

## CLAIM SUMMARY / DETERMINATION

<b>Claim Number:</b>	M20009-0001
<b>Claimant:</b>	Safe Harbor Seafoods
<b>Type of Claimant:</b>	Corporate
<b>Type of Claim:</b>	Removal Costs
<b>Claim Manager:</b>	(b) (6)
<b>Amount Requested:</b>	\$75,000.00
<b>Action Taken:</b>	Offer in the amount of \$64,000.00

### EXECUTIVE SUMMARY:

On December 3, 2019, the F/V IRIS MARIE caught fire and sank while moored at the Safe Harbor Marina dock in Mayport, Florida, subsequently causing the F/V TRITON to catch fire and sink. The incident resulted in the release of diesel fuel into the Saint John's River; a navigable waterway of the United States.<sup>1</sup> Coast Guard (CG) Sector Jacksonville Incident Management Division (IMD) was dispatched to serve as Federal On Scene Coordinator (FOSC), and opened separate Federal Project Numbers (FPN) for each vessel's spillage on December 4, 2019.<sup>2</sup> As such, the owner of the F/V IRIS MARIE (Mr. (b) (6) or RP) and the owner of the F/V TRITON (Mr. (b) (6) Jr. or RP) were each identified as responsible party's (RP's), as defined by the Oil Pollution Act of 1990.<sup>3</sup>

Florida Department of Environmental Protection (FL DEP), in its capacity as the State On Scene Coordinator (SOSC), was dispatched to assist with the cleanup of the oil spill,<sup>4</sup> and coordinated with CG Sector Jacksonville IMD.<sup>5</sup> On January 8, 2020, FL DEP directed Safe Harbor Seafoods (Safe Harbor or Claimant) to remove the sunken vessels from Safe Harbor Marina.<sup>6</sup> Safe Harbor Seafoods contracted Salonen Marine, Inc. to remove the F/V IRIS MARIE and F/V TRITON from the waterway<sup>7</sup>, and paid all expenses to Salonen Marine, Inc. for costs associated with the vessel removal.<sup>8</sup>

On March 12, 2020, Safe Harbor Seafoods presented its removal costs claim to the National Pollution Funds Center (NPFC) for \$75,000.00.<sup>9</sup> The NPFC has thoroughly reviewed all documentation submitted with the claim, analyzed the applicable law and regulations, and after careful consideration has determined that \$64,000.00 of the requested amount is compensable and offers this amount as full and final compensation of this claim.

<sup>1</sup> SITREP 1, dated December 4, 2019.

<sup>2</sup> Federal Project Number M20009, opened December 4, 2020 for the F/V IRIS MARIE, and Federal Project Number M20010, opened December 4, 2020 for the F/V TRITON.

<sup>3</sup> 33 U.S.C. § 2701(32).

<sup>4</sup> FL DEP Emergency Field Authorization, dated January 14, 2020.

<sup>5</sup> Email from FOSC to NPFC, dated March 23, 2020.

<sup>6</sup> FL DEP warning letter, dated January 8, 2020.

<sup>7</sup> Removal Agreement for F/V IRIS MARIE, dated January 7, 2020, and Removal Agreement for F/V TRITON, dated January 7, 2020.

<sup>8</sup> Check Number 82225, dated January 22, 2020, and Check Number 82342, dated January 31, 2020.

<sup>9</sup> Safe Harbor Seafoods claim submission, dated March 3, 2020.

## **I. INCIDENT, RESPONSIBLE PARTY AND RECOVERY OPERATIONS:**

### ***Incident***

On December 3, 2019, a fire started onboard the F/V IRIS MARIE for reasons unidentified, causing the vessel to become fully engulfed in fire and sank.<sup>10</sup> The F/V IRIS MARIE was moored outboard the F/V TRITON, and the fire onboard the F/V IRIS MARIE caused the F/V TRITON to catch fire and sink. Both vessels were moored at the Safe Harbor Marina dock.<sup>11</sup> The spill resulted in the discharge of diesel fuel into the Saint Johns River, a navigable waterway of the United States.<sup>12</sup>

FL DEP, in its capacity as the State On Scene Coordinator (SOSC), was dispatched to the scene following their notification of the spill and coordinated with CG Sector Jacksonville IMD, who served as the FOSC for the spill.<sup>13</sup> The SOSC issued a warning letter to Mr. (b) (6), the owner and President of Safe Harbor Seafoods, directing Mr. (b) (6) to cleanup the oil and remove the sunken vessels from Safe Harbor Marina.<sup>14</sup> Safe Harbor Seafoods contracted Salonen Marine, Inc. (Salonen Marine) to handle cleanup and disposal of the vessels.<sup>15</sup> CG Sector Jacksonville IMD monitored Salonen Marine's cleanup activity.<sup>16</sup>

### ***Responsible Party***

The FOSC identified the owner of the F/V IRIS MARIE and the owner of the F/V TRITON as the RP's on December 4, 2019.<sup>17</sup> The NPFC issued separate Responsible Party Notification Letters to the owner of F/V IRIS MARIE, and to the owner of F/V TRITON on March 13, 2020.<sup>18</sup> The NPFC has received no notification or response from the RPs.

### ***Recovery Operations***

On January 16, 2020, Salonen Marine was notified by Safe Harbor Seafoods of the oil spill release nearby Safe Harbor Marina in Mayport, Florida, and was contracted to assist with cleanup and removal of the vessels causing the spill.<sup>19</sup> Salonen Marine arrived on-site and began oil cleanup and vessel removal operations on January 18, 2020.<sup>20</sup>

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<sup>10</sup> Email from FOSC to NPFC, dated January 9, 2020.

<sup>11</sup> Notice of Designation Letter for M20009, dated January 9, 2020, and Notice of Designation Letter for M20010, dated January 9, 2020.

<sup>12</sup> SITREP 1, dated December 4, 2019.

<sup>13</sup> Email from FOSC to NPFC, dated March 23, 2020.

<sup>14</sup> FL DEP warning letter, dated January 8, 2020.

<sup>15</sup> F/V IRIS MARIE Removal Agreement with Salonen Marine, Inc. signed by Mr. (b) (6) on January 16, 2020, and F/V TRITON Removal Agreement with Salonen Marine, Inc. signed by Mr. (b) (6) on January 16, 2020.

<sup>16</sup> Email from FOSC to NPFC, dated March 23, 2020.

<sup>17</sup> Notice of Federal Interest to Mr. (b) (6), dated December 4, 2020, and Notice of Federal Interest to Mr. (b) (6) Jr., dated December 4, 2020.

<sup>18</sup> NPFC RP Notification Letter to owner of F/V IRIS MARIE, dated March 13, 2020, and NPFC RP Notification Letter to owner of F/V TRITON, dated March 13, 2020.

<sup>19</sup> F/V IRIS MARIE Removal Agreement with Salonen Marine, Inc. signed by Mr. (b) (6) on January 16, 2020, and F/V TRITON Removal Agreement with Salonen Marine, Inc. signed by Mr. (b) (6) on January 16, 2020.

<sup>20</sup> Email from FOSC to NPFC, dated March 23, 2020.

Pieces of the F/V IRIS MARIE were removed from the waterway. The pieces were then placed on the deck of a Salonen Marine barge in preparation for transport to Salonen Marine's yard for disposal.<sup>21</sup> Pieces from the F/V TRITON were also removed from the waterway and placed on a separate barge in preparation for transport and disposal.<sup>22</sup> The barges carrying the debris from the vessels departed Safe Harbor Marina via tug boats to a facility in Fernandina, Florida for disposal.<sup>23</sup> All cleanup/vessel removal operations were completed on January 31, 2020.<sup>24</sup>

## **II. CLAIMANT AND RP:**

Absent limited circumstances, the federal regulations implementing the Oil Pollution Act of 1990 (OPA)<sup>25</sup> require all claims for removal costs or damages must be presented to the responsible party before seeking compensation from the NPFC.<sup>26</sup>

Safe Harbor Seafoods submitted its request for compensation to the owner of F/V IRIS MARIE for \$75,000.00 on February 3, 2020.<sup>27</sup> The RP replied on February 7, 2020, stating they did not have the financial resources necessary to pay the costs submitted, and subsequently denied the costs.<sup>28</sup>

Safe Harbor Seafoods submitted its request for compensation to the owner of F/V TRITON for \$75,000.00 on March 20, 2020.<sup>29</sup> The RP replied on March 20, 2020, stating they did not have the financial resources necessary to pay the costs submitted, and subsequently denied the costs.<sup>30</sup>

## **III. CLAIMANT AND NPFC:**

When an RP denies payment on claim, a claimant may elect to present its claim to the NPFC.<sup>31</sup> On March 12, 2020, the NPFC received a claim for \$75,000.00 from Safe Harbor Seafoods, dated March 3, 2020.<sup>32</sup> On March 19, 2020, the NPFC requested Claimant provide proof of submission of all costs to the owner of the F/V TRITON.<sup>33</sup> On March 20, 2020, Claimant provided proof of submission to the owner of the F/V TRITON, along with proof of the RP's denial to pay the costs.<sup>34</sup> Upon receipt of denial of all costs by both RPs, Safe Harbor

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<sup>21</sup> Salonen Marine, Inc. Breakdown of Costs for Invoice 354142.

<sup>22</sup> Salonen Marine, Inc. Breakdown of Costs for Invoice 354144.

<sup>23</sup> Salonen Marine, Inc. Breakdown of Costs for Invoice 354142, and Salonen Marine, Inc. Breakdown of Costs for Invoice 354144.

<sup>24</sup> Email from FOSC to NPFC, dated March 23, 2020.

<sup>25</sup> 33 U.S.C. § 2701 et seq.

<sup>26</sup> 33 CFR 136.103(c)(1).

<sup>27</sup> Letter from Safe Harbor Seafoods to the owner of F/V IRIS MARIE, dated February 3, 2020.

<sup>28</sup> Letter from owner of F/V IRIS MARIE to Safe Harbor Seafoods, dated February 7, 2020.

<sup>29</sup> Letter from Safe Harbor Seafoods to the owner of F/V TRITON, dated March 20, 2020.

<sup>30</sup> Letter from owner of F/V TRITON to Safe Harbor Seafoods, dated March 20, 2020.

<sup>31</sup> 33 CFR 136.103.

<sup>32</sup> Safe Harbor Seafoods claim submission, dated March 3, 2020.

<sup>33</sup> Email summary of telephone conversation between Moseley Prichard Parrish Knight & Jones Attorneys and Counselors at Law and the NPFC, dated March 19, 2020.

<sup>34</sup> Letter from Safe Harbor Seafoods to the owner of F/V TRITON, dated March 20, 2020, and Letter from owner of F/V TRITON to Safe Harbor Seafoods, dated March 20, 2020.

submitted its claim to the NPFC. The NPFC began the adjudication process of the claim submission on March 20, 2020.

#### **IV. DETERMINATION PROCESS:**

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).<sup>35</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>36</sup> The NPFC may rely upon, is not bound by the findings of fact, opinions, or conclusions reached by other entities.<sup>37</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.

#### **V. DISCUSSION:**

OPA provides a mechanism for compensating parties who have incurred removal costs where the responsible party has failed to do so. 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.”<sup>38</sup> The term “remove” or “removal” means “containment and removal of oil [...] from water and shorelines or the taking of other actions as may be necessary to minimize or mitigate damage to the public health or welfare, including, but not limited to fish, shellfish, wildlife, and public and private property, shorelines, and beaches.”<sup>39</sup>

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan (NCP).<sup>40</sup> The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.<sup>41</sup> 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.<sup>42</sup>

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<sup>35</sup> 33 CFR Part 136.

<sup>36</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>37</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).

<sup>38</sup> 33 U.S.C. § 2701(31).

<sup>39</sup> 33 U.S.C. § 2701(30).

<sup>40</sup> See generally, 33 U.S.C. §2712 (a) (4); 33 U.S.C. § 2713; and 33 CFR Part 136.

<sup>41</sup> 33 CFR Part 136.

<sup>42</sup> 33 CFR 136.105.

