

CLAIM SUMMARY / DETERMINATION

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:	Reconsideration 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.¹ 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.² Pollution Responders from Marine Safety Detachment at Fort Macon conducted an initial assessment and noted a recoverable amount of oil in a heavily trafficked area. The FOSC hired Atlantic Coast Marine Group (ACMG) to clean the recoverable oil from the marina and mitigate further environmental impacts.³

((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 Oriental Marina⁴ 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.⁵ The NPFC reviewed all documentation submitted with the claim, analyzed the applicable law and regulations, and after careful consideration determined that \$1,935.38 was compensable.

On June 15, 2023, Claimant timely sought reconsideration of his claim. As part of the reconsideration request, he provided a photo of the bottom of his vessel and argued that the photo clearly illustrated damage to the bottom of the boat caused by the oil spill. Requests for reconsideration are considered de novo. The NPFC has thoroughly reviewed the original claim, the request for reconsideration, information it obtained independently, and the applicable law and regulations. Upon reconsideration, the NPFC has determined the initial determination offer of \$1,935.38 is compensable.

I. CLAIM HISTORY:

On March 22, 2023, Claimant presented his original claim to the NPFC for Removal Costs, which the NPFC later recategorized as Real and Personal Property for \$6,854.95. The NPFC thoroughly reviewed the original claim, all information provided by Mr. ((b) (6)) and obtained

¹ NRC Report # 1325620 dated December 23, 2021.

² USCG SITREP-Pol One dated January 1, 2022.

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

⁴ Email Re Additional Information Received Claimant dated April 17, 2023

⁵ Email from NPFC to Claimant Re Claim Update dated June 7, 2023

independently, the relevant statutes and regulations, and ultimately approved the claimed costs associated with oil staining on the vessel's hull sides totaling \$1,935.38. Claimant failed to provide evidence to support damage to the bottom of the vessel, due to the oil spill. The NPFC's initial determination is hereby incorporated by reference.

II. REQUEST FOR RECONSIDERATION:

The regulations implementing OPA require requests for reconsideration of an initial determination to be in writing and include the factual or legal grounds for the relief requested, along with any additional support for the claim.⁶ The claimant has the burden of providing all evidence, information, and documentation deemed necessary by NPFC's Director to support the claim.⁷ When analyzing a request for reconsideration, the NPFC performs a *de novo* review of the entire claim submission, including any new information provided by the Claimant in support of his request for reconsideration. The written decision by the NPFC is final.⁸

On June 15, 2023, the NPFC received Claimant's timely request for reconsideration, which consisted of a photo of the bottom of his vessel and a statement that alleged the photo "clearly illustrates damage to the bottom of the boat as caused by the oil spill", which includes "significant paint flaking". Finally, Claimant alleged that "This is clearly indicative of damage to the bottom of the vessel caused by the oil spill as claimed previously in my original submittals".⁹

III. ANALYSIS ON RECONSIDERATION:

The regulations implementing OPA require requests for reconsideration of an initial determination to be in writing and include the factual or legal grounds for the relief requested, along with any additional support for the claim in accordance with our governing claims regulations at 33 CFR 136.115(d).

The NPFC has thoroughly reviewed and considered the Claimants' request for reconsideration.

As noted above, Claimant's request for reconsideration included a photo of the bottom of the vessel that he stated was taken when he pulled the vessel out of the water on June 14, 2023 to clean the bottom in preparation for a regatta that upcoming weekend.¹⁰ Claimant alleged the photo clearly illustrates damage to the bottom of the boat as caused by the oil spill.¹¹ Claimant also noted significant paint flaking and the stained waterline in the photo which he alleged was caused by the oil spill.¹² Additionally, on June 19, 2023, Claimant sent a photo of the the vessel's rudder which he alleged illustrated flaking paint caused by the oil spill.¹³

⁶ 33 CFR 136.115(d).

⁷ 33 CFR 136.105(a).

⁸ *Id.*

⁹ Claimant's Request for Reconsideration dated June 15, 2023

¹⁰ Claimant's Request for Reconsideration dated June 15, 2023.

¹¹ Claimant's Request for Reconsideration dated June 15, 2023.

¹² Claimant's Request for Reconsideration dated June 15, 2023.

¹³ Email from Claimant Re Another pic dated June 19, 2023.

The NPFC advised Mr. (b) (6) on multiple occasions to provide any additional information he would like to have considered in reconsideration of his claim.¹⁴ On July 24, 2023, Claimant provided four more emails; one email arguing that the bottom paint was damaged as a result of exposure to petrochemicals during the oil spill; and three other emails with photographs that show the bottom paint at the waterline area and below, where the Claimant argues “the greatest concentration of the oil spill was in contact with the vessel over the 36-hour period, clearly shows that the paint was dissolved and “eaten away” from the bottom of the boat”. Claimant also argues the “flaking paint on the hull and rudder and the damage to the side of the hull were caused by the oil spill”.¹⁵

Characteristics of Weathered Light Fuel Oil and Lubricating Oil

On January 1, 2022, USCG Sector North Carolina took samples of the oil in order to determine the responsible party for the incident. According to the sample analysis results, the samples taken contained slightly weathered light fuel oil mixed with lubricating oil.¹⁶ The NPFC contacted the USCG Marine Safety Laboratory (MSL), who analyzed these samples, to determine if the oil would have remained on the surface of the water or if the oil would have entered the water column and contaminated a vessel’s bottom as asserted by the Claimant. The supervisor of the MSL stated that “the only way your particular spill would have entered the water column, based on the chromatograms, would be if dispersant had been added to the spill. Otherwise, there is no degradation or other criteria met that would make this mixture go subsurface”.¹⁷ The NPFC reviewed the incident information connected to this spill and the invoice of costs provided by that the Oil Spill Removal Organization (OSRO) that responded to this incident; no mention of dispersants to clean up this spill were documented.¹⁸

Density is the property used by the petroleum industry to define light or heavy crude oils. Density is also important as it indicates whether a particular oil will float or sink in water.¹⁹ The density of water is 1.0 g/cm³ at 15°C and the density of most oils ranges from 0.7 to 0.99 g/cm³, most oils will float on water.²⁰ As the density of seawater is 1.03 g/cm³, even heavier oils will usually float on it²¹. The oils found in the samples taken were Fuel Oil whose density ranges from 0.750 to 0.9787²² and Lubricating Oil’s whose density ranges from 0.8728 to 0.9271.²³

¹⁴ Email from NPFC to Claimant dated June 20, 2023, July 5, 2023 and July 19, 2023.

¹⁵ Email from Claimant to NPFC dated June 19, 2023 Re Additional Photo referencing rudder illustrating flaking paint.

¹⁶ See USCG Marine Safety Laboratory Oil Sample Analysis Report 22-025 dated January 12, 2022.

¹⁷ Email from Supervisor, Marine Safety Laboratory to NPFC dated June 29, 2023.

¹⁸ ACMG Invoice 2022-T21 dated February 1, 2022.

¹⁹ Hollebhone, Bruce P., Handbook of Oil Spill Science and Technology, First Edition. Edited by Merv Fingas. © 2015 John Wiley & Sons, Inc. Published 2015 by John Wiley & Sons, Inc., The Oil Properties Data Appendix – A, page 577.

²⁰ Hollebhone, Bruce P., Handbook of Oil Spill Science and Technology, First Edition. Edited by Merv Fingas. © 2015 John Wiley & Sons, Inc. Published 2015 by John Wiley & Sons, Inc., The Oil Properties Data Appendix – A, page 577.

²¹ Hollebhone, Bruce P., Handbook of Oil Spill Science and Technology, First Edition. Edited by Merv Fingas. © 2015 John Wiley & Sons, Inc. Published 2015 by John Wiley & Sons, Inc., The Oil Properties Data Appendix – A, page 577.

²² Hollebhone, Bruce P., Handbook of Oil Spill Science and Technology, First Edition. Edited by Merv Fingas. © 2015 John Wiley & Sons, Inc. Published 2015 by John Wiley & Sons, Inc., The Oil Properties Data Appendix – A, pages 609, 622, 637.

²³ Hollebhone, Bruce P., Handbook of Oil Spill Science and Technology, First Edition. Edited by Merv Fingas.

These ranges corroborate the fact that the oil spilled would not have gone subsurface or caused any damage to the bottom of the vessel's hull.

The photos²⁴ Claimant submitted with the initial claim documented oil staining at the waterline of the vessel's hull, which is indicative of how the oil spilled and remained on the surface of the water during this incident.²⁵ The NPFC's initial offer compensated Claimant for that staining.

The photo²⁶ submitted with the reconsideration request and subsequent photos provided by the claimant of the bottom of the vessel show marine growth on the rudder and bottom which indicates the antifouling paint was no longer providing effective protection, but does not prove it was because of the oil spill.²⁷ According to Interlux, a bottom paint distributor, an out of water inspection is recommended every 24-36 months, to assess repairs and recoat of the bottom as needed.²⁸ The NPFC requested evidence from the claimant of when the bottom of the boat was last painted. Claimant asserted that he "had not painted the bottom of the boat and that it had fresh bottom paint on it when he purchased it shortly after July 2021"²⁹. However, Claimant did not provide any evidence to support the date stated.

The NPFC finds Claimant has not provided evidence that the oil spill damaged the bottom paint of his vessel. Additionally, the Coast Guard Marine Safety Lab supervisor stated that the oils spilled in this incident would have remained on the surface of the water, unless dispersants were used. NPFC found no record of dispersants used during the cleanup of this spill. Finally, Claimant provided 18 pictures during reconsideration of his claim; none of the hull/waterline paint appears to be damaged; which is where the oil would have concentrated during the spill.

Upon reconsideration of this claim, the NPFC offers \$1,935.38, which compensates the claimant for parts, labor and haul out for cleaning and polishing the sides of the vessel where oil was present.

VI. CONCLUSION:

Based on a comprehensive review of the record, the applicable law and regulations, and for the reasons outlined above, Claimant's request for reconsideration of his claim is approved in the amount of \$1,935.38.

© 2015 John Wiley & Sons, Inc. Published 2015 by John Wiley & Sons, Inc., The Oil Properties Data Appendix – A, pages 629 to 634.

²⁴ Photos VH001, VH003 and VH008 provided with the initial claim on April 17, 2023.

²⁵ Email from Supervisor of Analysis to NPFC dated June 29, 2023.


²⁶ One photo submitted with reconsideration request on June 15, 2023 and one photo on June 19, 2023 and 16 photos emailed from Claimant on July 24, 2023.

²⁷ See Department of Ecology website <https://ecology.wa.gov/Waste-Toxics/Reducing-toxic-chemicals/Washingtons-toxics-in-products-laws/Antifouling-boat-paints>

²⁸ Antifoulings and the Environment brochure from Interlux website https://www.international-yachtpaint.com/s3/documents/Guidance/antifoulings_and_the_environment.pdf, page 8 of 8.

²⁹ Email from Mr. (b) (6) to NPFC Re Additional Information dated May 4, 2023.

This determination on reconsideration is a settlement offer,³⁰ the claimant has 60 days in which to accept this offer. Failure to do so automatically voids the offer.³¹ The NPFC reserves the right to revoke a settlement offer at any time prior to acceptance.³² Moreover, this settlement offer is based upon the unique facts giving rise to this claim and is not precedential.

Claim Supervisor: **Russell C. Proctor** 

Date of Supervisor's review: 1 August 2023

Supervisor Action: ***Offer Approved.***

³⁰ 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).

³¹ 33 CFR § 136.115(b).

³² 33 CFR § 136.115(b).