

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

<b>Claim Number:</b>	UCGPJ17017-URC001
<b>Claimant:</b>	Alaska Department of Environmental Conservation
<b>Type of Claimant:</b>	State
<b>Type of Claim:</b>	Removal Costs
<b>Claim Manager:</b>	(b) (6)
<b>Amount Requested:</b>	\$762.65
<b>Action Taken:</b>	Denial

### **EXECUTIVE SUMMARY:**

On July 2, 2017, Marine Safety Detachment (MSD) Ketchikan and Sector Juneau in its capacity as the Federal On Scene Coordinator (FOSC) received notification that the fishing vessel, F/V Deceptive C, ran aground on the south side of Zarembo Island and was creating a 1,000 yard sheen.<sup>2</sup> A discharge of 2-3 gallons of oily bilge water was discharged from the vessel into the Stikine Strait, a navigable waterway of the United States.<sup>3</sup>

The Federal On Scene Coordinator (FOSC) identified (b) (6); owner/operator of F/V Deceptive C, as the responsible party (RP), as defined by the Oil Pollution Act of 1990.<sup>4</sup> The FOSC issued a Notice of Federal Interest (NOFI) to Mr. (b) (6) via a letter dated July 4, 2017.<sup>5</sup>

On July 4, 2017, MSD Ketchikan federalized the cleanup operation under FPN J17017 and hired Power Systems & Supplies of Alaska, LLC., (“Power Systems” or “OSRO”) to contain and recover the oil substance from the vessel and waterway.<sup>6</sup> On July 5, 2017, Power Systems deployed boom, recovered fuel from the vessel’s starboard tank and engine room, plugged fuel vents, recovered all product and oiled waste, and completed clean up.<sup>7</sup>

During the FOSC’s investigation and recovery operations, Alaska Department of Environmental Conservation, Spill Prevention & Response (“ADEC” or “Claimant”) opened a case on the spill incident and communicated with the USCG and Power Systems.<sup>8</sup> ADEC closed

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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> National Response Center (NRC) Report # 1183051 dated July 2, 2017.

<sup>3</sup> *Id.*

<sup>4</sup> 33 U.S.C. § 2701(32).

<sup>5</sup> USCG Notice of Federal Interest letter to the RP dated July 4, 2017.

<sup>6</sup> SITREP-POL Two and Final updated July 7, 2017.

<sup>7</sup> SITREP-POL Two and Final updated July 7, 2017.

<sup>8</sup> ADEC claim submission to received May 25, 2023 ADEC Spill Summary Report 17119918302, pages 1-5.

their case on August 17, 2017, after Power Systems confirmed disposal of all waste associated with the spill incident.

On May 25, 2023, ADEC presented its removal costs to the National Pollution Funds Center (NPFC) in the amount of \$762.65.<sup>9</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 all costs must be denied.

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

### ***Incident***

On July 2, 2017, at approximately 1800 hours, Marine Safety Detachment Ketchikan (MSD) and Sector Juneau received notification that the fishing vessel, F/V Deceptive C, ran aground on the south side of Zarembo Island.<sup>10</sup> A discharge of 2-3 gallons of oily bilge water was discharged from the vessel into the Stikine Strait, a navigable waterway of the United States.<sup>11</sup> On July 3, 2017, at 1930 hours, MSD Ketchikan arrived to the scene and reported the vessel was still aground and there was a sheen from a 5 gallon can of gasoline leaking from the bow of the vessel.<sup>12</sup> On July 4, 2017, MSD Ketchikan federalized the cleanup operation under FPN J17017 and hired Power Systems & Supplies of Alaska, LLC., (“Power Systems” or “OSRO”) to contain and recover the oil substance from the vessel and waterway.<sup>13</sup> On July 5, 2017, Power Systems deployed boom, recovered fuel from the vessel’s starboard tank and engine room, plugged fuel vents, recovered all product and oiled waste, and completed clean up.<sup>14</sup>

### ***Responsible Party***

In accordance with the Oil Pollution Act of 1990, the owner/operator of the source which caused the oil spill is the Responsible Party (RP) for the incident.<sup>15</sup> On July 4, 2017, a Notice of Federal Interest (NOFI) was read over the phone and mailed to (b) (6); owner of the F/V Deceptive C.<sup>16</sup> Mr (b) (6) confirmed he was in fact, the owner/operator of the vessel at the time of the incident by his completion and signature of a U.S. Coast Guard Report of Marine Casualty form.<sup>17</sup> As such, (b) (6) is identified as the responsible party (RP), as defined by the Oil Pollution Act of 1990.<sup>18</sup>

### ***Recovery Operations***

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<sup>9</sup> ADEC claim submission to received May 25, 2023.

<sup>10</sup>National Response Center (NRC) Report # 1183051 dated July 2, 2017.

<sup>11</sup>*Id.*

<sup>12</sup> SITREP-POL Two and Final updated July 7, 2017.

<sup>13</sup> SITREP-POL Two and Final updated July 7, 2017.

<sup>14</sup> SITREP-POL Two and Final updated July 7, 2017.

<sup>15</sup> 33 U.S.C. § 2701(32).

<sup>16</sup> Notice of Federal Interest dated July 4, 2017

<sup>17</sup> CG-2692 Form dated July 5, 2017.

<sup>18</sup> 33 U.S.C. § 2701(32).

On July 4, 2017, USCG federalized the cleanup operation under FPN J17017 and hired Power Systems to remove the oil substance from the waterway and dispose of any waste associated with spill incident.<sup>19</sup> Sector Juneau Command Center (SCC Juneau) was requested and arrived on scene on July 5, 2017, to observe and assist MSD Ketchikan.<sup>20</sup> Power Systems arrived on the scene on and deployed containment boom.<sup>21</sup> The starboard tank was lightered with 680 gallons of diesel oil recovered. An additional 195 gallons was lightered and recovered from the engine room. A total of 875 gallons was recovered from the vessel.<sup>22</sup> The following day, on July 6, 2017, fuel vents were plugged, all product/equipment and oil was recovered, and clean up was complete.<sup>23</sup>

During recovery/disposal operations, ADEC had a series of correspondence between USCG, the claimant, and Power Systems.<sup>24</sup> On July 3, 2017, ADEC opened a case on the spill incident. After Power Systems confirmed disposal of waste through their affiliate Full Cycle, LLC, ADEC closed the case on August 17, 2017.<sup>25</sup>

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

On May 25, 2023, the NPFC received a claim for \$762.65.<sup>26</sup> ADEC provided the NPFC with an OSLTF claim form, ADEC Spill Summary Report #17119918302, Invoices (SPAR20181049, SPAR2018441, SPAR2018685), hardship letter from RP, disposal documentation, ADEC Notification Questionnaire, ADEC Oil & Hazardous Substances Spill Notification Form, and photos of the incident.<sup>27</sup>

On June 12, 2023, the NPFC requested additional information from ADEC relative to their costs claimed.<sup>28</sup> On June 22, 2023, ADEC replied to the NPFC's request, providing their billing rates for the costs claimed.<sup>29</sup>

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

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).<sup>30</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

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<sup>19</sup> SITREP-POL Two and Final updated July 7, 2017.

<sup>20</sup> SITREP-POL Two and Final updated July 7, 2017.

<sup>21</sup> SITREP-POL Two and Final updated July 7, 2017.

<sup>22</sup>UCGG ICS 214a Pollution Responder's log, page 2 of 2.

<sup>23</sup> SITREP-POL Two and Final updated July 7, 2017.

<sup>24</sup> ADEC claim submission to received May 25, 2023 ADEC Spill Summary Report 17119918302, pages 1-5.

<sup>25</sup> ADEC claim submission to received May 25, 2023 ADEC Spill Summary Report 17119918302, page 5 of 5.

<sup>26</sup> ADEC claim submission to received May 25, 2023.

<sup>27</sup> ADEC claim submission to received May 25, 2023.

<sup>28</sup> NPFC email to Claimant dated June 12, 2017.

<sup>29</sup> ADEC email to NPFC dated June 22, 2017.

<sup>30</sup> 33 CFR Part 136.

the facts of the claim.<sup>31</sup> The NPFC may rely upon, is not bound by the findings of fact, opinions, or conclusions reached by other entities.<sup>32</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.

## **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>33</sup> An RP's liability is strict, joint, and several.<sup>34</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>35</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>36</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>37</sup>

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan (NCP).<sup>38</sup> The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.<sup>39</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>40</sup>

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<sup>31</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>32</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>33</sup> 33 U.S.C. § 2702(a).

<sup>34</sup> See, H.R. Rep. No 101-653, at 102 (1990), reprinted in 1990 U.S.C.C.A.N. 779, 780.

<sup>35</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>36</sup> 33 U.S.C. § 2701(31).

<sup>37</sup> 33 U.S.C. § 2701(30).

<sup>38</sup> See generally, 33 U.S.C. §2712 (a) (4); 33 U.S.C. § 2713; and 33 CFR Part 136.

<sup>39</sup> 33 CFR Part 136.

<sup>40</sup> 33 CFR 136.105.

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.<sup>41</sup>
- (d) That the removal costs were uncompensated and reasonable.<sup>42</sup>

The NPFC analyzed each of these factors and determined that the actions taken by ADEC were not necessary to prevent, minimize, or mitigate the effects of the incident. Evidence supports the Claimant was not on scene and provided no spill cleanup oversight. Furthermore, no evidence was provided to support that ADEC's actions mitigated the effects of the spill. After careful analysis of all costs, actions, and supporting documentation submitted to the NPFC, the NPFC must deny the costs claimed since there was no evidence that the actions undertaken by ADEC assisted in the mitigation of the oil spill incident.

**VI. CONCLUSION:**

Based on a comprehensive review of the record, the applicable law and regulations, and for the reasons outlined above, ADEC's request for uncompensated removal costs is denied.

<b>(b) (6)</b>	
Claim Supervisor:	<b>(b) (6)</b>
Date of Supervisor's review:	7/5/23
Supervisor Action:	<i>Denial Approved</i>
Supervisor's Comments:	

<sup>41</sup>June 14, 2023 FOSC email regarding ADEC actions.

<sup>42</sup> 33 CFR 136.203; 33 CFR 136.205.