

## CLAIM SUMMARY / DETERMINATION FORM

Date	: 10/12/2011
Claim Number	: N11025-0001
Claimant	: Bradford Johnson
Type of Claimant	: Private (US)
Type of Claim	: Removal Costs
Claim Manager	: [REDACTED]
Amount Requested	: \$2,950.12

### **FACTS:**

***Oil Spill Incident:*** On March 30, 2011, Sector Mobile Incident Management Division (IMD) received NRC notification via report # 971263 of a vessel sinking and a discharge of diesel fuel into a navigable waterway. The vessel is a 43 ft cabin cruiser (formerly named "ACCEPTANCE", hull number AUL43156M80L) that was moored at Fly Creek Marina when it sank for unknown reasons. Fly Creek Marina is located on Fly Creek, a tributary of Mobile Bay and a navigable waterway of the US.

Sector Mobile responded to the scene and discovered a red diesel film and sheen covering approximately 300 ft x 50 ft. The Responsible Party (RP) and owner of the vessel causing the oil pollution incident is Mr. [REDACTED]. The USCG reported that Mr. [REDACTED] was on scene and stated that there was approximately 100 gallons of diesel fuel in the starboard tank. Mr. [REDACTED] advised the USCG that he could not pay for cleanup and removal of the discharged diesel fuel.

Sector Mobile issued a Notice of Federal Assumption and hired United States Environmental Services (USES) to contain and remove all of the diesel fuel that was discharged into the environment. The vessel settled and was partially submerged with a 30 degree list to starboard. After several attempts to raise the vessel, the owner and RP, was able to refloat the vessel with intentions to remove and repair the vessel.

***Description of removal actions for this Claimant:*** On March 30, 2011, the Claimant, Mr. [REDACTED], owner of a 22 ft Catalina sailboat that was moored at Fly Creek Marina, traveled from his residence in Houston, Texas along with his wife and grandson for a family outing on their boat. Upon arrival at the Marina, USCG and oil spill response personnel were on site tending to the vessel sinking of the ACCEPTANCE.

The Claimant boarded his sailboat to see if it had sustained any damage which it had. Sailboats frequently take on small amounts of water in the hull and when they opened the cabin door, they were overcome with the smell of fumes from the oil contaminated water that was in the bottom of the vessel. The Claimant had customized cushions which were on the floorboard of the vessel and were subsequently damaged beyond repair.

The Claimant took photos at the scene and met with LT [REDACTED] from Sector Mobile. LT [REDACTED] spoke to his Pollution Investigators and recommended to the Claimant to have his vessel out of the water and have the fuel removed. The Claimant then spoke with [REDACTED] of Eastern Shore Marine about taking down the mast and removing his vessel from the water. East Shore Marine accepted the engagement to take down the mast and remove the vessel from the water once the Claimant could go back to Houston and obtain his

trailer to have the vessel placed on it. The Claimant then went and rented a dry space for the boat for three months (it was a company minimum standard) so that the Claimant could drain the contaminated water from the vessel and clean it appropriately.

On April 21, 2011, the Claimant traveled back to Fly Creek Marina from his home in Houston, TX to meet Eastern Shore Marine who was taking down the mast and loading the vessel on the Claimant's trailer. The Claimant then transported the boat to the dry storage location where boat was cleaned and repaired.

**The Claim:** On May 13, 2011, Mr. [REDACTED] (Claimant) submitted a claim to the NPFC for a total amount of \$2,950.12. The Claimant broke down his claim in separate claim components identified as removal costs, public services and real or property damage based on his limited knowledge of how his claim should be categorized. Upon further review of the claim submission, the NPFC has determined that this claim is a removal cost claim.

Upon receipt of the claim submission, the NPFC provided the RP's information to the Claimant and advised that the Claimant must first present all costs to the RP pursuant to 33 CFR 136.103(a) which states that all claims for removal costs or damages must be presented first to the responsible party (RP). The Claimant made proper presentment to the RP and received a letter from Mr. [REDACTED] dated October 6, 2011 whereby the RP stated he cannot pay due to his personal financial situation.

The Claimant presented copies of all lodging, food, gas, and store receipts in support of his response costs as well as a copy of his invoice from East Shore Marine removing the vessel from the waterway and a copy of his dry storage contract for where he moved his vessel in order to clean his vessel. The Claimant provided a copy of his presentment and RP response, photos taken on the day of the incident and a copy of his valid vessel registration.

#### **APPLICABLE LAW:**

Under OPA 90, at 33 USC § 2702(a), responsible parties are liable for removal costs and damages resulting from the discharge of oil into navigable waters and adjoining shorelines, as described in Section 2702(b) of OPA 90. A responsible party's liability will include "removal costs incurred by any person for acts taken by the person which are consistent with the National Contingency Plan". 33 USC § 2702(b)(1)(B).

"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. Removal costs are defined as "the costs of removal that are incurred 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 an incident".

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].

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. In addition, under 33 CFR 136, the claimant bears the burden to prove the removal actions were reasonable in response to the scope of the oil spill incident, and the NPFC has the authority and responsibility to perform a reasonableness determination. Specifically, under 33 CFR 136.203, “a claimant must establish -

- (a) That the actions taken were necessary to prevent, minimize, or mitigate the effects of the incident;
- (b) That the removal costs were incurred as a result of these actions;
- (c) That the actions taken were determined by the FOSC to be consistent with the National Contingency Plan or were directed by the FOSC.”

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.” [Emphasis added].

### **DETERMINATION OF LOSS:**

#### **A. Overview:**

1. NPFC has determined that the actions undertaken by the claimant are deemed consistent with the NCP. This determination is made in accordance with the Delegation of Authority for Determination of Consistency with the NCP for the payment of uncompensated removal cost claims and is consistent with the provisions of sections 1002(b)(1)(B) and 1012(a)(4) of OPA, 33 U.S.C. §§ 2702(b)(1)(B) and 2712(a)(4)."
2. The incident involved the report of a discharge of “oil” as defined in OPA 90, 33 U.S.C. § 2701(23);
3. A Responsible Party was determined and subsequently notified by the NPFC. However, no response has been received from the RP to date. 33 U.S.C. § 2701(32).
4. The claim was submitted within the six year statute of limitations. 33 U.S.C. § 2712(h)(2)
5. In accordance with 33 CFR § 136.105(e)(12), the claimant has certified no suit has been filed in court for the claimed uncompensated removal costs.

#### **B. Analysis:**

NPFC CA reviewed the actual cost invoices and dailies to confirm whether or not the claimant had incurred all costs claimed. The review focused on: (1) whether the actions taken were compensable “removal actions” under OPA and the claims regulations at 33 CFR 136 (e.g., actions to prevent, minimize, mitigate the effects of the incident); (2) whether the

costs were incurred as a result of these actions; (3) whether the actions taken were determined by the FOSC, to be consistent with the NCP or directed by the FOSC, and (4) whether the costs were adequately documented and reasonable.

Upon adjudication of this claim, the NPFC contacted the Claimant on October 12, 2011 to discuss the facts of the claim and the details associated with the costs incurred. The Claimant confirmed that the cushioned seats were on the floor of the vessel at the time the oil contamination water entered the vessel. Due to the customized cushions containing foam, they are unable to be cleaned and require replacement. The Claimant does not have the original purchase receipt for the customized cushions but advised that they received the replacement pricing from the boat manufacturer, Catalina. The NPFC went to the Catalina Direct website and also called the manufacturer to discuss the replacement cost of the customized cushions. Based on the information received, the NPFC had determined full replacement is warranted.

With respect to the food, lodging and gas charges, the NPFC has determined that these costs have been proven by way of receipt and support the Claimant's actions while traveling to AL from Houston, TX in order to perform proper cleanup of his vessel.

The NPFC hereby determines that the OSLTF will pay **\$2,950.12** as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim # N11025-0001. All costs claimed are for charges paid for by the Claimant for removal actions as that term is defined in OPA and, are compensable removal costs, payable by the OSLTF as presented by the Claimant.

**AMOUNT: \$2,950.12**

Claim Supervisor: [REDACTED]

Date of Supervisor's review: *10/12/11*

Supervisor Action: *Approved*

Supervisor's Comments: