

CLAIM SUMMARY / DETERMINATION

Claim Number: 915073-0001
Claimant: [REDACTED]
Type of Claimant: Individual
Type of Claim: Real or Personal Property
Claim Manager: [REDACTED]
Amount Requested: \$21,643.63

BACKGROUND

On August 23, 2014, U.S. Coast Guard, Marine Safety Detachment, Panama City, (MSD Panama City) responded to a discharge of oil in the Saint Andrews Marina. Upon arrival, MST1 [REDACTED] and MST3 [REDACTED] observed a sheen of oil against the sea wall in the marina. Three Notices of Federal Interest were issued and oil samples were taken from the surrounding suspected vessels.¹ The oil samples were sent to the Marine Safety Laboratory in New London, Connecticut where all the samples were found to be inconclusive.²

To date, a Responsible Party has not been identified.

CLAIM

On April 14, 2015, Mr. [REDACTED] (Claimant) submitted documentation to the NPFC requesting reimbursement of his Personal Property damage costs in the amount of \$21,643.63.³ Mr. [REDACTED]'s costs are claimed to have been a result from the oil that was spilled in the St. Andrews Marina on August 23, 2014.

Mr. [REDACTED] owns and charters a 50' sailing yacht in Panama City, Florida,⁴ named the *Fair Trades*. Mr. [REDACTED] asserts that the night of August 24, 2015, his vessel, *Fair Trades*, was docked in Slip #93 at the St. Andrews Marina. During the evening of the 24th a heavy thunderstorm, with high winds, and driving rain, splashed oil from the above incident onto the hull of his vessel, above the water line.

Mr. [REDACTED] typically hauls his boat out to be painted every three years.⁵ However, due to Mr. [REDACTED]'s damages from the oil, he had to have his vessel hauled out a year earlier than usual. Mr. [REDACTED] provided a Bay County Boatyard invoice # 1913 as evidence of when the *Fair Trade* was last hauled out. Mr. [REDACTED] also provided pictures of his oil stained vessel.⁶

Claimant's sum certain of \$21,643.63 is based on the following alleged damage from the mystery oil spill at the St. Andrews Marina:⁷

¹ Case Report # 698240, Opened 8/24/2014.

² Oil Sample Analysis Report Case / Activity Number 4973365

³ OSLTF Claim Form

⁴ Florida Vessel Registration

⁵ See, 2015 04 22 Email regarding vessel haul out schedule between DU and Claimant

⁶ See Pictures in provided by Claimant in CPS.

⁷ See Bay Count Boatyard Invoice # 8119, dated 2/24/2015

Table # 1 Sum Certain

Description	Costs	Comments
Haul Out	\$ 500.00	Vessel out of the water (11/21/2014)
Lay Days	\$ 750.00	\$750 per month (Lay days 11/22 - 12/22)
PW & Block	\$ 75.00	Blocking and pressure washing the vessel
Antifouling Service	\$ 2,350.00	Clean and prepare vessel bottom for painting; apply two coats antifouling paint CuKote Blk
Misc Serv	\$ 1,000.00	Sand, fill scratches, and chipped out areas on hull
Misc Serv	\$ 1,000.00	Apply extra primer and fairing to the transom of the vessel. Fiberglass all broken and delaminated areas on transom.
Misc Serv	\$ 1,000.00	Clean hull and remove any contaminates
Misc Serv	\$ 2,250.00	Prime hull with 545 Awlgrip epoxy primer
Misc Serv	\$ 2,500.00	Guide coat and sand filling any other imperfections
Misc Serv	\$ 2,750.00	Clean and mask off topside to avoid over spray & paint hull with Awlgrip 2000
Misc Serv	\$ 2,250.00	Tape off and prepare boot stripe areas; clean and remove any contaminates; mask for painting boot stripe; paint boot stripe with Awlgrip 2000
Misc Serv	\$ 2,250.00	Tape off and prep for accent stripe above boot; clean and remove any contaminates, and paint accent stripe with Awlgrip 2000
Misc Serv	\$ 747.52	Additional material/parts for above service. Paint, catalyst, and reducer for snow white hull, federal yellow boot and concord grape accent
Contract Labor	\$ 687.50	Apply Mo's Graphix. Remove & replace vinyl stripes and accent design
Shop Fee	\$ 212.64	Min \$25.00 or 1% of total amount due before sales tax to cover consumables i.e. acetone, rags, gloves, etc.
Sales Tax	\$ 1,320.97	6.50% Florida Sales Tax
	\$ 21,643.63	Sum Certain

APPLICABLE LAW

"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.”.

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.

Under 33 CFR 136.213(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.

Under 33 CFR 136.215(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.

