

August 30, 2010

Mr. Kenneth Feinberg
Administrator
Gulf Coast Claims Facility
P.O. Box 9658
Dublin, OH 43017-4958

Via E-Mail [info@gccf-claims.com]

Re: Questions Regarding the Eligibility of Gulf Coast Oil Spill Claims Filed by Recreational Marine Businesses and Individuals

Dear Mr. Feinberg:

This letter is to ask for general claim guidance from you in your capacity as the Administrator of the Gulf Coast Claims Facility ("GCCF") for the BP / Deepwater Oil Spill. In addition, this letter is to provide the GCCF with information on the effect of the Spill on recreational marine manufacturing businesses.

We understand that the GCCF is the official way for individuals and businesses to file claims for costs and damages incurred as a result of the oil discharges due to the Deepwater Horizon Incident on April 20, 2010 ("the Spill"). The GCCF is administered by you, Kenneth R. Feinberg ("the Claims Administrator"), a neutral fund administrator responsible for all decisions relating to the administration and processing of claims by the GCCF. We understand that all claims filed with BP before August 23, 2010, have been transferred to the GCCF for ongoing review and determination.

The National Marine Manufacturers Association ("NMMA") is the leading national recreational marine trade association, with nearly 1,500 members involved in every aspect of the boating industry. Many of our members have inquired about the eligibility of specific claims under the GCCF. We do appreciate the [general guidance](#) released by GCCF on August 23, 2010 and the more specific information related to [lost profits provided](#) on the GCCF website.¹ However, we find that we are unable to answer some of our members' questions regarding the GCCF -- such as how best to present claims and what claims will be eligible. Thus, we have compiled our

¹ This guidance is available at the GCCF website at <http://www.gulfcoastclaimsfacility.com/>.

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member's questions below and request that the GCCF provide general guidance to the recreational marine industry by answering these questions.

Recreational Boating Industry Background

NMMA members manufacture over 80 percent of recreational boats, engines, trailers, accessories, and gear used in the United States. Recreational boating contributes significantly to the U.S. economy. In particular, the **Gulf Coast States** of Louisiana, Florida, Texas, Alabama, and Mississippi **generate over \$19.5 billion in economic output** and serve more than **2.3 million registered recreational boat owners** in the region. Nationwide, recreational boating remains an important contributor to the U.S. economy, generating \$30.8 billion in sales and services during 2009. In 2008, there were 5,284 recreational marine manufacturers, employing more than 135,900 people and generating 31.3 billion in revenue. There were more than 33,000 retail/service boating businesses, employing 217,718 people in 2008. In addition, there were 12.7 million boat registrations in the U.S. in 2008.

Economic Damages Reported by Recreational Marine Businesses

Boat manufacturers, boat dealers, marinas, and marine retail product stores have all sustained economic damages due to the Spill. The recreational marine industry is dependent on a clean and healthy marine environment and on boaters' actual and perceived access to the waterways and recreational fishing to support sales. To get a better understanding of our industry's losses, NMMA conducted a survey last month to assess the impact of the oil spill on sales and operations of recreational marine manufacturers.² These manufacturers are located nationwide, demonstrating the nationwide economic impact of the Spill. Below is a quick summary of the results of our survey:

- 3 of 5 recreational marine businesses have been affected by the Oil Spillage.
- Nearly 4 of 5 companies anticipate some effect from the Oil Spillage on their business through the remainder of the year.
- 76% of companies had forecasted sales growth in 2010 prior to the Oil Spillage.
- 70% of companies have downwardly revised their 2010 sales projection as a direct result of the Oil Spillage.
- 64% of these companies downwardly revised their projections by 5-20%.
- 68% of companies were told that a cancellation was directly due to the Oil Spillage.
- 90% of companies have less than 500 employees.

² NMMA member chief executives (178) were surveyed from June 29, 2010 – July 22, 2010. The full report can be found at:

<http://www.nmma.net/assets/cabinets/Cabinet421/2010%20BP%20Survey.pdf>

Accordingly, our members need to know whether their claims for economic losses will be eligible for the six-month emergency financial assistance payment and/or the long-term settlement payment. Below are our members' questions regarding the expected treatment of their claims:

Economic Loss Claims

Our members are recreational boat and associated equipment manufacturers that are located both in and outside of the Gulf region. These manufacturers generate an important percentage of their revenue from selling their products to boat dealers and retailers in the region. However, due to the impact of the oil spill, these manufacturers have seen a decline in Gulf Coast sales and cancellation of orders.

1. Please outline the basic requirements for the filing of an economic loss claim to the GCCF, including the documents needed to be provided to prove claims and the length of the look back period.
2. Will recreational boat and associated equipment manufacturers, regardless of where they are located, who sell to boat dealers and retailers in the Gulf region and who have experienced a decline in sales, or canceled orders, qualify for claim payment?
3. Will boat dealers and other retailers located in the Gulf region, who sell boats and marine products in the region and who have experienced a decline in sales, or canceled orders, also qualify for claim payment?

In addition, recreational boat and associated equipment manufacturers have experienced an increase in warranty claims due to oil fouling of boats located in the Gulf Coast states.

4. Will recreational boat and associated equipment manufacturers who pay on warranty claims due to oil fouling of boats and associated equipment used in the Gulf Coast be eligible for reimbursement on those claims?

Boat livery operators, boat charter companies, and marinas, marine retail product stores located in the Gulf region, thrive off the income generated by the Gulf's large tourism industry. These companies, operators, and stores have lost profit as consumers have decreased or ceased travel to the Gulf States and thus, decreased or ceased buying recreational marine products and services in the Gulf States.

5. Will Boat livery operators, boat charter companies, marinas, and marine retail product stores located in the Gulf region that experience a decline in sales associated with the substantial decrease in tourism and transient boating directly resulting from the spill, be eligible for claim payment?

In addition to those basic questions, NMMA members also have questions regarding the different types of assistance available.

***Economic Loss Claims for Six-Month Emergency Financial Assistance Payment
vs. Long-Term Settlement Payment***

NMMA understands that in addition to the six-month emergency financial assistance payment, there is also another compensation option: the long-term settlement payment. We understand that while the six-month emergency payment will be available immediately and will require minimal documentation, the lump sum settlement for long-term damages will be available at a later time and will require additional income statements. Further, claimants who accept the six-month emergency payment are not required to waive their right to file a suit. However, we understand that claimants who accept a settlement for long-term losses are required to waive their right to file a lawsuit.

6. Can you confirm our understanding of the different types of claims?

NMMA also requests answers for all of our questions for *both* the emergency assistance and the final settlement of the losses. *For example*, it would be helpful to know if the data required or the type of claim eligible differs if the claim sought is for emergency six-month financial assistance payment or for final settlement.

7. Are there different claim processes, standards of proof, forms, deadlines etc., for different types of claims (e.g., emergency financial assistance or long term settlement)?

In addition to economic loss questions and process questions, NMMA members have inquired about how BP will compensate for the loss of public access to the waterways.

Loss of Public Access Claims

Although the businesses involved in the recreational marine industry vary from manufacturing to retail sales and services, they all rely on public access to the Gulf Coast, recreational fishing opportunities, and a clean and healthy marine environment. Due to the Spill, the gulf marine environment is severely polluted, and public access to many coastal waters have been restricted at least as a temporary measure. In some cases, marshes will be so stressed that access will be restricted for a longer term.

8. Will claims filed for lost public access by boaters, recreational anglers, tour boat operators, and charter boat captains qualify for emergency financial assistance and/or long-term settlement payment?
9. If not, will the GCCF be responsible for compensating users by creating equivalent public access resources, from parking lots to restrooms to boat ramps, in unaffected areas?

Pending Claims

Lastly, NMMA members have inquired about the status of their pending claims. We understand that the GCCF officially began operating on August 23, 2010. At that time, GCCF will be responsible for all private claims filed by individuals and businesses. However, our members have already filed claims with BP as well submitted supporting documentation for those claims.

10. Will recreational marine manufacturing businesses and individuals who have already submitted a claim to BP prior to August 23, 2010, only need to open a new complaint file with the GCCF or will they need to open a new complaint file as well as re-submit all of their supporting documentation?

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NMMA greatly appreciates your guidance on this matter. The information provided by GCCF on the eligibility of claims filed by recreational marine businesses will greatly assist NMMA in its efforts to provide our members with reliable, accurate and actionable information. NMMA stands ready to assist GCCF should it have any concerns about the questions discussed above. Please contact me at 202-737-9766 or csquires@nmma.org for any additional information.

Sincerely,



Cindy L. Squires, Esq.
Chief Counsel for Public Affairs and Director of Regulatory Affairs