

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 | : [REDACTED] |
| 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 [REDACTED] and \$56.00 for [REDACTED]).

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. [REDACTED] on 1/10/11.

³ See, [REDACTED] 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 FOSC 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 FOSC 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. [REDACTED] of the NPFC, Claims Division to Mr. [REDACTED] of the NPFC Claims Management Division states in part, ".....based on the activity, if blessed and ordered by the FOSC 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 FOSC and had been "blessed and ordered" by the FOSC. The LCMM is unclear why activities that were blessed and ordered by the FOSC are not compensable OPA removal costs, especially

⁵ See, LCMM email from [REDACTED] dated July 01, 2011.

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

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

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

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

¹⁰ See, undated LCMM reconsideration letter attached to [REDACTED] 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, [REDACTED] and [REDACTED] 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 [REDACTED] email dated July 01, 2011, labeled "McAllister Appeal ltr to NPFC.docx", page two, paragraph three.

¹² See, undated LCMM reconsideration letter attached to [REDACTED] 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. [REDACTED] and Mr. [REDACTED] 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 FOSC & other parties. | \$2,020.00 |
| Unknown | No category selected on line item for [REDACTED] 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 [REDACTED] 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 [REDACTED] and \$56.00 (112 miles x .50) for [REDACTED]. On 6/15/2010 [REDACTED] 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 | [REDACTED] | 54 | \$27.00 | To drop off DVD's to be dubbed |
| 5/26/10 | [REDACTED] | 54 | \$27.00 | To pick up dubbed DVDs |
| 6/1/10 | [REDACTED] | 59 | \$29.50 | To interview Frank Pabst who dove on the McAllister when it was in service |
| 6/9/10 | [REDACTED] | 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: [REDACTED]

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

Supervisor's Action: offer approval

Supervisor Comments: