

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

<b>Claim Number:</b>	UCGP924001-URC001
<b>Claimant:</b>	State of 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>	\$1,878.51
<b>Action Taken:</b>	Offer in the amount of \$1,878.48

### **EXECUTIVE SUMMARY:**

On December 18, 2017, the National Response Center (NRC) notified United States Coast Guard (USCG) Sector Southeast Alaska Incident Management Division (IMD) via NRC Case # 1199955 of a 40' recreational vessel identified as the M/V NORTHWIND submerged in Aurora Harbor and actively sheening.<sup>2</sup> In its role as Federal On Scene Coordinator (FOSC), USCG Sector Southeast Alaska IMD arrived on scene at the Aurora Harbor and observed a light sheening and diesel engine lube oil surrounding the boat.<sup>3</sup> The oil entered Aurora Harbor, a navigable water of the United States.<sup>4</sup> ADEC contracted divers were unable to locate a cause for the vessel's sinking.<sup>5</sup>

On December 18, 2017, State of Alaska, Department of Environmental Conservation, ("ADEC" or "Claimant") Spill Prevention & Response, Emergency Responder, responded to the incident in its role as the State On Scene Coordinator (SOSC) and generated Spill Summary Report # 17119935201 confirming a sunken vessel and documented the activities surrounding the mitigation of damages to the environment.<sup>6</sup>

In accordance with the Oil Pollution Act of 1990, a confirmed responsible party/boat owner has not been identified involving this case.

On October 12, 2023, the National Pollution Funds Center (NPFC) received ADEC's claim submission in the amount of \$1,878.51 in removal costs.<sup>7</sup> The NPFC has thoroughly reviewed

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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 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> NRC Report Number 1199955 dated December 18, 2017.

<sup>3</sup> State of Alaska Spill Summary # 17119935201.

<sup>4</sup> NRC Report Number 1199955 dated December 18, 2017.

<sup>5</sup> State of Alaska Spill Summary # 17119935201. P 1/3.

<sup>6</sup> See, State of Alaska Spill Summary # 17119935201.

<sup>7</sup> See, OSLTF Form, dated October 12, 2023.

all documents submitted with the claim, analyzed the applicable laws and regulations, and after careful consideration, has determined that \$1,878.48 is compensable and offers this amount as full compensation of this claim.<sup>8</sup>

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

### ***Incident***

On December 18, 2017, Juneau Harbor Department notified the NRC that the motor vessel “NORTHWIND” sunk at its berth (slip AM67) in the Aurora Harbor a navigable waterway of the United States.<sup>9</sup> The sunken vessel caused a 100’ x 100’ rainbow sheen within the waters of the Harbor.<sup>10</sup>

### ***Responsible Party***

The spill in this case does not provide a responsible party (RP) as defined by the Oil Pollution Act of 1990 (OPA). Based on USCG National Vessel Documentation Center (NVDC) records, there was no evidence of a registered owner at the time of the NORTHWIND sinking.<sup>11</sup>

### ***Recovery Operations***

On December 18, 2017, at 11:17 a.m. local time, ADEC personnel responded to the incident and began response actions by deploying hard boom containment with a sorbent boom liner and at 14:00 local time, ADEC contracted divers raised the vessel to the hull line and began pumping off water from the vessel.<sup>12</sup> ADEC personnel attended the scene on December 18, 2017 and on successive dates as needed to evaluate site conditions, effectiveness of containment measures, and other aspects of the response.<sup>13</sup> ADEC oversaw the response in coordination with the FOSC.<sup>14</sup> The cause of the sinking remains unknown.

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

On October 12, 2023, the NPFC received DEC’s claim submission for \$1,878.51 in uncompensated removal costs.<sup>15</sup> The claim included a signed OSLTF Claim Form, ADEC Spill Summary Report # 17119935201, ADEC letter addressed to Mr. (b) (6), dated January 3, 2018, NRC Incident Report # 1199955 dated December 18, 2017, pictures of the incident, a second ADEC letter addressed to Mr. (b) (6) dated January 31, 2018, ADEC Statement # 100745 addressed to Mr. (b) (6) for \$1,907.31 dated October 9, 2023, ADEC invoice # SPR-156194 for \$1,878.51 dated July 31, 2019, ADEC Employee Billable Rates, State of Alaska Purchase Requisition # 53-1050-18, Harri Plumbing & Heating, Inc., receipt for vessel booming

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<sup>8</sup> 33 CFR 136.115.

