

## CLAIM SUMMARY / DETERMINATION FORM

Date	: 3/9/2010
Claim Number	: 910026-001
Claimant	: Southern Marine Towing
Type of Claimant	: Corporate (US)
Type of Claim	: Removal Costs
Claim Manager	: ██████████
Amount Requested	: \$14,100.00

### **FACTS:**

**1. Oil Spill Incident:** On July 5, 2009, a houseboat was found sinking at the Lakesite Marina in Tennessee. The Dallas Bay Fire Department (Dallas Bay FD) called the Hamilton County HazMat team. They detected a sheen around the vessel from the discharge of its fuel, and deployed boom. Southern Marine Towing (Southern Marine) was also called by the Dallas Bay FD via a 911 dispatch call in order to raise the vessel to allow the marina and boat ramp to resume normal operations. The Marina is located on Chickamauga Lake, which is a reservoir of the Tennessee River, a navigable waterway of the United States.

Southern Marine arrived at the incident site and was told by the Tennessee Wildlife Resource Agency (TWRA) and the Tennessee Emergency Management Agency (TEMA) that the vessel had to be lifted due to a possible pollution threat and because it was a navigational hazard. The claimant deployed two towboats, two captains, two laborers and divers for the salvage. Their work included a pump out, loading the vessel, transporting the vessel to storage and disposal of the vessel. They used several pumps, air bags and divers to raise the vessel. A wrecker was called to the site to assist with the loading of the vessel. The vessel was then put on a trailer and taken to a storage facility for the determination of the vessel owner. According to the Claimant, after several weeks, the TWRA informed that they were not able to determine the owner of the vessel and instructed the Claimant to dispose of the vessel.

**2. The Claim:** On October 6, 2009, the Claimant submitted a removal cost claim to the National Pollution Funds Center (NPFC) for reimbursement in the amount of \$14,100.00 for their uncompensated removal costs. The claim consists of a single invoice which is broken down as follows: salvage = \$10,500.00; loading of boat = \$700.00; transport of boat = \$800.00; and disposal of boat = \$2,100.00 and the TWRA Boating Accident Report, claimant's summary of the events, and photographs taken at the incident site.

The Responsible Party (RP) has not been determined. It is important to note that the NPFC did contact the last owner of record for the boat who advised that they sold the boat.

### **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].

33 U.S.C. §2713(d) provides that “If a claim is presented in accordance with this section, including a claim for interim, short-term damages representing less than the full amount of damages to which the claimant ultimately may be entitled, and full and adequate compensation is unavailable, a claim for the uncompensated damages and removal costs may be presented to the Fund.”

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. FOSC coordination has not been provided.
2. The incident did not involve the discharge of “oil” as defined in OPA 90, 33 U.S.C. § 2701(23), to navigable waters. The vessel initially had some residual sheening although no oil spill response actions were taken.
3. 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.
4. The claim was submitted on time.
5. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined that the costs presented were not for actions in accordance with the NCP and that costs for these actions were not reasonable and allowable under OPA and 33 CFR § 136.205 as set forth below as the primary purpose of the salvage was to remove the hazard to navigation.

**B. Analysis:**

The claimant seeks reimbursement of uncompensated costs for salvage services provided in response to a sunken houseboat at the Lakesite Marina on the Chickamauga Lake. Claimant was called to raise the vessel to allow the marina and boat ramp to resume normal operations. Based on the information gathered regarding this claim submission, the engine parts of the houseboat had previously been removed well before the incident, and the fuel tanks were empty. Claimant’s primary response was for salvage of the vessel and not oil spill response. Therefore this claim is denied as the costs associated with this claim are not OPA compensable costs.

In summary, the total amount claimed for salvage services requested by the claimant is \$14,100.00. The NPFC hereby determines that the claim is denied because claimant’s costs are not compensable under OPA.

**AMOUNT: \$0.00**

Claim Supervisor: [REDACTED]

Date of Supervisor’s review: *3/11/10*

Supervisor Action: *Denial approved*

Supervisor’s Comments: