

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
United States Coast Guard
National Pollution Funds Center

4200 Wilson Blvd. Suite 1000
Arlington, VA 20598-7100
Staff Symbol: (CA)
Phone: 202-493-6891
E-mail: Robert.C.Rioux@uscg.mil
Fax: 202-493-6937

5890
7/22/2011

VIA EMAIL: [REDACTED]

Lake Champlain Maritime Museum
4472 Basin Harbor Road
Vergennes, VT 05491

Re: Claim Number E10203-0001

Dear Ms. Jones:

The National Pollution Funds Center (NPFC) in accordance with the Oil Pollution Act (OPA) (33 U.S.C. 2701 et seq.), has determined that \$22,334.50 is compensable for OPA claim number E10203-0001.

This reconsideration determination is based on an analysis of information submitted.

All costs that are not determination as compensable are considered denied. Disposition of this reconsideration constitute final agency action.

If you accept this determination, please sign the enclosed Acceptance/Release Form where indicated and return to:

Director (ca)
U.S. Coast Guard MS 7100
National Pollution Funds Center
4200 Wilson Boulevard, Suite 1000
Arlington, VA 20598-7100

If we do not receive the signed original Acceptance/Release Form within 60 days of the date of this letter, the determination is void. If the determination is accepted, your payment will be mailed within 30 days of receipt of the Release Form.

If you have any questions or would like to discuss the matter, you may contact me at the above address or by phone at 202-493-6891.

Sincerely,

[REDACTED]
ROBERT RIOUX
Claims Manager

ENCL: (1) Acceptance/Release Form
(2) Claim Summary / Determination Form

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Claim Number: E10203-0001	Claimant Name: Lake Champlain Maritime Museum 4472 Basin Harbor Road Vergennes, VT 05491
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I, the undersigned, ACCEPT the determination of \$22,334.50 as full compensation for the removal costs incurred.

This determination represents full and final release and satisfaction of all removal costs incurred under the Oil Pollution Act of 1990 (33 U.S.C. 2712(a)(4)), associated with the above referenced claim. This determination is not an admission of liability by any party. I hereby assign, transfer, and subrogate to the United States all rights, claims, interest and rights of action, that I may have against any party, person, firm or corporation that may be liable for the loss. I authorize the United States to sue, compromise or settle in my name and the United States fully substituted for me and subrogated to all of my rights arising from the incident. I warrant that no legal action has been brought regarding this matter and no settlement has been or will be made by me or any person on my behalf with any other party for costs which are the subject of the claim against the Oil Spill Liability Trust Fund (Fund).

I, the undersigned, agree that, upon acceptance of any compensation from the Fund, I will cooperate fully with the United States in any claim and/or action by the United States against any person or party to recover the compensation. The cooperation shall include, but is not limited to, immediately reimbursing the Fund any compensation received from any other source for the same claim, providing any documentation, evidence, testimony, and other support, as may be necessary for the United States to recover from any other person or party.

I, the undersigned, certify that to the best of my knowledge and belief the information contained in this claim represents all material facts and is true. I understand that misrepresentation of facts is subject to prosecution under federal law (including, but not limited to 18 U.S.C. 287 and 1001).

_____	_____
Title of Person Signing	Date of Signature
_____	_____
Typed or Printed Name of Claimant or Name of Authorized Representative	Signature

_____	_____
Title of Witness	Date of Signature
_____	_____
Typed or Printed Name of Witness	Signature

_____	_____	_____
EIN / SSN Required for Payment	Bank Routing Number	Bank Account Number

CLAIM SUMMARY / DETERMINATION FORM

Date	: 7/22/2011
Claim Number	: E10203-0001
Claimant	: Lake Champlain Maritime Museum
Type of Claimant	: Non Profit Organization
Type of Claim	: Removal Costs
Claim Manager	: Robert Rioux
Amount Requested	: \$30,956.50

FACTS

A. Oil Pollution Incident:

On November 17, 1963 the tugboat William H. McAllister sank in Lake Champlain, New York, a navigable waterway of the United States. In May 2020 the U.S. Environmental Protection Agency (EPA) initiated an assessment to determine if the tugboat posed a substantial threat of discharge and if so, to develop removal activities. These activities included an historic research survey and conducting a physical survey of the vessel using a remotely operated vehicle (ROV) (Phase I assessment activities).

