

CLAIM SUMMARY / DETERMINATION¹

Claim Number:	UCGPJ19009-URC001
Claimant:	Alaska Department of Conservation
Type of Claimant:	State
Type of Claim:	Removal Costs
Claim Manager:	(b) (6)
Amount Requested:	\$2,309.47
Action Taken:	Offer in the amount of \$2,309.47

EXECUTIVE SUMMARY:

On June 13, 2019, at approximately 15:08 local time, the National Response Center (NRC) received a report of a sunken vessel that was discharging oil into Icy Passage, a navigable waterway of the United States.² The Gustavus Fire Department was the first to respond to the scene and verified that the vessel sank at the mooring buoy 100-200 yards offshore and released fuel, causing a 100' sheen on the surrounding water. Staff from the Alaska Department of Conservation ("ADEC" or "Claimant"), in their role as the State On Scene Coordinator (SOSC), were called by the local Fire Marshall and alerted to the spill.³

The United States Coast Guard (USCG) Sector Juneau, in its capacity as the Federal On Scene Coordinator (FOSC), opened Federal Project Number UCGPJ19009 in the amount of \$50,000 and hired Global Diving and Salvage (GDS) to perform removal actions.

The Federal On Scene Coordinator (FOSC) identified (b) (6); owner/operator of F/V OCEANRAIDER, as the responsible party (RP), as defined by the Oil Pollution Act of 1990.⁴

ADEC submitted its uncompensated removal cost claim to the National Pollutions Funds Center (NPFC) in the amount of \$2,309.47 on May 31, 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 \$2,309.47 is compensable and offers this amount as full and final compensation of this claim.

¹ 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.

² NRC Report # 1248808 dated June 13, 2019.

³ Original Claim Submission dated May 31, 2023, page 3 of 23, Spill Cleanup Actions.

⁴ 33 U.S.C. § 2701(32).

I. INCIDENT, RESPONSIBLE PARTY AND RECOVERY OPERATIONS:

Incident

On June 13, 2019, at approximately 15:08 local time, the National Response Center (NRC) received a report of a sunken vessel that was discharging oil into Icy Passage, a navigable waterway of the United States.⁵ The Gustavus Fire Department was the first to respond to the scene and verified that the vessel sank at the mooring buoy 100-200 yards offshore and released fuel, causing a 100' sheen on the surrounding water. Staff from the Alaska Department of Conservation ("ADEC" or "Claimant"), in their role as the State On Scene Coordinator (SOSC), were called by the local Fire Marshall and alerted to the spill.⁶

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.⁷ The owner/operator of the fishing vessel, OCEAN RAIDER, has been identified as (b) (6).⁸ The NPFC issued a RP Notification letter dated June 2, 2023, to Mr. (b) (6). An RP Notification letter notifies the RP that a claim was presented to the NPFC that is seeking reimbursement of uncompensated removal costs or damages incurred as a result of the incident in which the recipient is the identified or suspected RP.⁹

Recovery Operations

On June 13, 2019, USCG federalized the cleanup operation under FPN J19009 and hired Global Diving & Salvage (GDS) to perform removal actions.¹⁰ On June 14, 2019, the USCG and personnel from ADEC arrived on site, along with staff from GDS. GDS attempted to locate the vessel with an underwater camera.¹¹ The vessel was found 67 feet below the surface. Once the vessel was found, GDS sent divers to inspect the vessel and found that the stern had broken apart; they also confirmed there was fuel aboard.^{12 13} The following day, the divers returned to the site and noted that the day tank and the port-side fuel tank were both empty but that there was still fuel in the starboard-side tank.¹⁴ A total of 50 gallons of diesel fuel was pumped out of the starboard tank and disposed of.

⁵ NRC Report # 1248808 dated June 13, 2019.

⁶ Original Claim Submission dated May 31, 2023, page 3 of 23, Spill Cleanup Actions.

⁷ 33 U.S.C. § 2701(32).

⁸ USCG POLREP Number 1 dated June 15, 2019.

⁹ RP Notification Letter dated June 2, 2023.

¹⁰ SITREP-POL Two and Final updated July 7, 2017.

¹¹ USCG POLREP Number 1 dated June 15, 2019.

¹² Original Claim Submission dated May 31, 2023.

¹³ USCG POLREP Number 1 dated June 15, 2019.

¹⁴ USCG Pollution Report (POLREP) Number 2 and Final, dated June 17, 2019.

II. CLAIMANT AND RP:

On July 31, 2019, ADEC presented the RP with the invoice for \$2,309.47, representing their costs associated with the spill incident. ADEC did not get a response, or payment, and on May 31, 2023, sent the RP another invoice, including late fees.¹⁵

III. CLAIMANT AND NPFC:

On May 31, 2023, the NPFC received a claim for \$2,309.47.¹⁶ ADEC provided the NPFC with an OSLTF claim form, ADEC Spill Summary Report #19119916401, Invoices (SPR-156106), ADEC RP Notification letter dated July 2, 2019, photos, various emails, disposal documentation, and NRC Report # 1248808.¹⁷

On June 12, 2023, the NPFC requested additional information from ADEC relative to their costs claimed.¹⁸ On June 13, 2023, ADEC replied to the NPFC's request, providing their billing rates for the costs claimed and an explanation of where to obtain impound documentation.¹⁹

IV. DETERMINATION PROCESS:

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

¹⁵ Original Claim Submission dated May 31, 2023, Optional OSLTF Claim Form.

¹⁶ ADEC claim submission to received May 25, 2023.

¹⁷ ADEC claim submission to received May 25, 2023.

¹⁸ NPFC email to Claimant dated June 12, 2023.

¹⁹ ADEC email to NPFC dated June 13, 2023.

²⁰ 33 CFR Part 136.

²¹ 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)).

²² 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.²³ An RP's liability is strict, joint, and several.²⁴ 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."²⁵ 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."²⁶ 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."²⁷

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

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.³¹

²³ 33 U.S.C. § 2702(a).

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

²⁵ *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).

²⁶ 33 U.S.C. § 2701(31).

²⁷ 33 U.S.C. § 2701(30).

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

²⁹ 33 CFR Part 136.

³⁰ 33 CFR 136.105.

³¹ 33 CFR 136.203; 33 CFR 136.205.

The claimant's submission provided a detailed cost breakdown of claimed expenses, including ADEC personnel expenses and a table providing employee payroll rates for the year the incident occurred. The claimant requested \$2,309.47, for personnel labor costs during the multi-day oil pollution response, including case management and field work performed by the ADEC Environmental Protection Specialist assigned to the incident. The total amount requested of \$2,309.47 is supported by the documentation provided by the claimant in their submission and has been determined to be consistent with the National Contingency Plan.³²

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's request for removal costs is approved in the amount of \$2,309.47.

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

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

³² USCG POLREP Number 2 and Final dated July 17, 2017.

³³ 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).

³⁴ 33 CFR § 136.115(b).

³⁵ 33 CFR § 136.115(b).