<sup>9</sup> NRC Report Number 1199955 dated December 18, 2017.

<sup>10</sup> See, Redacted USCG NVDC Documents sent to the NPFC dated October 23, 2023.

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

<sup>12</sup> See, ADEC Spill Summary Report # 17119935201 dated December 18, 2017.

<sup>13</sup> *Id.*

<sup>14</sup> See, Email from USCG Sector Southeast Alaska IMD to NPFC dated January 23, 2024.

<sup>15</sup> Signed OSLTF claim form dated October 12, 2023.

line dated December 18, 2017, and an undated memo from USCG Commander (CDR) (b) (6), Chief of Prevention, USCG Sector Juneau.<sup>16</sup>

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

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).<sup>17</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>18</sup> The NPFC may rely upon, is not bound by the findings of fact, opinions, or conclusions reached by other entities.<sup>19</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:**

Under OPA, 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>20</sup> An RP's liability is strict, joint, and several.<sup>21</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>22</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>23</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

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<sup>16</sup> See, ADEC's claim submission to the NPFC dated October 12, 2024, page 26 of 26.

<sup>17</sup> 33 CFR Part 136.

<sup>18</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>19</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>20</sup> 33 U.S.C. § 2702(a).

<sup>21</sup> See, H.R. Rep. No 101-653, at 102 (1990), reprinted in 1990 U.S.C.C.A.N. 779, 780.

<sup>22</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>23</sup> 33 U.S.C. § 2701(31).

damage to the public health or welfare, including, but not limited to fish, shellfish, wildlife, and public and private property, shorelines, and beaches.”<sup>24</sup>

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan (NCP).<sup>25</sup> The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.<sup>26</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>27</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>28</sup>

The NPFC analyzed each of these factors and determined that the costs incurred and submitted by ADEC are compensable removal costs based on the supporting documentation provided.<sup>29</sup> All costs approved for payment were verified as being invoiced at the appropriate ADEC rates for personnel labor.<sup>30</sup>

Based on the location of this incident, the FOSC is the United States Coast Guard, Sector Southeast Alaska. All approved costs were supported by adequate documentation and were determined by the FOSC to be consistent with the National Contingency Plan (NCP).<sup>31</sup>

Upon adjudication of the costs, the NPFC has determined that the amount of compensable removal costs is \$1,878.48 while \$0.03 are deemed unsubstantiated and non-compensable.

**Overall Denied Costs = \$0.03**

## **VI. CONCLUSION:**

Based on a comprehensive review of the record, the applicable law, and regulations, and for the reasons outlined above, State of Alaska, Dept. of Environmental Conservation, Spill Prevention & Response request for uncompensated removal costs is approved in the amount of **\$1,878.48**.

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<sup>24</sup> 33 U.S.C. § 2701(30).

<sup>25</sup> See generally, 33 U.S.C. § 2712 (a) (4); 33 U.S.C. § 2713; and 33 CFR Part 136.

<sup>26</sup> 33 CFR Part 136.

<sup>27</sup> 33 CFR 136.105.

<sup>28</sup> 33 CFR 136.203; 33 CFR 136.205.

<sup>29</sup> See, NPFC Summary of Costs.

<sup>30</sup> See, State Employee Bill Rates, P. 23/26 of Claim Submission.

<sup>31</sup> See, Email from USCG Sector Southeast Alaska to NPFC dated January 23, 2024.

This determination is a settlement offer,<sup>32</sup> the claimant has 60 days in which to accept this offer. Failure to do so automatically voids the offer.<sup>33</sup> The NPFC reserves the right to revoke a settlement offer at any time prior to acceptance.<sup>34</sup> 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: 2/2/2024

Supervisor Action: *Offer Approved*

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<sup>32</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>33</sup> 33 CFR § 136.115(b).

<sup>34</sup> 33 CFR § 136.115(b).