B. The Claimant:

The Claimant, Lake Champlain Maritime Museum (LCMM), is a non-profit museum whose mission is to study, preserve and share the history and archaeology of Lake Champlain. Claimant contracted with EPA on or about May 12, 2010, to conduct the Phase I assessment activities.¹

C. Claim History:

On January 27, 2011, the Claimant presented a removal cost claim to the NPFC for \$50,729.00.² The LCMM later amended its sum certain to \$30,956.50, by removing the Phoenix invoice and administrative fees.³ The new sum certain included \$28,820.00 in personnel costs, \$2,000.00 in Juniper Research invoice costs, and \$136.50 in LCMM personnel travel costs (\$80.50 for Adam Kane and \$56.00 for Alex Kehning).

On May 3, 2011, the NPFC offered the Claimant **\$4,186.50** in uncompensated removal costs for this claim (\$2,160.00 in personnel costs + \$2,000.00 for Juniper Research costs + \$26.50 for LCMM personnel travel costs).⁴ The remainder of the claim (\$26,770) was denied on the grounds that the Claimant had not established that these costs were OPA-compensable removal costs or, if they were, had not provided sufficient documentation to support the costs.

D. Claim Reconsideration:

¹ EPA initially contracted with Claimant under a Pollution Removal Funding Authorization (PRFA) but when it was determined that a PRFA was not available to a non-profit organization, EPA submitted the Claimant's documentation to the NPFC seeking reimbursement for the costs from the Oil Spill Liability Trust Fund (the Fund or OSLTF) in August 2010. This documentation did not meet OPA statutory requirements for presentment of a claim.

² See Optional OSLTF Claim Form signed by Ms. Susan Jones on 1/10/11.

³ See, Susan Jones email dated April 20, 2011.

⁴ See, NPFC original claim offer letter dated 5/3/2011 with the attached Claim Summary/Determination Form and Lake Champlain Maritime Museum Spreadsheet.

The Claimant did not accept the NPFC offer. Instead they requested reconsideration of their claim, which was received by email at the NPFC on July 1, 2011.⁵ They submitted the following documentation in support of their reconsideration request:

1. Claimant's reconsideration letter.
2. LCMM task justification document.
3. End of field work letter.
4. McAllister historic research document.
5. Three dive log pages.
6. LCMM spreadsheet noting personnel work hours and travel expenses.
7. DVD containing the ROV inspection of the tug WILLIAM H. McALLISTER.

The LCMM requests that the NPFC reconsider its alleged uncompensated personnel costs in the amount of \$26,660.00 that we did not offer in our initial claim determination. It also requested the NPFC to reconsider the \$110.00 in LCMM personnel travel expenses we did not initially offer. This total \$26,770.00 of alleged uncompensated costs, plus the NPFC offered \$4,186.50 (\$2,160.00 in personnel costs, \$2,000.00 for Juniper Research, and \$26.50 for LCMM personnel travel expenses) equals \$30,956.50.⁶ The Claimant also identifies an additional 3.5 hours of work (\$945.00) under LCMM personnel costs that are supported by a dive logbook⁷ bringing the total requested amount upon reconsideration to \$31,901.50 (\$30,956.50 + 945.00).

