

## CLAIM SUMMARY / DETERMINATION<sup>1</sup>

<b>Claim Number:</b>	UCGPM23040-DRP001
<b>Claimant:</b>	(b) (6)
<b>Type of Claimant:</b>	Individual
<b>Type of Claim:</b>	Real or Personal Property
<b>Claim Manager:</b>	(b) (6)
<b>Amount Requested:</b>	\$1,464.83
<b>Action Taken:</b>	Offer in the amount of \$1,464.83

### **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.<sup>2</sup> 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.<sup>3</sup> The discharge caused heavy staining on the seawall of the port.<sup>4</sup> 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.<sup>5</sup> No responsible party has been identified for this incident.

On the morning of September 2, 2023, Mr. (b) (6) was fishing for four hours.<sup>6</sup> While he was underway in Port Manatee, FL, an oil slick floated by the vessel. The oil sheen left an oil residue on all sides of the boat and motor.<sup>7</sup> (b) (6) submitted a claim to the National Pollution Funds Center (NPFC) in the amount of \$1,464.83 on September 19, 2023.<sup>8</sup> The NPFC has thoroughly reviewed all documentation submitted with the claim, analyzed the applicable laws and regulations, and after careful consideration has determined that \$1,464.83 is compensable and offers this amount as full and final compensation of this claim.

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<sup>1</sup> 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 with 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.

<sup>2</sup> National Response Center (NRC) Report #1377869

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

<sup>4</sup> MISLE Incident Investigation Report Case Number 1367357 – Preliminary Investigation – General Information

<sup>5</sup> USCG SITREP Two dated September 10, 2023.

<sup>6</sup> Steady Action Charter Booking Confirmation

<sup>7</sup> (b) (6) claim submission page 1, received September 19, 2023.

<sup>8</sup> (b) (6) claim submission received September 19, 2023. The initial claim form did not provide a claim type. Mr. (b) (6) confirmed it is a real or personal property claim via email dated October 24, 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.<sup>9</sup> 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.<sup>10</sup>

### ***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.<sup>11</sup> 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.<sup>12</sup> The oil sample results revealed the spilled oil was heavy fuel oil and the suspected source samples were non-matches.<sup>13</sup>

### ***Recovery Operations***

USCG Sector St. Petersburg, in its capacity as the Federal On Scene Coordinator (FOSC), opened Federal Project Number UCGPM2340 and hired contractors to contain the discharge and to commence oil removal/decontamination operations.<sup>14</sup>

On September 1, 2023, contractors arrived on scene and deployed containment boom and sorbent materials.<sup>15</sup> The FOSC oversaw the response and removal actions. USCG conducted safety and operation briefings daily.<sup>16</sup> 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.<sup>17</sup>

## **II. CLAIMANT AND NPFC:**

On September 19, 2023, the NPFC received a claim for \$1,464.83 from (b) (6).<sup>18</sup> (b) (6) provided the NPFC with an OSLTF claim form, cost estimate of vessel's worth,

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<sup>9</sup> USCG SITREP One dated September 6, 2023.

<sup>10</sup> USCG SITREP Two dated September 10, 2023.

<sup>11</sup> 33 U.S.C. § 2701(32).

<sup>12</sup> USCG SITREP Two dated September 10, 2023.

<sup>13</sup> United States Coast Guard Marine Safety Laboratory Cases #23-068 & #23-073.

<sup>14</sup> Id.

<sup>15</sup> USCG SITREP One dated September 6, 2023.

<sup>16</sup> USCG SITREP Six dated September 22, 2023.

<sup>17</sup> Id.

<sup>18</sup> (b) (6) claim submission received September 19, 2023.

photos of the oiled vessel, and an invoice from O'Neill's Marina with an estimate for cleaning and polishing the vessel.<sup>19</sup>

On October 3, 2023 the NPFC requested additional information from (b) (6) relative to the costs claimed.<sup>20</sup> On October 4, 2023, (b) (6) replied to the NPFC's request, providing vessel registration and confirmation that his vessel was underway on September 2, 2023.<sup>21</sup>

### **III. DETERMINATION PROCESS:**

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).<sup>22</sup> 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.<sup>23</sup> The NPFC may rely upon, is not bound by the findings of fact, opinions, or conclusions reached by other entities.<sup>24</sup> 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.

### **IV. 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.

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<sup>19</sup> Email from Claimant to NPFC dated September 12, 2023 & email from Claimant to NPFC dated September 14, 2023.

<sup>20</sup> Email from NPFC to Claimant dated October 3, 2023.

<sup>21</sup> Email from Claimant to NPFC dated October 4, 2023.

<sup>22</sup> 33 CFR Part 136.

<sup>23</sup> 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)).

<sup>24</sup> 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.

### ***Real or Personal Property 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.

### ***NPFC Analysis***

To prove ownership of the vessel, Mr. (b) (6) provided an active Florida Vessel Registration which proved he owned the vessel at the time of the incident.<sup>25</sup> The claimant proved the vessel was injured by providing pictures of the oil stained vessel and evidence that his vessel was underway during this incident.<sup>26</sup>

To prove cost of repairs, claimant provided an invoiced estimate from O'Neill's Marina. The estimate included a detail, compound, and wax of the sides of the hull, motor bracket, and motor that was stained by the oil.<sup>27</sup>

The Claims Regulations also require the claimant provide the difference between value of the property before and after the damage or the replacement value. The NPFC did not require that

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<sup>25</sup> (b) (6) Florida Vessel Registration

<sup>26</sup> Images 2 through 3

<sup>27</sup> O'Neill's Marina Estimate

these regulations be fulfilled because Mr. (b) (6) was not asking for replacement in kind and his vessel was a new 2023 model.

Based on the evidence provided, the NPFC approves \$1,464.83 in costs to repair the vessel's hull and motor damaged by the oil spill incident.

#### **V. CONCLUSION:**

Based on a comprehensive review of the record, the applicable law and regulations, and for the reasons outlined above, (b) (6)'s request for real or personal property damages is approved in the amount of **\$1,464.83**.

This determination is a settlement offer,<sup>28</sup> the claimant has 60 days in which to accept this offer. Failure to do so automatically voids the offer.<sup>29</sup> The NPFC reserves the right to revoke a settlement offer at any time prior to acceptance.<sup>30</sup> 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: 10/25/2023

Supervisor Action: *Offer Approved*

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<sup>28</sup> 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).

<sup>29</sup> 33 CFR § 136.115(b).

<sup>30</sup> 33 CFR § 136.115(b).