Before reimbursement can be authorized for uncompensated removal costs, the claimant must demonstrate by a preponderance of the evidence:

- (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 directed by the FOOSC or determined by the FOOSC to be consistent with the National Contingency Plan.<sup>43</sup>
- (d) That the removal costs were uncompensated and reasonable.<sup>44</sup>

The NPFC analyzed each of these factors and determined that the majority of costs incurred and submitted by Safe Harbor Seafoods herein are compensable removal costs based on the supporting documentation provided. All costs approved for payment were verified as being invoiced at the appropriate rate sheet pricing and all costs were supported by adequate documentation which included invoices and/or proof of payment where applicable.

The amount of compensable costs is \$64,000.00, while \$11,000.00 is deemed non-compensable for the following reasons:

1. Safe Harbor Seafoods seeks to recover \$30,000.00 for salvage and removal costs submitted on Salonen Marine Invoice 354142.<sup>45</sup> The Salonen Marine Invoice 35142 Breakdown of Costs cites \$27,500.00 as the total costs for salvage/removal/barge transportation, and cites the additional \$2,500.00 in costs as land transportation.<sup>46</sup> The land transportation of the F/V IRIS MARIE took place after the vessel was removed from the waterway and after the vessel no longer posed a threat to the navigable waterway. As such, the land transport costs in the amount of \$2,500.00, are denied.<sup>47</sup>
2. Safe Harbor Seafoods seeks to recover \$45,000.00 for salvage and removal costs submitted on Salonen Marine Invoice 354144.<sup>48</sup> The Salonen Marine Invoice 35144 Breakdown of Costs cites \$42,500.00 as the total costs for salvage/removal/barge transportation, and cites the additional \$2,500.00 in costs as land transportation.<sup>49</sup> The land transportation of the F/V TRITON took place after the vessel was removed from the waterway and after the vessel no longer posed a threat to the waterway. As such, the land transport costs in the amount of \$2,500.00, are denied.<sup>50</sup>
3. Safe Harbor Seafoods was provided a \$6,000.00 credit on Salonen Marine Invoice 354144.<sup>51</sup> Claimant seeks \$45,000.00 for Invoice 354144, but due to a \$6,000.00 fuel

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<sup>43</sup> Email from US Coast Guard Sector Jacksonville IMD to the NPFC, dated March 23, 2020.

<sup>44</sup> 33 CFR 136.203; 33 CFR 136.205.

<sup>45</sup> Salonen Marine, Inc. Invoice 354142, dated January 21, 2020.

<sup>46</sup> Salonen Marine, Inc. Breakdown of Costs for Invoice 354142.

<sup>47</sup> Claim M20009-0001 Summary of Costs Spreadsheet.

<sup>48</sup> Salonen Marine, Inc. Invoice 354144, dated January 30, 2020.

<sup>49</sup> Salonen Marine, Inc. Breakdown of Costs for Invoice 354144.

<sup>50</sup> Claim M20009-0001 Summary of Costs Spreadsheet.

<sup>51</sup> Monty's Marina Fuel Credit Document 41462, dated January 29, 2020.

credit, Safe Harbor only paid \$39,000.00 to Salonen Marine for costs displayed on Invoice 354144.<sup>52</sup> As such, all unpaid costs in the amount of \$6,000.00 are denied.<sup>53</sup>

**Overall Denied Costs:** \$11,000.00

**VI. CONCLUSION:**

Based on a comprehensive review of the record, the applicable law and regulations, and for the reasons outlined above, Safe Harbor's request for uncompensated removal costs is approved in the amount of \$64,000.00.

This determination is a settlement offer,<sup>54</sup> the claimant has 60 days in which to accept this offer. Failure to do so automatically voids the offer.<sup>55</sup> The NPFC reserves the right to revoke a settlement offer at any time prior to acceptance.<sup>56</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:	<i>4/13/2020</i>
Supervisor Action:	<i>Offer Approved</i>

<sup>52</sup> Check #82342, dated January 31, 2020.

<sup>53</sup> Claim M20009-0001 Summary of Costs Spreadsheet.

<sup>54</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>55</sup> 33 CFR § 136.115(b).

<sup>56</sup> 33 CFR § 136.115(b).