

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

<b>Claim Number:</b>	UCGPN21003-URC001
<b>Claimant:</b>	State of Louisiana
<b>Type of Claimant:</b>	Government
<b>Type of Claim:</b>	Removal Costs
<b>Claim Manager:</b>	(b) (6)
<b>Amount Requested:</b>	\$3,188.31
<b>Action Taken:</b>	Offer in the amount of \$3,182.42

### EXECUTIVE SUMMARY:

On September 27, 2020, at approximately 1900 hours CST, the National Response Center (NRC) received notification from the National Oceanic and Atmospheric Association (NOAA) of a possible oil anomaly observed by satellite imagery.<sup>2</sup> The NRC notified Coast Guard Sector New Orleans (CG SEC NOLA), the Federal On Scene Coordinator (FOSC) for the incident. An auxiliary overflight of the area determined the image was a sheen of crude oil in the Gulf of Mexico; a navigable waterway of the United States.<sup>3</sup> CG SEC NOLA identified the source as the Yuma Energy Main Pass #2 facility<sup>4</sup>; owned and operated by Yuma Energy, Inc.(Yuma). CG SEC NOLA determined Yuma was the responsible party (RP) for the incident as defined by the Oil Pollution Act of 1990.<sup>5</sup> On September 27, 2020, the FOSC contacted Yuma to investigate the cause of discharge and initiate response actions.<sup>6</sup>

Yuma filed for Chapter 11 bankruptcy on April 15, 2020, then converted to Chapter 7 liquidation on October 19, 2020.<sup>7</sup> On October 19, 2020, the FOSC federalized the clean up under FPN N21003.<sup>8</sup> CG SEC NOLA contracted Forefront Emergency Management (Forefront) to manage the incident cleanup and hired Environmental Safety & Health Consulting Services (ES&H) to perform all essential cleanup and disposal duties as the Oil Spill Recovery Organization (OSRO).<sup>9</sup> The FOSC contacted the State of Louisiana, who deployed multiple agencies (Department of Pubic Safety (LOSCO), Department of Environmental Quality (LA

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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 Report# 1288387.

<sup>3</sup> SITREP-POL 2, dated January 6, 2021.

<sup>4</sup> In some documents this facility is noted as Breton Sound #2; but they are the same platform/facility.

<sup>5</sup> 33 U.S.C. § 2701(32).

<sup>6</sup> MISLE Case Id: 1237410.

<sup>7</sup> The State of Louisiana claim submission received on February 9, 2023, page 86 of 86: U.S. Bankruptcy Court Petition #20-41455-mxm7.

<sup>8</sup> MISLE Case Id: 1237410.

<sup>9</sup> MISLE Case Id: 1237410.

DEQ) and the State of Louisiana Department of Wildlife & Fisheries (LA DWF)), who arrived on scene to coordinate with the Federal On Scene Coordinator Representative (FOSCR)<sup>10</sup> and were part of the Unified Command to oversee the cleanup process.

On October 19, 2020, ES&H began deploying absorbent boom around the facility and reconfiguring a containment boom left by Yuma. Between October 19, 2020 and December 11, 2020, the OSRO continuously traveled to and from the scene of the spill, deploying a total of 1,400 feet of containment boom, 124 bales of absorbent boom, 9 bales of absorbent pads and recovering/disposing of a total of 129 pollution bags.<sup>11</sup> Approximately 4,950 barrels of an oil/water mixture were recovered from the production equipment, and from hatches and tanks on the facility between December 1, 2020 and December 11, 2020.<sup>12</sup> The incident cleanup ended on December 12, 2020.<sup>13</sup> LOSCO submitted all incident costs on behalf of the State of Louisiana (LA State) to Yuma on December 1, 2021.<sup>14</sup> Their claim was returned by the postal service, citing Yuma had been liquidated.<sup>15</sup>

On February 8, 2023, the State of Louisiana presented all incident costs to the National Pollution Funds Center (NPFC) for \$3,188.31.<sup>16</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 \$3,182.42 of the requested amount is compensable and offers this amount as full and final compensation of this claim.

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

### ***Incident***

On September 27, 2020, at approximately 7:00 p.m., the NRC received notification from NOAA of satellite imagery of a possible oil slick extending 4.8 nautical miles from an oil facility, located approximately 0.8 nautical miles South-Southwest of St. Bernard Parish, Louisiana.<sup>17</sup> The NRC notified CG SEC NOLA, who identified the source as the Yuma Energy Main Pass #2 facility; owned and operated by Yuma Energy, Inc. CG SEC NOLA contacted Yuma, and advised them to investigate the cause of discharge and initiate response actions.<sup>18</sup>

On September 27, 2020, Yuma sent a crew to investigate the spill but were unable to identify the source. On September 28, 2020, they sent out a second crew and notified CG SEC NOLA the potential source could be a knocked over 10 gallon hydraulic tank which Yuma had corrected

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<sup>10</sup> The State of Louisiana claim submission received February 9, 2023, page 2 of 86.

<sup>11</sup> The State of Louisiana claim submission received on February 9, 2023, pages 58 of 86: CG NOLA Incident Briefing ICS-201-2AP.

<sup>12</sup> The State of Louisiana claim submission received on February 9, 2023, page 61 of 86: CG NOLA Incident Briefing ICS-201-2AS.

<sup>13</sup> The State of Louisiana claim submission received on February 9, 2023, page 60 of 86: CG NOLA Incident Briefing ICS-201-2AR.

<sup>14</sup> The State of Louisiana claim submission received on February 9, 2023, page 62 of 86: LOSCO Letter to Yuma Energy, Inc., dated December 1, 2021.

<sup>15</sup> The State of Louisiana claim submission received on February 9, 2023, page 86 of 86: U.S. Bankruptcy Court Petition #20-41455-mxm7.

<sup>16</sup> The State of Louisiana claim submission received February 9, 2023.

<sup>17</sup> NRC Report #1288387.

<sup>18</sup> MISLE Case Id: 1237410.

and secured.<sup>19</sup> Yuma hired Forefront to manage the incident cleanup and hired ES&H to serve as the OSRO, but due to the RP's questionable financial status both contractor's awaited funds to be transferred upfront prior to mobilization. On September 29, 2020, Yuma notified the FOSC their facility had been shut down since May, 2020 since the company filed bankruptcy on April 15, 2020, and Yuma noted the facility was in the process of sale.

On September 30, 2020, the Federal On Scene Coordinator Representative (FOSCR) arrived at the incident location and conducted an initial assessment of the area.<sup>20</sup> The FOSCR spotted a rainbow-colored sheen on the Northwest side of Yuma's facility, and noted the sheen's direction of movement was heading Southeast in the Gulf of Mexico. The FOSCR discovered a hole in a concrete storage barge at the bottom level of the platform, that appeared to have been struck by an unknown object and identified the breach as the source of discharge.<sup>21</sup> The FOSCR also noted the platform had several thousand barrels of oil & oil/water mixture in its tanks.<sup>22</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>23</sup> The FOSC tracked the source of the spill to the Yuma Energy Main Pass #2 Facility; an oil facility located approximately 0.8 nautical miles South-Southwest of St. Bernard Parish, Louisiana.<sup>24</sup> Yuma Energy, Inc. was the owner and operator of the facility at the time of the spill incident.

Yuma was identified as the responsible party (RP), as defined by the Oil Pollution Act of 1990.<sup>25</sup> Claimant submitted the claimed costs to the RP on December 1, 2021,<sup>26</sup> but the claim was returned by the United States Postal Service. Further investigation by the claimant confirmed the RP had filed for Chapter 11 bankruptcy on April 15, 2020., and converted to Chapter 7 liquidation on October 19, 2020.<sup>27</sup>

### ***Recovery Operations***

On September 30, 2020, Yuma placed containment boom around the facility.<sup>28</sup> On October 16, 2020, after acknowledging the RP had filed bankruptcy and had not initiated further response

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<sup>19</sup> MISLE Case Id: 1237410.

<sup>20</sup> The State of Louisiana claim submission received on February 9, 2023, page 17 of 86: CG NOLA Incident Briefing ICS-201-2A.

<sup>21</sup> SITREP-POL 2, dated January 6, 2021.

<sup>22</sup> The State of Louisiana claim submission received on February 9, 2023, page 70 of 86: Louisiana Department of Environmental Quality Incident Report #198952, dated March 2, 2021.

<sup>23</sup> 33 U.S.C. § 2701(32).

<sup>24</sup> NRC Report# 1288387.

<sup>25</sup> 33 U.S.C. § 2701(32).

<sup>26</sup> The State of Louisiana claim submission received on February 9, 2023, page 62 of 86: LOSCO Letter to Yuma Energy, Inc., dated December 1, 2021.

<sup>27</sup> The State of Louisiana claim submission received on February 9, 2023, page 86 of 86: U.S. Bankruptcy Court Petition #20-41455-mxm7.

<sup>28</sup> The State of Louisiana claim submission received on February 9, 2023, page 17 of 86: CG NOLA Incident Briefing ICS-201-2A.

actions, the FOSCR took command of the incident cleanup operation. CG SEC NOLA federalized the clean up under FPN N21003 on October, 19, 2020.<sup>29</sup> The FOSCR contracted Forefront to manage the operation and hired ES&H to serve as the OSRO.<sup>30</sup> CG SEC NOLA contacted the Louisiana Department of Pubic Safety (LOSCO), who arrived on scene to coordinate with the FOSCR. Together, the FOSCR and LOSCO oversaw all operations performed by Forefront and ES&H.<sup>3132</sup>

On October 19, 2020, ES&H began deploying absorbent boom around the facility and reconfiguring the containment boom left behind by Yuma. Between October 19, 2020 and December 11, 2020, the OSRO continuously traveled to and from the scene of the spill, deploying a total of 1,400 feet of containment boom, 124 bales of absorbent boom, 9 bales of absorbent pads and recovering/disposing of a total of 129 pollution bags.<sup>33</sup> Response operations were completed on December 12, 2020.<sup>34</sup>

## **II. NPFC AND RP:**

The NPFC issued a RP Notification letter to Yuma Energy, Inc. dated February 16, 2023.<sup>35</sup> The NPFC has not received a response.

A 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.<sup>36</sup>

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

On February 9, 2023, the NPFC received a claim for \$3,188.31 from the State of Louisiana.<sup>37</sup> Claimant provided the NPFC with the National Response Center Report# 1288387, the U.S. Coast Guard Spill Summary relative to the Yuma Energy, Inc. Main Pass #2 facility response, the U.S. Coast Guard Operational Summary relative to the response, the U.S. Bankruptcy Court Petition #20-41455-mxm7, the request for payment mailed to Yuma Energy, Inc. on December 1, 2021, work reports specific to LOSCO, LA DEQ and LA DWF, labor and equipment records associated with all costs claimed and the invoice/requests for reimbursement associated with the costs claimed.<sup>38</sup>

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<sup>29</sup> MISLE Case Id: 1237410.

<sup>30</sup> MISLE Case Id: 1237410.

<sup>31</sup> FOSCR email to the NPFC dated March 3, 2023.

<sup>32</sup> The State of Louisiana claim submission received on February 9, 2023.

<sup>33</sup> The State of Louisiana claim submission received on February 9, 2023, page 58 of 86: CG NOLA Incident Breifing ICS-201-2AP.

<sup>34</sup> The State of Louisiana claim submission received on February 9, 2023, page 60 of 86: CG NOLA Incident Breifing ICS-201-2AR.

<sup>35</sup> NPFC letter to Yuma Energy, Inc. dated February 16, 2023.

<sup>36</sup> See, RP Notification Letter dated February 16, 2023.

<sup>37</sup> State of Louisiana Claim Submission received February 9, 2023.

<sup>38</sup> The State of Louisiana claim submission received on February 9, 2023.

On February 23, 2023, the NPFC requested additional information from the State of Louisiana.<sup>39</sup> On February 28, 2023, Claimant submitted lists of all drums and tote tanks present at the time of incident cleanup, a map of the facility with drums and tote tanks specified, a list of equipment usage rates established by Louisiana Department of Public Safety (DPS) and two e-mails with attachments from CG SEC NOLA and ES&H that stated oil was spilled from the barge and not from drums or tote tanks, and that any other hazardous materials were contained in drums and tote tanks on the platform.<sup>40</sup> Claimant specified that LA State's claim is solely related to cleanup of the active oil spill event from the barge and monitoring the removal of the drums/totes that contained oil products.<sup>41</sup>

To verify the State of Louisiana's claim, the NPFC contacted the FOSCR on-site during incident cleanup, who agreed that hazardous materials had not mixed with any oil spilled and verified that State of Louisiana personnel were present on the dates claimed and had acted in accordance with the National Contingency Plan (NCP).<sup>42</sup>

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

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).<sup>43</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>44</sup> The NPFC may rely upon, is not bound by the findings of fact, opinions, or conclusions reached by other entities.<sup>45</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>46</sup> An RP's liability is strict, joint, and several.<sup>47</sup> When enacting OPA, Congress "explicitly recognized that the existing federal and states laws provided inadequate cleanup and damage remedies, required

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<sup>39</sup> NPFC email to LOSCO dated February 23, 2023.

<sup>40</sup> The State of Louisiana attachment package received by NPFC on February 28, 2023.

<sup>41</sup> LOSCO email to NPFC dated February 28, 2023.

<sup>42</sup> FOSCR email to NPFC dated March 3, 2023.

<sup>43</sup> 33 CFR Part 136.

<sup>44</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>45</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>46</sup> 33 U.S.C. § 2702(a).

<sup>47</sup> See, H.R. Rep. No 101-653, at 102 (1990), reprinted in 1990 U.S.C.C.A.N. 779, 780.

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>48</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>49</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>50</sup>

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan (NCP).<sup>51</sup> The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.<sup>52</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>53</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.<sup>54</sup>
- (d) That the removal costs were uncompensated and reasonable.<sup>55</sup>

The NPFC analyzed each of these factors and determined that the majority of costs incurred and submitted by the State of Louisiana herein are compensable removal costs based on the supporting documentation provided. All costs approved for payment were verified as being invoiced at the appropriate rate sheet pricing, FEMA rates and/or State agency pay rates. All approved costs were supported by adequate documentation which included invoices and/or proof of payment where applicable.

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<sup>48</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>49</sup> 33 U.S.C. § 2701(31).

<sup>50</sup> 33 U.S.C. § 2701(30).

<sup>51</sup> See generally, 33 U.S.C. § 2712 (a) (4); 33 U.S.C. § 2713; and 33 CFR Part 136.

<sup>52</sup> 33 CFR Part 136.

<sup>53</sup> 33 CFR 136.105.

<sup>54</sup> FOSCR email to NPFC dated March 3, 2023.

<sup>55</sup> 33 CFR 136.203; 33 CFR 136.205.

The FOSCR confirmed that the claimed State agencies were present during the days and times itemized in this claim.<sup>56</sup> All approved costs were supported by adequate documentation and were determined by the FOSCR to be consistent with the National Contingency Plan (NCP).<sup>57</sup>

Upon adjudication of the costs, the NPFC has determined that the amount of compensable removal costs is \$3,182.42 while \$5.89 are deemed non-compensable for the following reasons:<sup>58</sup>

1. NPFC submitted a request for additional information related to Invoice LA2020\_0927\_1111\_1, which consisted of equipment costs specific to a 2018 Dodge Ram 1500 used by LOSCO personnel on October 19, 2020.<sup>59</sup> In response to the NPFC's request for a rate schedule to support equipment costs cited in the claim, Claimant provided a list of equipment usage rates established by DPS<sup>60</sup>, and explained how DPS and DEQ had each established a mileage rate based on the FEMA rate.<sup>61</sup> The transportation vehicle was claimed for 290 miles of use at a rate of \$0.56 per mile; totaling \$162.40. The 2019-2020 equipment rates established by FEMA support an automobile for transport up to \$0.54 per mile.<sup>62</sup> As such, costs were approved for 290 miles of use at a rate of \$0.54 per mile; totaling \$156.60. The additional \$5.80 are denied.
2. An unidentified amount of \$.09 is denied as unsupported by the record.<sup>63</sup>

**Overall Denied Costs:** \$5.89

## **VI. CONCLUSION:**

Based on a comprehensive review of the record, the applicable law and regulations, and for the reasons outlined above, the State of Louisiana's request for uncompensated removal costs is approved in the amount of \$3,182.42.

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<sup>56</sup> FOSCR email to the NPFC dated March 3, 2023.

<sup>57</sup> FOSCR email to NPFC dated March 3, 2023.

<sup>58</sup> Enclosure 3 to this determination provides a detailed analysis of the amounts approved and denied by the NPFC.

<sup>59</sup> The State of Louisiana claim submission received on February 9, 2023, page 63 of 86: The State of Louisiana Invoice LA2020\_0927\_1111\_1, dated December 1, 2021.

<sup>60</sup> DPS Equipment List.

<sup>61</sup> LOSCO email to NPFC dated February 28, 2023.

<sup>62</sup> FEMA Schedule of Equipment Rates 2019, page 1 of 11.

<sup>63</sup> NPFC's Summary of Costs Spreadsheet, Enclosure 3.

This determination is a settlement offer,<sup>64</sup> the claimant has 60 days in which to accept this offer. Failure to do so automatically voids the offer.<sup>65</sup> The NPFC reserves the right to revoke a settlement offer at any time prior to acceptance.<sup>66</sup> Moreover, this settlement offer is based upon the unique facts giving rise to this claim and is not precedential.

Claim Supervisor: (b) (6) (b) (6)

Date of Supervisor's review: 4/19/2023

Supervisor Action: Offer Approved.

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<sup>64</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>65</sup> 33 CFR § 136.115(b).

<sup>66</sup> 33 CFR § 136.115(b).