

CLAIM SUMMARY / DETERMINATION

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| Claim Number: | 921018-0001 |
| Claimant: | Tow Boat U.S., Lake Tahoe |
| Type of Claimant: | Corporate |
| Type of Claim: | Removal Costs |
| Claim Manager: | [REDACTED] |
| Amount Requested: | \$7,200.00 |
| Action Taken: | Offer in the amount of \$7,200.00 |

EXECUTIVE SUMMARY:

At approximately 0845 local time on September 19, 2020, Mr. [REDACTED], Harbor Master, of Tahoe Keys Marina, contacted the United States Coast Guard's (USCG) National Response Center (NRC) to report a vessel sinking.¹ United States Coast Guard Sector San Francisco, Incident Management Division (IMD), received notification via NRC report # 1287773 of a recreational vessel sinking in South Lake Tahoe, a navigable waterway of the United States.² Sector San Francisco, Incident Management Division Duty Team contacted United States Environmental Protection Agency (USEPA) and verified that the incident occurred outside of USCG jurisdiction.³ USEPA Region 9 was the Federal On-Scene Coordinator (FOSC) for the incident. The Harbor Master of Tahoe Keys Marina contacted Tow Boat U.S., Lake Tahoe ("Tow Boat" or "Claimant") to remove the sunken vessel.⁴ Once the vessel was out of the water and the boat registration was found, Tow Boat was able to identify the boat owner as [REDACTED] of Meadow Vista, California.⁵ As the vessel owner, Mr. [REDACTED] is the responsible party as defined by the Oil Pollution Act of 1990 (OPA).⁶ The Office of Spill Prevention and Response (OSPR) was contacted and was the State On-Scene Coordinator (SOSC) for the incident.⁷ Due to COVID19 pandemic restrictions, OSPR was operating remotely and therefore, did not physically respond to the incident.⁸ However, OSPR made telephone contact with the Tahoe Keys Marina staff and verified that the boat was removed from the water.⁹

The Harbor Master and an employee of the Tahoe Keys Marina boomed off the contaminated boat slip # Emerald B-18, with oil absorbent boom and absorbent pads.¹⁰ USEPA in its capacity as the FOSC determined that the actions undertaken by Tow Boat and Tahoe Keys Marina were consistent with the National Contingency Plan (NCP).¹¹

¹ NRC Report # 1287773 dated September 19, 2020.

² USCG Sector San Francisco MISLE Case ID: 1236658, Situation Report dated September 19, 2020.

³ USCG Sector San Francisco MISLE Case ID: 1236658, Situation Report dated September 19, 2020.

⁴ Tahoe Keys Marina Sunken Vessel Report dated September 19, 2020, p. 1 of 2.

⁵ Email from Harbor Master, Tahoe Keys Marina & Yacht Club to the NPFC dated March 18, 2021.

⁶ 33 U.S.C. § 2701(32).

⁷ OSPR Spill Incident Information DFG # 20FG1652

⁸ Email from [REDACTED], OSPR, Northern Field Response Team dated March 8, 2021.

⁹ Email from [REDACTED], OSPR, Northern Field Response Team dated March 8, 2021.

¹⁰ Tahoe Keys Marina Sunken Vessel Report dated September 19, 2020, Manifest of Materials Used for Vessel Salvage/Spill Control Section, p. 2 of 2.

¹¹ USEPA FOSC Coordination email dated March 11, 2021.

Tow Boat presented its invoice to the RP on September 19, 2020 and stated that no action has been taken by the RP to pay Tow Boat's uncompensated removal costs.¹² Tow Boat presented its uncompensated removal cost claim to the National Pollution Funds Center (NPFC) for \$7,200.00.¹³ The NPFC has thoroughly reviewed all documentation submitted with the claim, analyzed the applicable law and regulations, and after careful consideration, has determined that \$7,200.00 is compensable and offers this amount as full compensation of this claim.¹⁴

I. INCIDENT, RESPONSIBLE PARTY AND RECOVERY OPERATIONS:

Incident

On September 19, 2020, Mr. [REDACTED], Harbor Master of Tahoe Keys Marina, reported to the NRC via report # 1287773 that a recreational vessel was sinking at the Tahoe Keys Marina.¹⁵ Tahoe Keys Marina is located on South Lake Tahoe, a navigable waterway of the United States.

Responsible Party

In accordance with the Oil Pollution Act of 1990, the owner of the sunken vessel (CF-9143-UZ) Hull# FGE24009A494 is identified as the Responsible Party (RP) for the incident.¹⁶ After Tow Boat US removed the vessel from the water, it located the vessel registration paperwork which identified Mr. [REDACTED] as the registered owner.¹⁷ On February 20, 2021, the NPFC issued a Responsible Party Notification Letter to Mr. [REDACTED].¹⁸ A Responsible Party Notification letter notifies the owner and/or operator that a claim was presented to the National Pollution Funds Center (NPFC) seeking reimbursement of uncompensated removal costs incurred as a result of response services performed that resulted from a vessel or facility that was identified as the source of a discharge or substantial threat of a discharge of oil to navigable waters of the United States.

