

## CLAIM SUMMARY / DETERMINATION<sup>1</sup>

<b>Claim Number:</b>	UCGP922017-URC001
<b>Claimant:</b>	[REDACTED]
<b>Type of Claimant:</b>	Individual
<b>Type of Claim:</b>	Removal Costs
<b>Claim Manager:</b>	(b) (6)
<b>Amount Requested:</b>	\$16,000.00
<b>Action Taken:</b>	Denied

### EXECUTIVE SUMMARY:

On July 5, 2022, the National Response Center (NRC) received three reports of an unknown sheen located in two adjacent waterways. The waterways are identified as Black Bay and New Orleans Sound; both are navigable waters of the United States (US).<sup>2</sup>

In accordance with the Oil Pollution Act of 1990 (OPA),<sup>3</sup> Helis Oil & Gas, the owner and operator of a bulk pipeline, was identified as the responsible party (RP).<sup>4</sup> Upon investigation, the Federal On Scene Coordinator's Representative (FOSCR) issued a Notice of Federal Interest ("NOFI") to the RP.<sup>5</sup> The State On Scene Coordinator (SOSC) for this incident was Louisiana Department of Environmental Quality (LADEQ), who also identified Helis Oil & Gas as the responsible party.<sup>6</sup>

Mr. [REDACTED] ("Claimant") presented his claim to the National Pollution Funds Center (NPFC) for \$16,000.00 on July 20, 2022, seeking \$2,000.00 in uncompensated removal costs; \$500.00 in loss of subsistence use costs; \$12,000.00 in loss of profit & earnings capacity costs; and \$1,500.00 in natural resource damages.<sup>7</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 the claim must be denied.

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<sup>1</sup> This determination is written for the sole purpose of adjudicating a claim against the Oil Spill Liability Trust Fund (OSLTF). This determination adjudicates whether the claimant is entitled to OSLTF reimbursement of claimed removal costs or damages under the Oil Pollution Act of 1990. This determination does not adjudicate any rights or defenses any Responsible Party or Guarantor may have or may otherwise be able to raise in any future litigation or administrative actions, to include a lawsuit or other action initiated by the United States to recover the costs associated with this incident. After a claim has been paid, the OSLTF becomes subrogated to all of the claimant's rights under 33 U.S.C. § 2715. When seeking to recover from a Responsible Party or a Guarantor any amounts paid to reimburse a claim, the OSLTF relies on the claimant's rights to establish liability. If a Responsible Party or Guarantor has any right to a defense to liability, those rights can be asserted against the OSLTF. Thus, this determination does not affect any rights held by a Responsible Party or a Guarantor.

<sup>2</sup> See, NRC Report Number 1340698 dated July 6, 2022; NRC Report Number 1340706 dated July 6, 2022; and NRC Report Number 1340713 dated July 6, 2022.

<sup>3</sup> 33 U.S.C. § 2701(32).

<sup>4</sup> See, USCG Notice of Federal Interest (NOFI) dated July 6, 2022; Email fm CPO (b) (6) dated July 26, 2022; and Louisiana Department of Environmental Quality (LADEQ) Incident Report # 209427 dated September 22, 2022.

<sup>5</sup> USCG Notice of Federal Interest (NOFI) dated July 6, 2022.

<sup>6</sup> Louisiana Department of Environmental Quality (LADEQ) Incident Report # 209427 dated September 22, 2022.

<sup>7</sup> Claim submission dated July 19, 2022.

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

### ***Incident***

On July 5, 2022, a bulk pipeline belonging to Helis Oil & Gas, discharged approximately 25 gallons of crude oil into Black Bay, a navigable waterway of the United States, causing a visible sheen on the surface of the water. A pipeline failure caused a flow line to leak a crude oil/water mixture into Black Bay, which flows into the Gulf of Mexico.<sup>8</sup>

### ***Responsible Party***

Helis Oil and Gas Company, LLC (“Helis” or “RP”) is the owner of a bulk pipeline that discharged oil into Black Bay.<sup>9</sup> Helis hired Fernandes Maritime Consultants, LLC (FMC) for the purpose of accepting claims.<sup>10</sup> The Claimant presented a claim to the RP via its claims administrator in the amount of \$16,000.00 and was received by them on October 16, 2022. FMC provided Mr. (b) (6) claim number FMC22-075978.<sup>11</sup>

