

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

<b>Claim Number:</b>	UCGP923024-URC001
<b>Claimant:</b>	Alaska Department of Conservation
<b>Type of Claimant:</b>	State
<b>Type of Claim:</b>	Removal Costs
<b>Claim Manager:</b>	(b) (6)
<b>Amount Requested:</b>	\$394.88
<b>Action Taken:</b>	Offer in the amount of \$394.88

### **EXECUTIVE SUMMARY:**

On January 3, 2018, at 9:39 local time, the National Response Center (NRC) received a report that the vessel Sea Quest sank in Aurora Harbor, located on the Gastineau Channel, a navigable waterway of the United States.<sup>2</sup> The Alaska Department of Conservation (“ADEC” or “Claimant”), was the State On Scene Coordinator (SOSC) for the incident and spoke with the Aurora Harbor Master who confirmed that the vessel had sunk and contained a limited amount of fuel.<sup>3</sup>

U.S. Coast Guard (USCG) Sector Juneau, the Federal On Scene Coordinator (FOSC), arrived on scene at 11:20 local time, and verified that the vessel sank and released approximately 1 gallon of diesel fuel into the water.<sup>4</sup> The County and Borough of Juneau (CBJ) had previously impounded the vessel and as such, the FOSC identified it as the RP.<sup>5</sup> CBJ contracted with the Trucano Company (Trucano), to remove and dispose of the vessel.<sup>6</sup> Site work was completed on January 4, 2018 and the vessel was disposed of by Trucano on January 5, 2018.<sup>7</sup>

ADEC submitted its uncompensated removal cost claim to the National Pollution Funds Center (NPFC) in the amount of \$394.88 on May 30, 2023. The NPFC has thoroughly reviewed all documentation submitted with the claim, analyzed the applicable laws and regulations, and after careful consideration has determined that \$394.88 is compensable and offers this amount as full and final compensation of this claim.

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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 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> National Response Center (NRC) Incident Report #1201009 dated January 3, 2018.

<sup>3</sup> Original ADEC Claim Submission dated May 30, 2023.

<sup>4</sup> U.S. Coast Guard SITREP-Pol One dated February 27, 2022.

<sup>5</sup> *Id.* See also, 33 U.S.C. § 2701(32).

<sup>6</sup> Original ADEC Claim Submission dated May 30, 2023.

<sup>7</sup> *Id.*

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

### ***Incident and Recovery Operations***

On January 3, 2018, at 9:39 local time, the National Response Center (NRC) received a report that the vessel Sea Quest sank in the Aurora Harbor, located on the Gastineau Channel, a navigable waterway of the United States.<sup>8</sup> The United States Coast Guard (USCG) Sector Juneau was notified, as was the Alaska Department of Conservation (ADEC).<sup>9</sup> ADEC staff, in their capacity as the State On Scene Coordinator (SOSC), contacted the Aurora Harbor Office and spoke with the Harbor Master who gave the location of the vessel as Float H and verified that the vessel had minimal fuel on board since it was an impounded vessel.<sup>10</sup>

At 11:20 local time, USCG Sector Juneau, as the Federal On Scene Coordinator (FOSC), arrived on scene and noted a 25' rainbow sheen around the vessel and some escaping between the boat slips.<sup>11</sup> CBJ boomed off the area and contracted with Trucano to respond to the incident. All work was completed by January 5, 2018.

### ***Responsible Party***

The Oil Pollution Act identifies the owner or operator of a vessel resulting in an OPA incident to be the Responsible Party (RP) for that incident.<sup>12</sup> In this case, the vessel had been owned by Mr. (b) (6) before it was impounded by CBJ. According to the record, CBJ had impounded the vessel under a local ordinance. NPFC sought the official records documenting the impoundment but were unsuccessful.<sup>13</sup> By all accounts, CBJ had taken ownership of the vessel well before the incident and could be found to be the RP, as the FOSC had done in this case. However, in order for a governmental entity who acquires ownership in the manner CBJ appears to have done, the entity must have "caused or contributed to" the discharge.<sup>14</sup> There is simply not enough information in the record to conclude whether CBJ, by mooring the vessel and leaving it sit at the pier as it did "caused or contributed" to the discharge. Arguments could be made on either side. Coupled with the lack of the documentation regarding

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<sup>8</sup> National Response Center (NRC) Incident Report #1201009 dated January 3, 2018.

<sup>9</sup> USCG SITREP-Pol One dated February 27, 2022.

<sup>10</sup> Original ADEC Claim Submission, dated May 30, 2023.

<sup>11</sup> SITREP-Pol One dated February 27, 2022.

<sup>12</sup> 33 U.S.C. § 2701(32).

<sup>13</sup> Email from CBJ Aurora Harbor Master to NPFC dated June 14, 2023.

<sup>14</sup> [I]n the same manner and to the same extent, both procedurally and substantively, as any nongovernmental entity, including for purposes of liability under section 2702 of this title, any State or local government *that has caused or contributed to a discharge* or substantial threat of a discharge of oil from a vessel or facility ownership or control of which was acquired involuntarily through--

(I) seizure or otherwise in connection with law enforcement activity;

(II) bankruptcy;

(III) tax delinquency;

(IV) abandonment; or

(V) other circumstances in which the government involuntarily acquires title by virtue of its function as sovereign.

33 U.S.C. § 2701(26)(A)(v).

the impoundment, NPFC is not in a position to dispositively identify an RP at this time, nor does it need to, for the purposes of this determination.<sup>15</sup>

## **II. CLAIMANT AND NPFC:**

On May 30, 2023, the NPFC received a claim for \$394.88 from ADEC.<sup>16</sup> ADEC provided the NPFC with an OSLTF claim form, ADEC Spill Summary Report #18119900302, ADEC Invoice # SPAR20181839.<sup>17</sup>

On June 12, 2023, the NPFC requested additional information from ADEC relative to the RP's date of impoundment and any associated documents, and requested labor rate information for ADEC personnel.<sup>18</sup> On June 13, 2023, ADEC responded to the NPFC's request, providing the labor rate documentation but was unable to provide information about the impoundment. ADEC provided the CBJ's website in which to request vessel documentation directly.<sup>19</sup>

## **III. 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.

## **IV. 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

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<sup>16</sup> Original ADEC Claim Submission dated May 30, 2023.

<sup>17</sup> *Id.*

<sup>18</sup> Email from NPFC to Claimant dated June 12, 2023.

<sup>19</sup> Email from ADEC to NPFC dated June 13, 2023, with attachments. Unfortunately, CBJ no longer held records on this impoundment.

<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).

<sup>23</sup> 33 U.S.C. § 2702(a).

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 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.”<sup>26</sup> 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.”<sup>27</sup>

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan (NCP).<sup>28</sup> The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.<sup>29</sup> 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.<sup>30</sup>

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.<sup>31</sup>

The claimant’s submission provided a detailed cost breakdown of claimed personnel expenses and a table providing employee payroll rates for the year associated with the claim. The claimant requested \$394.88 for ADEC personnel labor costs for jointly coordinating cleanup and removal actions with the FOSC. The total amount requested of \$394.88 is supported by the

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<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> 33 U.S.C. § 2701(31).

<sup>27</sup> 33 U.S.C. § 2701(30).

<sup>28</sup> See generally, 33 U.S.C. § 2712 (a)(4); 33 U.S.C. § 2713; and 33 CFR Part 136.

<sup>29</sup> 33 CFR Part 136.

<sup>30</sup> 33 CFR 136.105.

<sup>31</sup> 33 CFR 136.203; 33 CFR 136.205.

documentation provided by the claimant in their submission and has been determined to be consistent with the National Contingency Plan (NCP).<sup>32</sup>

**VI. CONCLUSION:**

Based on a comprehensive review of the record, the applicable law and regulations, and for the reasons outlined above, the Alaska Department of Conservation request for uncompensated removal costs is approved in the amount of \$394.88.

This determination is a settlement offer,<sup>33</sup> the claimant has 60 days in which to accept this offer. Failure to do so automatically voids the offer.<sup>34</sup> The NPFC reserves the right to revoke a settlement offer at any time prior to acceptance.<sup>35</sup> Moreover, this settlement offer is based upon the unique facts giving rise to this claim and is not precedential.

<b>(b) (6)</b>
Claim Supervisor: <b>(b) (6)</b>
Date of Supervisor's review: <i>7/14/23</i>
Supervisor Action: <i>Offer Approved</i>

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<sup>32</sup> See, USCG SITREP-Pol One dated December 29, 2022 and ADEC Original claim submission dated May 30, 2023.

<sup>33</sup> 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).

<sup>34</sup> 33 CFR 136.115(b).

<sup>35</sup> *Id.*