Recovery Operations

On September 19, 2020, the Harbor Master and an employee of the Tahoe Keys Marina boomed off the contaminated area around boat slip # Emerald B-18 with oil absorbent boom and absorbent pads.¹⁹ The Harbor Master contacted Tow Boat to remove the sunken vessel out of the slip.²⁰

On September 19, 2020 at 9:45 a.m., local time, Tow Boat U.S. arrived on scene with oil boom and oil absorbent pads. Tow Boat found the vessel submerged in the Emerald B-18 boat

¹² Optional OSLTF Claim Form, questions 5 and 6 and signed by [REDACTED], page 1 of 3 of the claim submission.

¹³ 33 CFR 136.103(c)(2); Tow Boat claim submission received on February 17, 2021.

¹⁴ 33 CFR 136.115.

¹⁵ NRC Report # 1287773 dated September 19, 2020.

¹⁶ USCG Sector San Francisco MISLE Case ID: 1236658, Situation Report dated September 19, 2020 and OSPR Spill Incident Information DFG # 20FG1652.

¹⁷ Email from Tahoe Keys Marina providing RP identification explanation.

¹⁸ NPFC RP Notification Letter sent to Mr. [REDACTED] dated February 20, 2021.

¹⁹ Tahoe Keys Marina Sunken Vessel Report dated September 19, 2020, Manifest of Materials Used for Vessel Salvage/Spill Control Section, p. 2 of 2.

²⁰ Tahoe Keys Marina Sunken Vessel Report dated September 19, 2020, p. 1 of 2.

slip. Tow Boat attached lift bags to various vessel locations²¹ in order to raise the gunnels above the water. Gas pumps were used to try and dewater the vessel but the vessel continued to take on water. Tow Boat transported the vessel using lift bags to the Tahoe Keys Marina gantry for haul-out.²²

The FOSC agrees that the actions taken by both the Tahoe Keys Marina and Tow Boat US were necessary to prevent, minimize or mitigate the effects of the incident and the actions taken were consistent with the National Contingency Plan (NCP).²³

II. CLAIMANT AND RP:

Absent limited circumstances, the federal regulations implementing the Oil Pollution Act of 1990 (OPA)²⁴ require all claims for removal costs or damages must be presented to the responsible party before seeking compensation from the NPFC.²⁵ When an RP denies a claim or has not settled a claim after 90 days of receipt, a claimant may elect to present its claim to the NPFC.²⁶ As of the crafting of this Determination, Mr. ██████████'s boat remains at the Tahoe Keys Marina until he settles his debt with Tahoe Keys Marina.²⁷

III. CLAIMANT AND NPFC:

When an RP has not settled a claim after ninety days of receipt, a claimant may elect to present its claim to the NPFC.²⁸ On February 17, 2021, the NPFC received a claim for uncompensated removal costs from Tow Boat U.S. The claim included an OSLTF Claim Form and the Tow Boat U.S. invoice dated Septemeber 19, 2020 in the amount of \$7,200.00.²⁹

IV. DETERMINATION PROCESS:

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).³⁰ 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.³¹ The NPFC may rely upon, is not bound by the findings of fact, opinions,

²¹ Tow Boat U.S. Salvage Invoice dated September 19, 2020, p. 3 of 3 of the claim submission, Comments Section.

²² Tow Boat U.S. Salvage Invoice dated September 19, 2020, p. 3 of 3 of the claim submission, Comments Section.

²³ USEPA FOSC Coordination email dated March 11, 2021.

²⁴ 33 U.S.C. § 2701 *et seq.*

²⁵ 33 CFR 136.103.

²⁶ *Id.*

²⁷ Email from Tahoe Keys Marina, Harbor Master to the NPFC dated March 18, 2021.

²⁸ 33 CFR 136.103.

²⁹ Tow Boat claim submission received on February 17, 2021.

³⁰ 33 CFR Part 136.

³¹ *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)).

or conclusions reached by other entities.³² 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:

An RP is liable for all removal costs and damages resulting from either an oil discharge or a substantial threat of oil discharge into a navigable water of the United States.³³ An RP's liability is strict, joint, and several.³⁴ When enacting OPA, Congress "explicitly recognized that the existing federal and states laws provided inadequate cleanup and damage remedies, required large taxpayer subsidies for costly cleanup activities and presented substantial burdens to victim's recoveries such as legal defenses, corporate forms, and burdens of proof unfairly favoring those responsible for the spills."³⁵ OPA was intended to cure these deficiencies in the law.