Under 33 CFR 136.217(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 OF LOSS

NPFC Analysis

Mr. ██████ seeks compensation for the damages to his yacht that were caused by the oil spill. As proof of damage, the claimant provided a receipt from the Bay County Boatyard, a Marine

Survey of his vessel,⁸ and several photographs to establish that his vessel had oil staining from the mystery oil spill incident. Mr. ██████ could not avoid these damages as he did not learn of the oil spill until three days after the discovery of the oil.⁹

The Federal On-Scene Coordinator Representative (FOSCR) witnessed the oil on the hull of the claimant's vessel. Mr. ██████ attempted to remove the oil by power washing his vessel while it was in the water. However, the attempts to clean the oil off the side of the vessel while it was in the water were ineffective as the oil had permeated the vessel's gel coat. Several days later claimant let the FOSCR know that he was unable to clean the vessel in the water.¹⁰ The only solution was for the claimant to haul the vessel out of the water to remove the damage.

Mr. ██████ did not haul the vessel out of the water immediately because he charters the vessel during the boating season. To avoid the loss of charter revenue, Mr. ██████ made the decision to haul his vessel out after the charter season was over. The vessel was ultimately hauled out of the water on November 25, 2014. Claimant attempted several avenues to remove the oil damage from the vessel; none of which worked.¹¹ Finally, the claimant's Marine Surveyor¹² recommended that the hull be painted with an Imron or Awlgrip paint.¹³

Mr. ██████ provided a Bay County Boatyard invoice # 8119, dated February 24, 2015 in the amount of \$22,872.10. However, as stated above,¹⁴ Mr. ██████'s sum certain is only \$21,643.63 because the claimant is not requesting reimbursement for three line items that have a value of \$1,153.49 plus applicable taxes.

Mr. ██████ claims out-of-pocket expenses that he incurred for bringing his vessel back to its original condition. Under 33 CFR 136.217(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. In this claim, the claimant provided the actual cost of repairs necessary to restore the property to substantially the same condition which existed immediately before the oil damage to its vessel.

Denied Costs

The claimant provided pictures that evidence his vessel's hull was damaged, cracked, with worn, pitted gel coat and delaminated fiberglass. The NPFC denies the invoiced costs to provide extra primer and fairing to the broken and delaminated fiberglass. Those damages were not caused by the oil spill and represent normal wear and tear of the vessel caused by regular use.¹⁵ Additionally, Mr. ██████ made the business decision to haul his vessel out after the charter season ended rather than removing the oil immediately after the damages were discovered. The

⁸ Capt. ██████ & Son Marine Surveyors inc., Report of damage.

⁹ OSLTF Claim Form p. 2.

¹⁰ See email from MST1 ██████ dated June 11, 2015.

¹¹ Various cleaners and a rubbing compound were used.

¹² Capt. ██████ & Son

¹³ See signed Report of Damage, dated March 27, 2015.

¹⁴ See table #1

¹⁵ Mr. ██████ charters his vessel often during the Charter Season.

result of this business decision has, at a minimum, caused the oil to penetrate further into the vessel's damaged gel coat, resulting in more effort and time expended to remove the oil staining from the hull.

Further, the last time the claimant had the vessel's bottom painted was in January 2012, using the Seahawk CuKote bottom paint. Pictures provided by the claimant show bottom damage which appears to be the result of the vessel scraping bottom. Regardless of the reason for the scraped paint, it was damaged for reasons other than the oil spill incident. The NPFC contacted the Seahawk CuKote Manufacturer to gain a better understanding of how often the bottom paint should be re-applied. Their recommendation was that CuKote bottom paint should be applied to a vessel's bottom every two years.¹⁶ Mr. [REDACTED] provided a 2012 Bay County Boatyard Invoice and an email dated April 22, 2015 that states that he typically hauls his boat out of the water every three years during the winter months to minimize the impact to his charter business. Therefore, the NPFC denies the costs for costs associated with the vessel's bottom paint, since it was recommended by the paint manufacturer to be re-applied the year of the spill, there was no evidence of oil damage to the bottom paint and there already existed scrape damage to the bottom paint.

Table # 2 Denied Components

Description	Costs	Comments
Antifouling Service / Clean and prep vessel hull; apply two coats antifouling paint CuKote Blk	\$2,350.00	The NPFC contacted Seahawk Paints for their professional advice on how often the antifouling paint should be applied to the hull of a chartered vessel that sails in the Florida waters. SeaHawk Paints recommends that the antifouling paint / CuKote Blk be applied every 2-years, depending on how often the vessel is used. In this case, Claimant's vessel is a chartered vessel and based on the professional opinion of SeaHawk Paints, the Claimant's vessel was due to have the antifouling paint applied to the hull. Cukote should be applied about every 2 years, depends on how often you use your vessel is used boat. See email dated 2015 05 08 between NPFC Claims Manager and SeaHawk Paints. See additional reasons for denial of this component in the NPFC's analysis section of this determination.
Fiberglass all broken and delaminated areas on transom (extra primer and fairing to the transom)	\$1,000.00	Broken fiberglass and delaminated areas on transom was not caused by the oiling and is therefore denied. Claimant would have had to apply extra primer and fairing to the transom as a regular maintenance.

¹⁶ See Email dated 04 17 2015 between DU and Claimant regarding the last time the vessel bottom was painted.

Guide coat and sand filling any other imperfections	\$2,500.00	Based on the photographs that the Claimant provided of the hull of his vessel, there appears to be more damage to the hull than just oil damage and this cost was not due to being oiled. Therefore, the Claimant would have had to apply the Guide coat and sand filling as well as other imperfections as a regular maintenance.
Subtotal	\$5,850.00	Before shop fee and taxes
Shop Fee	\$70.04	NPFC Denied Amount of Shop Fee . This is more than 1% of the subtotal. Claimant deducted several costs from their invoice before submitting its claim, but failed to deduct the 1% applicable shop fee from the deducted costs. Therefore the NPFC deducted 1% of the denied costs and the extra shop fees associated with the costs claimant deducted before submitting the claimed costs.
Sub Total	\$5,920.04	After shop fee. Taxable amount based on the NPFC approved amount
Taxes	\$384.80	6.50% Florida State Sales Tax (Based on NPFC Denied Amount)
	\$6,304.84	Denied Amount

Paid Costs

The NPFC will pay for the repairs necessary to restore the vessel to substantially the same condition which existed prior to the oil spill. Claimant was charged a reduced rate of 750.00 for hauling out his vessel for a month. The daily rate claimant would have been charged was \$75.00 (50 foot boat x \$1.50 per foot) NPFC finds it reasonable to pay the whole monthly rate of \$750.00 because it would have taken claimant longer than 10 days to remove the oil damage to his vessel, sand, paint and renew decals. Additionally, previous to the spill, the vessel's hull was not primed or painted; but instead had a gel coat finish. Because of the penetration of the oil into the hull, it was recommended by the Marine Surveyor that the hull be primed and painted. Therefore, the NPFC will not depreciate the primer and paint costs below (depreciation of the paint job would normally be done if the vessel was previously painted and claimant was simply renewing the paint sooner rather than later).

Table # 3 Approved Components

Description	Costs	Comments
Haul Out	\$500.00	Haul out vessel for service (11/21/2014).
Lay Days	\$750.00	Claimant was charged a reduced rate of 750.00 for hauling out its vessel for a month. The daily rate claimant would have been charged was \$75.00 (50 foot boat x \$1.50 per foot) NPFC finds it reasonable to pay the whole monthly rate because it would have taken claimant

		longer than 10 days to remove the oil damage to his vessel, sand, paint and renew decals
Pressure Wash & Block	\$75.00	Pressure wash vessel and block up
Misc Serv	\$1,000.00	Clean hull and remove any contaminates
Misc Serv	\$2,250.00	Prime with 545 Awlgrip epoxy primer
Misc Serv	\$1,000.00	Sand, fill scratches and chipped out areas on hull
Misc Serv	\$2,750.00	Clean and mask off to avoid over spray & paint hull with Awlgrip 2000
Misc Serv	\$2,250.00	Tape off and prepare boot stripe areas. Clean and remove any contaminates; mask for painting boot stripe; paint boot stripe with awlgrip 2000
Misc Serv	\$2,250.00	Tape off and prep for accent stripe above boot top; clean and remove any contaminates and paint accent stripe with Awlgrip 2000
Misc Serv	\$747.52	Additional Material/Parts for above service. Paint, catalyst, and reducer; snow white hull, federal yellow boot & concord grape accent
Contract Labor	\$687.50	Mo's Graphix - remove & replace vinyl stripes and accent design
Sub Total	\$14,260.02	Before shop fee and taxes
Shop Fee	\$142.60	Based on 1% of NPFC Approved Total
Sub Total	\$14,402.62	After shop fee. Taxable amount based on the NPFC approved amount
Taxes	\$936.17	6.50% Florida State Sales Tax
	\$15,338.79	Offered Amount

Summary

The oil damage to claimant's vessel could not be removed in the water. The oil penetrated the vessels exterior gel coat, requiring the hull to be hauled out, sanded, primed and painted in order to remedy the damage. Because of this, the NPFC hereby determines that the OSLTF will pay **\$15,338.79** as full compensation for the work necessary to remove the oil from the vessel's hull.

Claim Supervisor: [REDACTED]

Date of Supervisor's review [REDACTED]

Supervisor Action: *Approved*

Supervisor's Comments: