

CLAIM DETERMINATION

Claim Number:	J19004-0001
Claimant:	Storm Chasers Marine Services
Type of Claimant:	OSRO
Type of Claim:	Removal Costs
Claim Manager:	██████████
Amount Requested:	\$45,233.67
Action Taken:	Offer in the amount of \$45,233.67

EXECUTIVE SUMMARY:

The vessel NORDIC VIKING discharged oil into the Seward Harbor, in Seward, Alaska, a navigable waterway of the US. Mr. ██████████ (“Mr. ██████████” or “RP”) owned and operated the NORDIC VIKING and is the responsible party (RP) as defined by the Oil Pollution Act of 1990.¹² Storm Chasers Marine Services, Inc. (“Storm Chasers” or “claimant”), was hired by the Responsible Party (RP)³ and commenced cleanup operations at the marina, in Seward Harbor. Storm Chasers presented its uncompensated removal costs to Mr. ██████████ via email on December 12, 2018.⁴⁵ Mr. ██████████ declined payment via email.⁶ Storm Chasers presented its uncompensated removal cost claim to the National Pollution Funds Center (NPFC) for \$45,233.67.⁷ The NPFC has thoroughly reviewed all documentation submitted with the claim, analyzed the applicable law and regulations, and after careful consideration has determined, the full amount of the claimant’s requested, \$45,233.67 is compensable and the NPFC offers this amount as full and final compensation of this claim.⁸

I. INCIDENT, RESPONSIBLE PARTY AND RECOVERY OPERATIONS:

Incident

At 10:30 a.m. on December 9, 2018, the National Response Center received a report of a sunken commercial fishing vessel, NORDIC VIKING, releasing an unknown amount of oil in to the Seward Harbor, in Resurrection Bay, a navigable waterway of the United States, in Seward, Alaska.⁹ Some of the oil migrated in to Scheffler Creek, and the lagoon.¹⁰

Pollution Responders from U.S. Coast Guard, Sector Anchorage (USCG), received NRC Report # 1232468 regarding the sunken vessel. Alaska Department of Environmental

¹ 33 U.S.C. § 2701(32).

² December 11, 2018 Notice of Federal Assumption to Mr. ██████████ as Responsible Party (RP).

³ Alaska Department of Environmental Conservation, Situation Report #1 dated December 1, 2018, see Source Control section on page 1.

⁴ 33 CFR 136.103(c).

⁵ January 31, 2019 email from Claimant to NPFC providing presentment verification information.

⁶ RP Email to ██████████ (Storm Chasers) dated December 19, 2018.

⁷ Storm Chasers claim submission dated January 5, 2019.

⁸ 33 CFR 136.115.

⁹ NRC Report #1232468

¹⁰ USCG Pollution Report (CG POLREP) 1; Alaska DEC Situation Reports One through Four and Final dated, December 21, 2018.

Conservation (ADEC) was contacted by the City of Seward Harbormaster the same day and responded as well in its capacity as the State On Scene Coordinator (SOSC).¹¹

USCG personnel arrived on scene on December 9, 2018. Two ADEC responders arrived on scene December 10, 2018 and worked with Mr. [REDACTED] to deploy boom and bird deterrents in Scheffler Creek and the lagoon.¹²

Responsible Party

The USCG and ADEC identified Mr. [REDACTED] as the responsible party for the incident.¹³ Mr. [REDACTED] owned and operated the NORDIC VIKING at the time of the incident. The NORDIC VIKING is an undocumented fishing vessel which was moored to the T Dock at Seward Boat Harbor at its time of capsizing.

An unknown amount of marine diesel and other petroleum products were released from the sunken fishing vessel.¹⁴ The vessel had a capacity to hold 2,000 gallons of marine diesel as well as a 500-gallon gasoline tank on the stern deck and an unknown amount of engine oils.¹⁵ Mr. [REDACTED] reported to the responders, the vessel's hull tanks had between 600 and 700 gallons of marine diesel on board and the deck tank contained 50 gallons of gasoline, as well as other types of petroleum products.¹⁶

The cause of the vessel sinking is unknown.¹⁷

Recovery Operations

U.S. Coast Guard Sector Anchorage was the Federal On-Scene Coordinator (FOSC) and oversaw the response, removal, and salvage operations. On December 9, 2018, the RP hired Storm Chasers to clean up the oil, conduct dive operations, and to plug vents in the hull's fuel tanks.¹⁸ December 9, 2018, the Harbor Master deployed absorbent boom and Storm Chasers deployed containment boom. Initially, the containment boom failed after the vessel shifted and pulled the boom under.¹⁹ Storm Chasers plugged the vessel's hull fuel tank vents and retrieved the boom then redeployed it.²⁰ December 11, 2018, USCG issued Mr. [REDACTED] a Notice of Federal Assumption (NOFA) because his actions to abate the threat and to remove the oil were unsatisfactory to the FOSC.²¹

¹¹ USCG Pollution Report (CG POLREP) 1; Alaska DEC Situation Reports One through Four and Final dated, December 21, 2018.

¹² Alaska DEC Situation Report, Four and Final.

¹³ USCG Pollution Report (CG POLREP) 1; Alaska DEC Situation Reports One through Four and Final dated, December 21, 2018.

¹⁴ Alaska DEC Situation Report, Four and Final.

¹⁵ Alaska DEC Situation Report, Four and Final.

¹⁶ Alaska DEC Situation Report, Four and Final.

¹⁷ Alaska DEC Situation Report, Four and Final.

¹⁸ Alaska DEC Situation Report, Four and Final

¹⁹ Alaska DEC Situation Report, Four and Final.

²⁰ Alaska DEC Situation Report, Four and Final.

²¹ December 11, 2018 USCG Notice of Federal Assumption.

On December 12, 2018, Storm Chasers removed the 500-gallon deck tank.²² December 13, 2018, Mr. [REDACTED]'s insurance contracted with Global Diving and Salvage, Inc. (Global) to complete the salvage operations.²³ December 14, 2018, BOA contractor, Alaska Chadux Corporation (Chadux) was retained, under the Federal Project Number (FPN) for pollution response.²⁴ Chadux deployed a second ring of boom around the vessel.²⁵ Chadux supported pollution mitigation related to salvage operations.²⁶

Storm Chasers was a vital part of the initial response, by mitigating the threat of further damages by providing personnel, work boat with crane, containment boom, oil absorbent boom, and absorbent pads.²⁷ Storm Chasers' boom remained on scene until December 26, 2018.

II. CLAIMANT AND RP:

Absent limited circumstances, the federal regulations implementing the Oil Pollution Act of 1990 (OPA)²⁸ require all claims for removal costs or damages must be presented to the responsible party before seeking compensation from the NPFC.²⁹

Storm Chasers presented its costs to Mr. [REDACTED] first via email on December 12, 2018³⁰ and received an email reply from Mr. [REDACTED] on December 19, 2018 indicating that he had no pollution coverage and was financially incapable of paying Storm Chasers invoice.³¹ Storm Chasers' claim submission combined all costs for its labor, equipment, and materials within its invoice, news articles relating to the spill, and ADEC Situation Reports.

III. CLAIMANT AND NPFC:

When an RP has not settled a claim after 90 days of receipt, a claimant may elect to present its claim to the NPFC.³² On January 28, 2019, the NPFC received a claim for uncompensated removal costs from Storm Chasers dated January 5, 2019. The claim included an invoice for Storm Chasers totaling \$45,223.57. However, during the adjudication process, the NPFC Claims Manager noticed the claimant inverted its numbers within its sum certain request. The claimant requested \$45,223.67 when its invoice was actually in the amount of \$45,233.67. On March 26, 2019, the NPFC Claims Manager sent Storm Chasers an email indicating the difference between its requested sum certain and the actual amount of its invoice. The NPFC Claims Manager asked Storm Chasers if it intended to revise its sum certain, based on the invoiced amount within its claim submission.³³ On March 27, 2019, Storm Chasers indicated via email its intent is to seek

²² Alaska DEC Situation Report, Four and Final.

²³ USCG Pollution Report (CG POLREP) 3; Alaska DEC Situation Report Four and Final.

²⁴ USCG Pollution Report (CG POLREP) 3; Alaska DEC Situation Report Four and Final.

²⁵ Alaska DEC Situation Report, Four and Final.

²⁶ Alaska DEC Situation Report. Four and Final.

²⁷ Storm Chasers' invoice # 169441.

²⁸ 33 U.S.C. § 2701 *et seq.*

²⁹ 33 CFR 136.103.

³⁰ January 31, 2019 email from Claimant to NPFC providing presentment verification information.

³¹ [REDACTED] email to [REDACTED].

³² 33 CFR 136.103.

³³ NPFC email to [REDACTED], dated March 26, 2019.

the total amount of the invoice.³⁴ The total amount claimed is \$45,233.67 based on Storm Chasers' invoice.³⁵

IV. DETERMINATION PROCESS:

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).³⁶ As a result, 5 U.S.C. § 555 (e) requires the NPFC to provide a brief statement explaining its determinations. This determination is issued to satisfy that requirement for the Claimant's claim against the OSLTF.

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.³⁷ The NPFC may rely upon, is not bound by the findings of fact, opinions, or conclusions reached by other entities.³⁸ 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 finds facts and makes its determination based on the preponderance of the credible evidence.

V. DISCUSSION:

A responsible party 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.³⁹ A responsible party's liability is strict, joint, and several.⁴⁰ 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."⁴¹ OPA was intended to cure these deficiencies in the law.

OPA provides a mechanism for compensating parties who have incurred removal cost 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."⁴² 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

³⁴ [REDACTED] email to NPFC, dated March 27, 2019.

³⁵ Storm Chasers' invoice.

³⁶ 33 CFR Part 136.

³⁷ 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).

³⁸ 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).

³⁹ 33 U.S.C. § 2702(a).

⁴⁰ See, H.R. Rep. No. 101-653, at 102 (1990), reprinted in 1990 U.S.C.C.A.N. 779, 780.

⁴¹ *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.).

⁴² 33 U.S.C. § 2701(31).

mitigate damage to the public health or welfare, including, but not limited to fish, shellfish, wildlife, and public and private property, shorelines, and beaches.”⁴³

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan.⁴⁴ The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.⁴⁵ 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.⁴⁶

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 FOSC or determined by the FOSC to be consistent with the National Contingency Plan.
- (d) That the removal costs were uncompensated and reasonable.⁴⁷

The NPFC analyzed each of these factors and determined the costs incurred by Storm Chasers and submitted herein are compensable removal costs based on the supporting documentation provided. The NPFC has determined that the costs invoiced were billed in accordance with the contracted rates. All costs approved for payment were verified as being invoiced at the appropriate rate sheet pricing, including all out of pocket expenses. All approved costs were supported by adequate documentation which included invoices and proofs of payment.

The amount of compensable costs is \$45,233.67.

VI. CONCLUSION:

Based on a comprehensive review of the record, the applicable law and regulations, and for the reasons outlined above, Storm Chasers’ request for uncompensated removal costs in the amount of \$45,233.67 is approved.

⁴³ 33 U.S.C. § 2701(30).



⁴⁴ See generally, 33 U.S.C. § 2712 (a)(4); 33 U.S.C. § 2713; and 33 CFR Part 136.

⁴⁵ 33 CFR Part 136.

⁴⁶ 33 CFR 136.105.

⁴⁷ 33 CFR 136.203; 33 CFR 136.205.

Because this determination is a settlement offer⁴⁸, the claimant has 60 days in which to accept; the failure to do so automatically voids the offer.⁴⁹ The NPFC reserves the right to revoke a settlement offer at any time prior to acceptance.⁵⁰ Moreover, this settlement offer is based upon the unique facts giving rise to this claim and is not precedential.

	
Claim Supervisor: 	
Date of Supervisor's review: <i>4/3/19</i>	
Supervisor Action: <i>Approved</i>	

⁴⁸ 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 compensated 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).

⁴⁹ 33 CFR §136.115(b).

⁵⁰ *Id.*