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."³⁶ 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."³⁷

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan (NCP).³⁸ The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.³⁹ 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.⁴⁰

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;

³² 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).

³³ 33 U.S.C. § 2702(a).

³⁴ See, H.R. Rep. No 101-653, at 102 (1990), reprinted in 1990 U.S.C.C.A.N. 779, 780.

³⁵ *Apex Oil Co., Inc. v United States*, 208 F. Supp. 2d 642, 651-52 (E.D. La. 2002) (citing S. Rep. No. 101-94 (1989), reprinted in 1990 U.S.C.C.A.N. 722).

³⁶ 33 U.S.C. § 2701(31).

³⁷ 33 U.S.C. § 2701(30).

³⁸ See generally, 33 U.S.C. § 2712(a) (4); 33 U.S.C. § 2713; and 33 CFR Part 136.

³⁹ 33 CFR Part 136.

⁴⁰ 33 CFR 136.105.

- (c) That the actions taken were directed by the FOOSC or determined by the FOOSC to be consistent with the National Contingency Plan.
- (d) That the removal costs were uncompensated and reasonable.⁴¹

Upon review and adjudication of the claim submission, the NPFC made several requests for additional information to Tow Boat in support of its claim.⁴² Tow Boat was unable to provide the requested additional information and stated that Tahoe Keys Marina would email him all of the relevant documentation.⁴³ On March 9, 2021, the NPFC had not received the requested information from Tow Boat U.S. so it reached out to the Tahoe Keys Marina Harbor Master and specifically requested that they provide the necessary documentation in support of Tow Boat's claim.⁴⁴ The Harbor Master provided its Sunken Vessel Report,⁴⁵ he also provided an email to the California Water Board notifying them of the incident,⁴⁶ and seven (7) pictures of the sunken vessel during Tow Boat's on scene response as well as pictures of the boom in the water.⁴⁷

During the adjudication, the NPFC requested a published, Rate Schedule from Tow Boat to support the pricing contained in its invoice.⁴⁸ Since Tow Boat does not have a rate schedule to provide for this particular response, the NPFC compared a, 2019 Tow Boat U.S., Lake Tahoe invoice from a prior incident to the current Tow Boat U.S. Lake Tahoe, invoice that was submitted to the NPFC with this claim. Upon comparison, the NPFC determined the billed costs in the 2019 incident are similar to the rates charged for this incident and as such, has determined the pricing to be reasonable.

Should Tow Boat U.S. decide to submit future claims to the NPFC, it is highly encouraged that Tow Boat U.S. ensures it provides a written pricing schedule or agreement to demonstrate that the prices charged were divulged to the client prior to providing the services that may become subject of a future claim submission.

Upon completion of its adjudication, the NPFC has determined that the costs incurred by Tow Boat U.S. Lake Tahoe, and submitted herein are compensable removal costs based on the supporting documentation provided by various entities and that the actions taken were properly coordinated with the FOOSC and determined to be reasonable, necessary and consistent with the NCP.⁴⁹

The amount of compensable costs is **\$7,200.00**.

⁴¹ 33 CFR 136.203; 33 CFR 136.205.

⁴² Email to [REDACTED] from the NPFC dated February 17, 2021.

⁴³ Email from [REDACTED] to NPFC dated February 22, 2021.

⁴⁴ Email to Mr. [REDACTED], Tahoe Keys Marina, from NPFC dated March 9, 2021.

⁴⁵ Tahoe Keys Marina Sunken Vessel Report dated September 19, 2020.

⁴⁶ Email from Tahoe Keys Marina to [REDACTED] at Water Boards, California dated September 23, 2020.

⁴⁷ Email from Tahoe Keys Marina to NPFC containing Sunken Vessel Report dated September 19, 2020 and seven pictures attached to the email dated March 9, 2021.

⁴⁸ Email to Tow Boat from the NPFC dated February 17, 2021

⁴⁹ Email from USEPA FOOSC, dated March 11, 2021.

VI. CONCLUSION:

Based on a comprehensive review of the record, the applicable law and regulations, and for the reasons outlined above, Tow Boat U.S., Lake Tahoe's request for uncompensated removal costs is approved in the amount of **\$7,200.00**.

This determination is a settlement offer,⁵⁰ the claimant has 60 days in which to accept this offer. Failure to do so automatically voids the offer.⁵¹ The NPFC reserves the right to revoke a settlement offer at any time prior to acceptance.⁵² Moreover, this settlement offer is based upon the unique facts giving rise to this claim and is not precedential.

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| Claim Supervisor: |  |
| Date of Supervisor's review: | <i>3/24/2021</i> |
| Supervisor Action: | <i>Offer Approved</i> |

⁵⁰ 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).

⁵¹ 33 CFR § 136.115(b).

⁵² 33 CFR § 136.115(b).