The Claimant's assertions in support of reconsideration consist of the following:

1. The LCMM was approached by the EPA FOISC to assist in Phase One of a Three Phase response action to a threat of a potential oil spill. Phase One was to determine the condition of the tug and to determine if the wreck was accessible.⁸
2. The Claimant asserts the EPA FOISC informed them that their costs would be reimbursed by the Coast Guard when the LCMM filed a proof of claim.⁹
3. The LCMM asserts an email from Ms. Hellberg of the NPFC, Claims Division to Mr. Ryan of the NPFC Claims Management Division states in part, "...based on the activity, if blessed and ordered by the FOISC it would typically be an activity I can reimburse under the claims program." They assert that "The individual who was responsible for reviewing and approving OPA claims clearly stated, without any conditions, reservations or qualifications, that this claim would be reimbursed".¹⁰
4. The Claimant states all of the activities performed by the LCMM to support the EPA were in accordance with the scope of work approved by the EPA FOISC and had been "blessed and ordered" by the FOISC. The LCMM is unclear why activities that were blessed and ordered by the FOISC are not compensable OPA removal costs, especially

⁵ See, LCMM email from Susan Jones dated July 01, 2011.

⁶ See, undated LCMM reconsideration letter attached to Susan Jones email dated July 01, 2011, labeled "McAllister Appeal ltr to NPFC.docx".

⁷ See, undated LCMM reconsideration letter attached to Susan Jones email dated July 01, 2011, labeled "McAllister Appeal ltr to NPFC.docx", page three, paragraph two.

⁸ See, undated LCMM reconsideration letter attached to Susan Jones email dated July 01, 2011, labeled "McAllister Appeal ltr to NPFC.docx", page one.

⁹ See, undated LCMM reconsideration letter attached to Susan Jones email dated July 01, 2011, labeled "McAllister Appeal ltr to NPFC.docx", page two.

¹⁰ See, undated LCMM reconsideration letter attached to Susan Jones email dated July 01, 2011, labeled "McAllister

Appeal ltr to NPFC.docx", page two, paragraph two.

because the FOSC blessing is a significant prerequisite for what makes costs compensable.¹¹

5. Additionally, under this reconsideration request the LCMM provides dive logbook documentation to show that during the ROV dive on 6/15/10, Art Cohn and Adam Kane actually worked 11.5 hours each, instead of 8 hours each. The Claimant requests this additional \$945.00 under reconsideration.¹²

APPLICABLE LAW:

Under 33 CFR § 136.115(d) The Director, NPFC, upon written request of the Claimant or of a person duly authorized to act on the Claimant's behalf, reconsiders any claim denied. The request for reconsideration must be in writing and include the factual or legal grounds for the relief requested, providing any additional support for the claim. The request must be received by the Director, NPFC, within 60 days after the date the denial was mailed to the Claimant or within 30 days after receipt of the denial by the Claimant, whichever date is earlier. Reconsideration may only be requested once for each claim denied. This written decision is final. The failure of the Director, NPFC, to make final disposition of a reconsideration within 90 days after it is received shall, at the option of the Claimant any time thereafter, be deemed a final denial of the reconsideration.

The Fund shall be available to the President for the payment of claims in accordance with section 2713 for *uncompensated* removal costs determined by the President to be consistent with the National Contingency Plan or uncompensated damages. 33 U.S.C. § 2712 (a)(4). (Emphasis added.) "Removal costs" means "the costs of removal that has occurred after a discharge of oil has occurred or, in any case in which there is a substantial threat of a discharge of oil, the costs to prevent, minimize, or mitigate oil pollution from such incident." 33 U.S.C § 2701(31).

Under 33 CFR 136.205 "the amount of compensation allowable is the total of uncompensated reasonable removal costs of actions taken that were determined by the FOSC to be consistent with the National Contingency Plan or were directed by the FOSC. Except in exceptional circumstances, removal activities for which costs are being claimed must have been coordinated with the FOSC."

I. NPFC RECONSIDERATION ANALYSIS

The NPFC performed a *de novo* review of the entire claim submission upon reconsideration.

As noted above the offer to pay the claim only in part on May 3, 2011 was based on the Claimant's failure to establish that its costs were removal costs as defined by OPA and that these costs were reasonable. Claimant has asserted that all its costs should be reimbursed because the EPA FOSC requested their help in accomplishing Phase One of a Three Phased response action to determine if the wreck was accessible and all work performed was under the FOSC's direction and approval. Claimant's assertions are based on misinformation provided to it by the EPA FOSC. The Fund is available for the reimbursement of uncompensated OPA removal costs that a Claimant has proven through adequate documentation to be reasonable and to support its sum certain. See Claims Regulations at 33 CFR Part 136.

¹¹ See, undated LCMM reconsideration letter attached to Susan Jones email dated July 01, 2011, labeled "McAllister Appeal ltr to NPFC.docx", page two, paragraph three.

¹² See, undated LCMM reconsideration letter attached to Susan Jones email dated July 01, 2011, labeled "McAllister Appeal ltr to NPFC.docx", page three, paragraph two.

Claimant presented clarification of its activities upon reconsideration. According to the Claimant, Phase One was to determine if the wreck was accessible. The Claimant hired an ROV company, including crew, to dive on the site in order to confirm this. It sent two of their own employees to the ROV dive site to provide guidance of the location of the wreck. We also offered compensation for the two LCMM employee's hourly wages during the ROV dive and mileage to and from the work site. Based on this information the NPFC determined that these costs were OPA compensable because they were directly related to determining if the wreck was accessible in order for Phases Two and Three to be accomplished. We reviewed the dive logs submitted with this reconsideration request and found the 3.5 hours for Mr. Cohn and Mr. Kane to be compensable. This additional \$945.00 under ROV Survey costs will be approved below.

LCMM Personnel Costs - \$28,820.00

In their reconsideration request¹³, the LCMM provided a more detailed description of personnel duties outlined below. The costs for each category are taken from the original claim:

LCMM Personnel Work Performed	Description of Duties¹⁴	Total Cost¹⁵
Informant Interviews	To gain information as to whether fuel leakage occurred at the time of the sinking or not.	\$760.00
Historic Research	To determine if any newspapers or other accounts would provide information about the release of fuel from the tugboat at the time of the sinking.	\$3,435.00
Machinery Research	Research into the tugs physical layout in order to obtain the tank and vent arrangements. LCMM states this would provide evidence as to whether or not the fuel was likely to stay inside the vessel as it sank.	\$1,235.00
Writing Vessel Research Document	Summarizing the results of LCMM's research.	\$965.00
Review & Edit Vessel Research Document		\$ 2,440.00
Video Footage Dubbing	Dubbing 1997 video footage.	\$770.00
Contractual Arrangements	LCMM drafted & received approval from FOSC for ROV dive contract. Delivered original and revised contract to Phoenix.	\$825.00
Correspondence	Coordinated the logistical details of the ROV survey.	\$2,463.00
Insurance Rider	ROV fieldwork required the execution of an insurance rider.	\$220.00
Telephone Discussions with Project Partners	Significant technical & logistical arrangements were made by LCMM. Coordinated between LCMM, USEPA, Phoenix Holdings International, USCG and Neptune Research.	\$640.00
ROV End of Fieldwork Report	LCMM analyzed the ROV video footage and reported on its	\$8,980.00

¹³ See, reconsideration document titled "Research into the extent of the ongoing oil discharges".

¹⁴ Id

¹⁵ See, NPFC's initial claim determination dated 5/3/2011, page 7.

	results.	
ROV Video Footage Editing	LCMM edited and duplicated the ROV footage to be shared with project partners.	\$820.00
Correspondence	Orchestration of the ROV survey & completion of the End of Fieldwork report required correspondence with the FOOSC & other parties.	\$2,020.00
Unknown	No category selected on line item for Pierre LaRocque on 5/25/2010	\$143.00
	Cost Calculations for Pierre LaRocque on 5/18 and 5/25 were off by .50 each day, totaling \$1.00	(\$1.00)
ROV Survey	LCMM personnel time attending the ROV survey.	\$3,105.00
Total Personnel Costs		\$28,820.00

