out costs necessary to compound, wax and polish the hull sides of the vessel totaling \$1,935.38 are approved.

The NPFC did not find any damage to the bottom of the vessel that is due to the oil. Claimant claimed the bottom paint was damaged because "soaking bottom paint in petrochemicals causes the paint to break down and lose many of its properties. The bottom paint is deteriorated because of the petrochemicals, which acted as a solvent."²³ Claimant provided photo VH008 as evidence of "the damaged bottom falling off of the hull, cracking at the waterline and marine growth present at the waterline and down the bottom."²⁴ The photo provided was a closeup that showed one piece of paint peeling off the waterline bottom paint in one area of the vessel; all other areas of the bottom paint were intact, with no peeling, cracking or falling off.

The NPFC finds this type of damage would not result from contact with oil. It is common for this type of damage at the waterline to occur from wear against another object or poor adhesion of the applied paint in that one area.²⁵ Additionally, marine growth at the waterline of a vessel naturally occurs over time and requires regular scrubbing to keep it in check. Finally, there was no evidence of any of these issues occurring on the bottom of the vessel, as there was no photo or other evidence provided to show the condition of the entire bottom after the oil spill in addition to the fact that the type of oil that spilled would float on the surface of the water; not affect the entire bottom of the vessel. NPFC requested documentation to support when the vessel was cleaned prior to the incident. Claimant stated the bottom had fresh paint on it when he purchased it "shortly after July 2021", which would support the last bottom cleaning prior to the incident;

²⁰ Photos VH001 through VH008.

²¹ Email from FOSC to NPFC Re Additional Information dated April 18, 2023.

²² Claimant's Original Submission dated March 22, 2023.

²³ Additional Information Email from Mr. (b) (6) to NPFC dated April 17, 2023.

²⁴ Additional Information Email from Mr. (b) (6) to NPFC dated April 17, 2023.

²⁵ Photo VH008

and claimant stated the bottom was cleaned on the last haul out October 2022, after the incident. However, claimant could not provide evidence of a clear date when the bottom paint was last applied to the vessel.

As noted in the table below, claimant requested \$4,919.57 to sandblast the entire bottom of the vessel, apply three coats of barrier paint and two coats of bottom paint, along with the supplies necessary to complete the work. As noted above, claimant has failed to provide evidence that the bottom paint on the vessel was damaged due to the oil spill.²⁶ These costs are denied.

Estimate from McCotters Marina and Boat Yard					
QTY	PARTS Item	Price	Total	Payable	Denied
2	Boat Soaps	\$19.00	\$38.00	\$38.00	Denied
	Compound		\$80.00	\$80.00	
	Wax		\$75.00	\$75.00	
	Buffing Pad		\$56.00	\$56.00	
	Polishing Pad		\$54.00	\$54.00	
	Rags		\$20.00	\$20.00	
	Sandpaper		\$18.00		\$18.00
	Acetone		\$21.00		\$21.00
4	Roller Pad	\$3.50	\$14.00		\$14.00
5	Roller Pad	\$5.50	\$27.50		\$27.50
5	Brushes	\$3.00	\$15.00		\$15.00
4	Epoxy Barrier	\$125.00	\$500.00		\$500.00
26	Bottom Paint		\$700.00		\$700.00
2	Tape Rolls	\$13.00	\$26.00		\$26.00
	Thinner		\$27.00		\$27.00
	TOTAL PARTS		\$1,671.50	\$323.00	\$1,348.50
	LABOR				
	Clean oil from hull sides		\$300.00	\$300.00	
	Compound from hull sides		\$680.00	\$680.00	
	Sandblast bottom to remove compromised material paint barrier		\$2,000.00		\$2,000.00
	Prepare and apply barrier boat (3)		\$960.00		\$960.00
	Apply bottom paint, two coats		\$300.00		\$300.00
	TOTAL LABOR		\$4,240.00	\$980.00	\$3,260.00
	Launch/Haul-Out/Deliver/Pick up		\$510.00	\$510.00	
	Subtotal		\$6,421.50	\$1,813.00	\$4,608.50
	Tax		\$433.45	\$122.38	\$311.07
	FINAL TOTAL		\$6,854.95	\$1,935.38	\$4,919.57

The NPFC approves \$1,935.38 in costs to repair the vessel’s hull damaged by the oil spill incident. The remaining \$4,919.57 in costs are denied because the claimant failed to demonstrate there was oil damage to the bottom paint.

VI. CONCLUSION:

Based on a comprehensive review of the record, the applicable law and regulations, and for the reasons outlined above, Mr. (b) (6) property damage claim is approved in the amount of

²⁶ Email from Claimant Re Additional Information dated May 4, 2023.

\$1,935.38. This determination is a settlement offer,²⁷ the claimant has 60 days in which to accept this offer. Failure to do so automatically voids the offer.²⁸ The NPFC reserves the right to revoke a settlement offer at any time prior to acceptance.²⁹ Moreover, this settlement offer is based upon the unique facts giving rise to this claim and is not precedential.

(b) (6)

Claim Supervisor: (b) (6)

Date of Supervisor's review: 6/14/2023

Supervisor Action: Offer Approved.

²⁷ Payment in full, or acceptance by the claimant of an offer of settlement by the Fund, is final and conclusive for all purposes and, upon payment, constitutes a release of the Fund for the claim. In addition, acceptance of any compensation from the Fund precludes the claimant from filing any subsequent action against any person to recover costs or damages which are the subject of the uncompensated claim. Acceptance of any compensation also constitutes an agreement by the claimant to assign to the Fund any rights, claims, and causes of action the claimant has against any person for the costs and damages which are the subject of the compensated claims and to cooperate reasonably with the Fund in any claim or action by the Fund against any person to recover the amounts paid by the Fund. The cooperation shall include, but is not limited to, immediately reimbursing the Fund for any compensation received from any other source for the same costs and damages and providing any documentation, evidence, testimony, and other support, as may be necessary for the Fund to recover from any person. 33 CFR § 136.115(a).

²⁸ 33 CFR § 136.115(b).

²⁹ 33 CFR § 136.115(b).