### ***Recovery Operations***

On July 6, 2022, Helis’ North Bay platform was shut in when the oil sheen was discovered. Divers deployed on July 9, 2022 in order to install a clamshell clamp and to re-pressure the line. The divers were unable to fully address the leaks in the line at that time. As of September 12, 2022, Jay Cooke of Helis Oil notified LADEQ, in its capacity as the SOSC, that the six inch bulk line at Black Bay had been repaired and returned to service. Helis replaced 240 inches of pipe and installed one clamp. The original report from Helis to the SOSC reported that pipeline released approximately 25 gallons of oil. The SOSC closed the case October 7, 2022.<sup>12</sup>

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

Absent limited circumstances, the federal regulations implementing the Oil Pollution Act of 1990 (OPA)<sup>13</sup> require all claims for removal costs or damages must be presented to the responsible party before seeking compensation from the NPFC.<sup>14</sup> Claimant had failed to do so.

On October 16, 2022, Mr. (b) (6) presented his claim to the RP’s claims administrator in the amount of \$16,000.00 seeking, \$2,000.00 in alleged uncompensated removal costs; \$500.00 in alleged loss of subsistence use costs; \$12,000.00 in alleged loss of profit &

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<sup>8</sup> FOSCR email dated July 20, 2022 with excerpt from MISLE Case # 1310912.

<sup>9</sup> USCG Notice of Federal Interest (NOFI) dated July 6, 2022; Email fm CPO (b) (6) dated July 26, 2022.

<sup>10</sup> Email fm CPO (b) (6) dated July 26, 2022.

<sup>11</sup> Email fm NPFC to RP Claims Administrator dated January 19, 2023.

<sup>12</sup> See, LADEQ Incident Report # 209427 dated September 22, 2022.

<sup>13</sup> 33 U.S.C. § 2701 *et seq.*

<sup>14</sup> 33 CFR 136.103.

earnings capacity costs; and \$1,500.00 in alleged natural resource damages.<sup>15</sup> By the date of this determination, there is no evidence that the RP has either settled or denied the Claimant's costs.

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

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.<sup>16</sup> Claimant presented its claim to the National Pollution Funds Center (NPFC) for \$16,000.00 on July 20, 2022, seeking, \$2,000.00 in alleged uncompensated removal costs; \$500.00 in alleged loss of subsistence use costs; \$12,000.00 in alleged loss of profit & earnings capacity costs; and \$1,500.00 in alleged natural resource damages.<sup>17</sup>

The NPFC notified the claimant that they must first present the claim to the RP before the claim could be adjudicated by the NPFC. Claimant presented its costs to the RP on October 16, 2022.<sup>18</sup> With no proof of settlement of the claim within 90 days or denial of the claim, the NPFC converted the submission into a claim on January 14, 2023.<sup>19</sup>

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

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).<sup>20</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>21</sup> The NPFC may rely upon, is not bound by the findings of fact, opinions, or conclusions reached by other entities.<sup>22</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.

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<sup>15</sup>Claim submission dated July 19, 2022.

<sup>16</sup> 33 CFR 136.103.

<sup>17</sup>Claim submission dated July 19, 2022.

<sup>18</sup> Email fm NPFC to RP Claims Administrator dated January 19, 2023.

<sup>19</sup> Email from NPFC to Claimant dated January 27, 2023.

<sup>20</sup> 33 CFR Part 136.

<sup>21</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>22</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).

## **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.<sup>23</sup> An RP's liability is strict, joint, and several.<sup>24</sup> 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."<sup>25</sup> OPA was intended to cure these deficiencies in the law.

OPA provides a mechanism for compensating parties who have incurred removal costs and damages where the responsible party has failed to do so.

Mr. (b) (6) claimed the following costs: \$2,000.00 for Removal Costs; \$500.00 for Subsistence Use; \$12,000.00 for Profits and Earning Capacity; and \$1,500.00 for Natural Resources for a total claimed amount of \$16,000.00. The claimant did not provide any additional information with their claim except for a signed Claim Form with a general description of the injury from the oil spill.

Additional information was requested by the NPFC on September 21, 2022<sup>26</sup> to determine if the claimant could substantiate any of the claimed costs. On October 6, 2022, Claimant stated they were gathering documents and would send them as soon as they had everything together.<sup>27</sup>

On January 27, 2023, the NPFC provided Claimant 14 days to respond to the NPFC's request for additional information sent on September 21, 2022.<sup>28</sup> Claimant failed to provide any further communications.

Below is an analysis of each claimed OPA category:

### **Removal Costs - \$2,000.00**

Compensation allowable is the total of uncompensated reasonable removal costs for actions taken that were determined by the FOOSC to be consistent with the National Contingency Plan (NCP) or were directed by the FOOSC.

The NPFC requested claimant provide information to prove these costs.<sup>29</sup> No evidence was provided by the claimant.

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<sup>23</sup> 33 U.S.C. § 2702(a).

<sup>24</sup> See, H.R. Rep. No 101-653, at 102 (1990), *reprinted in* 1990 U.S.C.C.A.N. 779, 780.

<sup>25</sup> *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).

<sup>26</sup> Email from NPFC to Claimant dated September 21, 2022.

<sup>27</sup> Email from Claimant to NPFC dated October 6, 2022.

<sup>28</sup> Email from NPFC to Claimant dated January 27, 2023.

<sup>29</sup> Email from NPFC to Claimant dated September 21, 2022.

Claimant failed to provide any evidence they performed response actions to remove oil from this incident. The signed claim submission form states there was “an oil sheen on water over the dead crabs for over a week”. However, Claimant did not provide any evidence their traps were located in the incident. Claimant states they spent “funds to clean traps and move traps” but no evidence was provided of oiled traps, the cost to clean traps, nor that the removal of oil was in accordance with the NCP or directed by the FOOSC. Therefore the claim for removal costs in the amount of \$2,000.00 is denied.

### **Loss of Subsistence Use - \$500.00**

A claim for loss of subsistence use of natural resources may be presented only by a claimant who uses, for subsistence, the natural resources which have been injured, destroyed, or lost, without regard to the ownership or management of resources.

On September 21, 2022 the NPFC requested additional information; specifically for the claimant to:

1. Identify each specific natural resource for which compensation for loss of subsistence use is being claimed (e.g., fish, lobster, crab, etc.);
2. Describe the actual subsistence use you make of each specific natural resource you identify;
3. Describe how and to what extent your subsistence use of the natural resource was affected by the injury to, destruction of, or loss of, each specific natural resource;
4. Describe each effort you made to mitigate your subsistence use loss; and
5. Describe any compensation available to you for the subsistence loss you suffered.

Claimant has not provided any of the requested information above. Therefore the claim for loss of subsistence in the amount of \$500.00 is denied.

### **Profits and Earning Capacity - \$12,000.00**

A claim for loss of profits or impairment of earning capacity must prove: a) that the claimant’s property was injured, destroyed, or lost; b) that the claimant’s income was reduced as a consequence of the oil spill; c) the amount of the claimant’s loss of profits or earnings in comparable periods and during the period when the claimed loss was suffered, as established by income tax returns, financial statements and similar documents. In addition, comparable figures for profits or earnings for the same or similar activities outside of the area affected by the incident also must be established.

On September 21, 2022 the NPFC requested additional information; specifically for the claimant to prove:

1. That your lost profits or earnings were caused by the oil spill and the amount you are claiming is appropriate;
2. That your income was reduced due to the damage or loss of property or natural resources; and how much it was reduced;
3. The amount of profits and earnings you had in similar time periods (aside from the time period you are stating affected your profits or

- income);
4. If alternative employment or business was available to you; and show what, if any, income you received from the alternative employment or business; and
  5. Any saved overhead and other normal expenses not incurred as a result of the oil spill.

Claimant has not provided any of the requested information above. Therefore the claim for loss of profit and earning capacity in the amount of \$12,000.00 is denied.

**Natural Resource Damages - \$1,500.00**

A Natural Resources Claim for uncompensated natural resource damages may be presented only by an appropriate natural resources trustee.

In the NPFC's additional information request dated September 21, 2022, claimant was notified they would have to prove they were a Federal, state, foreign or Indian Tribal Trustee and that as an individual, they may not submit a claim for natural resource damages.

Claimant did not provide any additional information to support their claim for Natural Resource damages. Therefore the claimed \$1,500.00 is denied.

**VI. CONCLUSION:**

Based on a comprehensive review of the record, the applicable law and regulations, and for the reasons outlined above, [REDACTED] s request for compensation in the amount of \$16,000.00 is denied.

[REDACTED]  
Claim Supervisor: [REDACTED]

Date of Supervisor's review: May 10, 2023

Supervisor Action: *Denial Approved*