The NPFC reviewed the documentation submitted with the original and reconsideration claim to support these personnel costs. We find the following:

LCMM Personnel Work Performed	NPFC Approved	NPFC Denied
Informant Interviews		\$760.00
Historic Research		\$3,435.00
Machinery Research	\$1,235.00	
Writing Vessel Research Document		\$965.00
Review & Edit Vessel Research Document		\$ 2,440.00
Video Footage Dubbing		\$770.00
Contractual Arrangements	\$825.00	
Correspondence	\$2,463.00	
Insurance Rider	\$220.00	
Telephone Discussions with Project Partners	\$640.00	
ROV End of Fieldwork Report	\$8,980.00	
ROV Video Footage Editing	\$820.00	
Correspondence	\$2,020.00	
Unknown		\$143.00
		(\$1.00)
ROV Survey	\$3,105.00	
Total Personnel Costs	\$20,308.00	\$8,512.00

The NPFC finds **\$20,308.00** as full compensation for LCMM personnel costs. All of the costs denied by the NPFC were not necessary or directly related to conducting the removal activities in Phase One of this “surveillance activity”¹⁶, which was necessary to determine the condition of the tug and if its accessibility to divers.

LCMM Mileage Costs - \$136.50

¹⁶ See, undated LCMM reconsideration letter attached to Susan Jones email dated July 01, 2011, labeled “McAllister Appeal ltr to NPFC.docx”, page one, paragraph three.

The Claimant provided no new evidence to reverse our denial of most of the LCMM's mileage costs. We denied the 1997 video footage dubbing costs above and therefore would not pay for the travel expenses incurred below for those costs. In their original claim submission, the LCMM provided start and stop locations, along with the purpose of each trip in order to support claimed travel mileage costs of \$80.50 (161 miles x .50) for Adam Kane and \$56.00 (112 miles x .50) for Alex Lehning. On 6/15/2010, Adam Kane traveled from the Museum to Burlington, Vermont to conduct the ROV survey. The spreadsheet provided notes this trip is 53 miles round trip. The NPFC finds this cost compensable totaling **\$26.50** (53 x .50). The NPFC denies all other claimed travel mileage as shown below:

Date	Name	Mileage	Cost	Purpose of Trip
5/11/10	Adam Kane	54	\$27.00	To drop off DVD's to be dubbed
5/26/10	Adam Kane	54	\$27.00	To pick up dubbed DVDs
6/1/10	Alex Lehning	59	\$29.50	To interview Frank Pabst who dove on the McAllister when it was in service
6/9/10	Alex Lehning	53	\$26.50	To do historic research
			\$110.00	Total Mileage Costs Denied by the NPFC

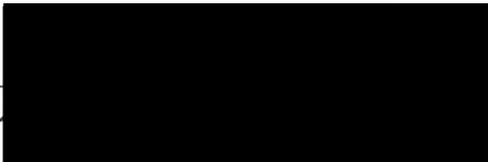
The NPFC denies the above costs because they do not represent OPA compensable removal costs. The costs associated with the denied travel are not for removal activities.

Juniper Research - \$2,000.00

The Claimant provided proof of payment to Juniper Research for this invoice. Since the subcontractor's duties were directly related to the operational dive assessment on the William H. McAllister, the NPFC finds this **\$2,000.00** cost OPA compensable. The NPFC found this invoice compensable in the Claimant's original submission and offer this \$2,000.00 upon reconsideration of their claim.

Accordingly, the NPFC has determined that the Claimant Lake Champlain Maritime Museum has \$22,334.50 in uncompensated removal costs for this claim under reconsideration (\$20,308.00 + \$26.50 + \$2,000.00).

NPFC offer to the Claimant upon this reconsideration claim is **\$22,334.50**.

Claim Supervisor: 

Date of Supervisor's Review: 7/22/11

Supervisor's Action: offer approval

Supervisor Comments: