

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

<b>Claim Number:</b>	UCGPJ18009-URC001
<b>Claimant:</b>	State of Alaska, Dept. of Environmental Conservation, Spill Prevention & Response
<b>Type of Claimant:</b>	State
<b>Type of Claim:</b>	Removal Costs
<b>Claim Manager:</b>	(b) (6)
<b>Amount Requested:</b>	\$184,001.58
<b>Action Taken:</b>	Offer in the amount of \$138,621.25

### **EXECUTIVE SUMMARY:**

On February 26, 2018, the United States Coast Guard (“USCG”) National Response Center (“NRC”) received notification that a rubber fuel bladder containing 3,000 gallons of Bunker C fuel oil ruptured, discharging oil into the waters of Shuyak Strait in Port Williams, Alaska; a navigable waterway of the United States.<sup>2</sup> The State of Alaska, Department of Environmental Conservation, Spill Prevention & Response (“ADEC” or “Claimant”)<sup>3</sup> received a report of the incident.<sup>4</sup> It was initially reported that wind gusts pushed the building with the fuel bladder off the dock, causing the 3,000-gallon capacity fuel bladder to rupture and release its contents.<sup>5</sup> Upon further investigation, it was determined the entire dock structure supporting the building collapsed.<sup>6</sup>

Coast Guard Sector Anchorage was the Federal On-Scene Coordinator (FOSC). Marine Safety Detachment (MSD) Kodiak was the Federal On-Scene Coordinator’s Representative (FOSCR). MSD Kodiak and ADEC established a Unified Command (“UC”) and began directing response operations.<sup>7</sup>

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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 #1205300 dated February 26, 2018.

<sup>3</sup> ADEC was the State On-Scene Coordinator (SOSC).

<sup>4</sup> See, ADEC Original Claim Submission received February 22, 2024. See also, ADEC Spill Summary Report #1849905701 in Attachments package; pg. 1 of 1.

<sup>5</sup> ADEC Original Claim Submission received February 22, 2024. See, ADEC SITREP 1 in Attachments package; pg. 1 of 1, dated February 27, 2018, for “Response Action”.

<sup>6</sup> ADEC Original Claim Submission received February 22, 2024. See, ADEC SITREP 2 in Attachments package; pg. 1 of 3, dated March 1, 2018, for “Response Action”.

<sup>7</sup> USCG POLREP One dated February 28, 2018.

Mr. (b) (6) (“Mr. (b) (6)” or “RP”) was identified as the Responsible Party (RP),<sup>8</sup> as defined by the Oil Pollution Act of 1990.<sup>9</sup> The FOSC issued a Notice of Federal Interest (“NOFI”) and a Notice of Federal Assumption (“NOFA”) to Mr. (b) (6) later that day.<sup>10</sup>

On February 27, 2018, the FOSC contracted Alaska Chadux, LLC (“Chadux” or “OSRO”) to perform a joint assessment and to perform cleanup.<sup>11</sup> MSD Kodiak personnel, Chadux, and staff from ADEC visited the site. ADEC staff assessed the site, coordinated future activities, and took photos to document the site conditions.<sup>12</sup> On April 18, 2018, onsite crew members began to demobilize, and all oil-based contaminated debris began being removed from the spill location.<sup>13</sup> Response operations were deemed complete on August 2, 2018.<sup>14</sup> The FOSC determined that all actions taken by the ADEC were consistent with the National Contingency Plan (“NCP”).<sup>15</sup>

On February 22, 2024, ADEC presented its removal costs claim to the National Pollution Funds Center (NPFC) for \$184,001.58.<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 \$138,621.25 of the claimed costs are compensable and offers this amount as full and final compensation of this claim.

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

### ***Incident***

On February 26, 2018, the NRC received notification from the RP that a rubber fuel bladder containing 3,000 gallons of Bunker C fuel oil ruptured discharging oil into the waters of Shuyak Strait; a navigable waterway of the United States.<sup>17</sup> It was initially reported that wind gusts pushed the building with the fuel bladder off the dock, causing the 3,000-gallon capacity fuel bladder to rupture and release its contents.<sup>18</sup> Upon further investigation, it was determined the dock structure supporting the building collapsed.<sup>19</sup>

### ***Responsible Party***

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<sup>8</sup> See, Email from FOSCR to NPFC dated March 20, 2024, pg. 1 of 3, question 3. Mr. (b) (6) was issued a Notice of Federal Interest and a Notice of Federal Assumption for the incident.

<sup>9</sup> See, 33 U.S.C. § 2701(32).

<sup>10</sup> Notice of Federal Interest dated February 26, 2018, pg. 1 of 2. See also, USCG POLREP One dated February 28, 2018.

<sup>11</sup> See, ADEC Original Claim Submission received February 22, 2024. See also, ADEC SITREP 1 in Attachments package; pg. 1 of 1, dated February 27, 2018, for “Response Action”; See also, USCG POLREP One dated February 28, 2018.

<sup>12</sup> ADEC claim submission received February 22, 2024.

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

<sup>14</sup> See, USCG SITREP-POL 10 and Final dated August 2, 2018.

<sup>15</sup> Email from FOSCR to NPFC dated March 20, 2024.

<sup>16</sup> ADEC Original Claim Submission received February 22, 2024.

<sup>17</sup> National Response Center Report #1205300 dated February 26, 2018.

<sup>18</sup> ADEC Original Claim Submission received February 22, 2024. See, ADEC SITREP 1 in Attachments package; pg. 1 of 1, dated February 27, 2018, for “Response Action”.

<sup>19</sup> ADEC Original Claim Submission received February 22, 2024. See, ADEC SITREP 2 in Attachments package; pg. 1 of 3, dated March 1, 2018, for “Response Action”.

Mr. (b) (6) was identified as the Responsible Party (RP),<sup>20</sup> as defined by the Oil Pollution Act of 1990.<sup>21</sup> On February 26, 2018, the FOSC issued a Notice of Federal Interest (“NOFI”) and a Notice of Federal Assumption (“NOFA”) to Mr. (b) (6).<sup>22</sup>

On February 23, 2024, the NPFC issued an RP Notification Letter to Mr. (b) (6) via email.<sup>23</sup>

### ***Recovery Operations***

On February 26, 2018, the FOSC and ADEC established a Unified Command (“UC”) and began directing all response operations.<sup>24</sup> The FOSC contracted Chadux to perform a joint assessment and to perform cleanup.<sup>25</sup>

On March 1, 2018, Chadux deployed 10 personnel to the spill location, and began loading response vessels and mobilizing equipment for response.<sup>26</sup> Oil spill containment boom was deployed to contain the fuel oil within the immediate area of the collapsed structures.<sup>27</sup> On March 12, 2018, responders began to collect debris within the boom, and a multi-agency Shoreline Cleanup and Assessment Technique team (“SCAT”) was deployed to conduct shoreline assessment.<sup>28</sup>

Cleanup continued into April 18, 2018, at which time ADEC reported more than 1,800 bags of oiled absorbent material was collected.<sup>29</sup> On April 18, 2018, onsite crew members began to demobilize, and all oil-based contaminated debris began being removed from the spill location.<sup>30</sup> Response operations were deemed complete on August 2, 2018.<sup>31</sup>

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

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<sup>20</sup> See, Email from FOSCR to NPFC dated March 20, 2024, pg. 1 of 3, question 3. Mr. (b) (6) was issued a Notice of Federal Interest and a Notice of Federal Assumption for the incident.

<sup>21</sup> See, 33 U.S.C. § 2701(32).

<sup>22</sup> Notice of Federal Interest dated February 26, 2018, pg. 1 of 2. See also, USCG POLREP One dated February 28, 2018.

<sup>23</sup> See, NPFC RP Notification Letter dated February 23, 2024. An RP Notification letter notifies the responsible party that a claim was presented to the NPFC seeking reimbursement of uncompensated removal costs incurred as result of a discharge of oil to navigable waters of the United States

<sup>24</sup> ADEC Original Claim Submission received February 22, 2024. See, ADEC Spill Summary Report #1849905701 in Attachments package; pg. 1 of 1.

<sup>25</sup> See, ADEC Original Claim Submission received February 22, 2024. See also, ADEC SITREP 1 in Attachments package; pg. 1 of 1, dated February 27, 2018, for “Response Action”; See also, USCG POLREP One dated February 28, 2018.

<sup>26</sup> ADEC Original Claim Submission received February 22, 2024. See, ADEC SITREP #2 in Attachments package; pg. 1 of 3, dated March 1, 2018, for “Response Action”.

<sup>27</sup> ADEC Original Claim Submission received February 22, 2024. See, ADEC SITREP 3 in Attachments package; pg. 1 of 3, dated March 6, 2018, for “Response Action”.

<sup>28</sup> ADEC Original Claim Submission received February 22, 2024. See, ADEC SITREP 4 in Attachments package; pg. 1 of 3, dated March 12, 2018, for “Response Action”.

<sup>29</sup> ADEC Original Claim Submission received February 22, 2024. See, ADEC SITREP 6 in Attachments package; pages 1-2 of 3, dated April 18, 2018, for “Response Action”.

<sup>30</sup> *Id.*

<sup>31</sup> See, USCG SITREP-POL 10 and Final dated August 2, 2018.

On February 22, 2024, ADEC presented its removal costs claim to the National Pollution Funds Center (NPFC) for \$184,001.58.<sup>32</sup> The claim included ADEC's signed OSLTF form, a copy of all lease agreements between the operator and owners of property known as Port William Cannery, ADEC's spill summary report #18249905701, ADEC's official state interest letter to Mr. (b) (6) dated March 1, 2018, ADEC's situation reports 1, 2, 3, 4, 5 and 6, several USCG news release reports and updates released in response to the Port William Cannery spill incident, a site investigation report from R&M Consultants Inc. dated March 16, 2018, invoices associated with the costs being claimed along with receipts and travel expense reports, an ADEC system listing of all receipts and travel expenses, and a list containing ADEC employee bill rates.<sup>33</sup>

On February 27, 2024, the NPFC requested any sample analyses, of the spilled material affiliated with the costs being claimed.<sup>34</sup> On March 1, 2024, ADEC submitted two lab reports from Louisiana State University, one lab report from SGS North America, Inc., and a data interpretation from the United States Environmental Protection Agency ("USEPA").<sup>35</sup>

On April 9, 2024, the NPFC requested timesheets, supervisor logs, and/or Incident Action Plans affiliated with the costs submitted with ADEC's claim.<sup>36</sup> In a telephone conversation with the NPFC, ADEC notified the NPFC that supervisor logs are not available, but agreed to provide any unit logs, and evidence pertaining to other agencies pertinent to activities affiliated with the costs claimed.<sup>37</sup> In response to the NPFC's request, ADEC submitted a total of 224 documents as additional information to support their claim.<sup>38</sup>

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

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).<sup>39</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>40</sup> The NPFC may rely upon, is not bound by the findings of fact, opinions, or conclusions reached by other entities.<sup>41</sup> If there is conflicting evidence in the record, the

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<sup>32</sup> ADEC Original Claim Submission received February 22, 2024.

<sup>33</sup> *Id.* with Attachments.

<sup>34</sup> Email from NPFC to ADEC dated February 27, 2024.

<sup>35</sup> Email from ADEC to NPFC dated March 1, 2024, with Attachments.

<sup>36</sup> Email from NPFC to ADEC dated April 9, 2024.

<sup>37</sup> Email from NPFC to ADEC dated April 9, 2024, summarizing phone conversation.

<sup>38</sup> Email from ADEC to NPFC dated April 18, 2024, summarizing content.

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

<sup>40</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>41</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).

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>42</sup> An RP's liability is strict, joint, and several.<sup>43</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>44</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>45</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>46</sup>

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan (NCP).<sup>47</sup> The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.<sup>48</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>49</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;

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<sup>42</sup> 33 U.S.C. § 2702(a).

<sup>43</sup> See, H.R. Rep. No 101-653, at 102 (1990), reprinted in 1990 U.S.C.C.A.N. 779, 780.

<sup>44</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>45</sup> 33 U.S.C. § 2701(31).

<sup>46</sup> 33 U.S.C. § 2701(30).

<sup>47</sup> See generally, 33 U.S.C. § 2712 (a)(4); 33 U.S.C. § 2713; and 33 CFR Part 136.

<sup>48</sup> 33 CFR Part 136.

<sup>49</sup> 33 CFR 136.105.

- (c) That the actions taken were directed by the FOSC or determined by the FOSC to be consistent with the National Contingency Plan.<sup>50</sup>
- (d) That the removal costs were uncompensated and reasonable.<sup>51</sup>

The NPFC analyzed each of these factors and determined that most of the costs incurred and submitted by ADEC 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 and all costs were supported by adequate documentation which included invoices and/or proof of payment where applicable.

All approved costs were supported by adequate documentation and were determined by the FOSC to be consistent with the National Contingency Plan (NCP).<sup>52</sup>

Upon adjudication of the costs, the NPFC has determined that the amount of compensable removal costs is \$138,621.25 while \$45,380.33 is denied for the following reasons:<sup>53</sup>

**Invoice SPAR20182099:**

1. ADEC is seeking \$338.46 for costs associated with 3 hours of ADEC Incident Management Team personnel activities, and \$787.44 for 5.5 hours of ADEC Incident Management Team personnel activities, each for February 28, 2018.<sup>54</sup> The description of duties on the documentation submitted suggests Public Information Officer (“PIO”) activities were the prime activity associated with the costs claimed.<sup>55</sup> Public affairs and media activities are not considered an OPA compensable response cost.<sup>56</sup> Total costs denied: \$1,125.90.<sup>57</sup>
2. ADEC is seeking \$338.46 for costs associated with 3 hours of ADEC Administrative, General personnel activities for February 27, 2018.<sup>58</sup> The description of duties on the documentation submitted suggests “drafted PRP” as an activity affiliated with the costs claimed and fails to provide a breakdown of the time attributed to each activity.<sup>59</sup> State activities associated with preparing RP liability documentation are not considered an OPA compensable response cost.<sup>60</sup> Total costs denied: \$338.46.<sup>61</sup>

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<sup>50</sup> After analyzing the incident and the actions taken by ADEC, the FOSC opined that the response actions undertaken by ADEC were consistent with the National Contingency Plan. *See*, email from USCG MSD Kodiak to the NPFC dated March 20, 2024.

<sup>51</sup> 33 CFR 136.203; 33 CFR 136.205.

<sup>52</sup> Email from FOSCR to NPFC dated March 20, 2024.

<sup>53</sup> Enclosure 3 provides a detailed analysis of the amounts approved by the NPFC.

<sup>54</sup> ADEC Original Claim Submission received February 22, 2024. *See*, Invoice SPAR20182099 in Attachments Package; pg. 2 of 4 for costs breakdown with description of duties.

<sup>55</sup> *Id.*

<sup>56</sup> *See*, 33 U.S.C. § 2701(31).

<sup>57</sup> *See*, Enclosure 3, Sheet 2, Lines 24 and 27.

<sup>58</sup> ADEC Original Claim Submission received February 22, 2024. *See*, Invoice SPAR20182099 in Attachments Package; pg. 2 of 4 for costs breakdown with description of duties.

<sup>59</sup> *Id.*

<sup>60</sup> *See*, 33 U.S.C. § 2701(31).

<sup>61</sup> *See*, Enclosure 3, Sheet 2, Line 19.

3. ADEC claimed \$7,024.81 as the total of all removal costs submitted with Invoice SPAR20182099.<sup>62</sup> Upon review, the NPFC found the total of all costs submitted equaled \$7,024.77. The additional \$.04 is unsupported. Total costs denied: \$0.04.<sup>63</sup>
4. Rounding issue in the amount of \$.01 is unsupported and denied.<sup>64</sup>

**Total: \$1,464.39**

**Invoice SPAR20182425:**

1. ADEC is seeking \$114.71 for costs associated with 0.75 hours of ADEC Case Management personnel activities for February 26, 2018.<sup>65</sup> The description of duties on the evidence submitted suggests “Complete administrative documents for payroll” was the prime activity affiliated with the costs claimed.<sup>66</sup> Administrative costs without documentation indicating they were costs to prevent, minimize, or mitigate oil pollution are not OPA compensable.<sup>67</sup> Total costs denied: \$114.71.<sup>68</sup>
2. ADEC is seeking \$535.90 for costs associated with 4.75 hours of ADEC Case Management personnel activities for April 3, 2018,<sup>69</sup> \$214.76 for 1.5 hours of ADEC Incident Management Team personnel activities for April 5, 2018,<sup>70</sup> \$214.76 for 1.5 hours of ADEC Incident Management Team personnel activities for April 17, 2018,<sup>71</sup> \$214.76 for 1.5 hours of ADEC Incident Management Team personnel activities for April 23, 2018,<sup>72</sup> and \$286.34 for 2 hours of ADEC Incident Management Team personnel activities for April 24, 2018,<sup>73</sup> The description of duties on the evidence submitted suggests “Planning mtg and PIO discuss” was the prime activity affiliated with the costs claimed for April 5, 2018,<sup>74</sup> and suggests “forwarding, APHIS tweet request and internal communications to PIOs” as an activity affiliated with the costs claimed for April 3,

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<sup>62</sup> ADEC Original Claim Submission received February 22, 2024. *See*, ADEC Invoice SPAR20182099 in Attachments Package; pages 1 and 2 of 4 for claimed total.

<sup>63</sup> *See*, Enclosure 3, Sheet 3, Line 34.

<sup>64</sup> *See*, Enclosure 3, Sheet 2, Line 35.

<sup>65</sup> ADEC Original Claim Submission received February 22, 2024. *See*, ADEC Invoice SPAR20182425 in Attachments Package; pg. 1 of 6 for costs breakdown with description of duties.

<sup>66</sup> *Id.*

<sup>67</sup> *See*, 33 U.S.C. § 2701(31).

<sup>68</sup> *See*, Enclosure 3, Sheet 3, Line 3.

<sup>69</sup> ADEC Original Claim Submission received February 22, 2024. *See*, ADEC Invoice SPAR20182425 in Attachments Package; pg. 1 of 6 for costs breakdown with description of duties.

<sup>70</sup> ADEC Original Claim Submission received February 22, 2024. *See*, ADEC Invoice SPAR20182425 in Attachments Package; pg. 2 of 6 for costs breakdown with description of duties.

<sup>71</sup> ADEC Original Claim Submission received February 22, 2024. *See*, ADEC Invoice SPAR20182425 in Attachments Package; pg. 4 of 6 for costs breakdown with description of duties.

<sup>72</sup> ADEC Original Claim Submission received February 22, 2024. *See*, ADEC Invoice SPAR20182425 in Attachments Package; pg. 4 of 6 for costs breakdown with description of duties.

<sup>73</sup> ADEC Original Claim Submission received February 22, 2024. *See*, ADEC Invoice SPAR20182425 in Attachments Package; pg. 4 of 6 for costs breakdown with description of duties.

<sup>74</sup> *Id.*

2018.<sup>75</sup> Public affairs and media activities are not considered OPA compensable removal costs and must be denied.<sup>76</sup> Total costs denied: \$1,466.52.<sup>77</sup>

3. ADEC claimed \$344.14 for costs associated with 2.25 hours of ADEC Case Management personnel activities for April 6, 2018.<sup>78</sup> Costs were billed at a rate of \$152.95. ADEC employee bill rates support the standard rate of the personnel as \$112.82 per hour and overtime rate as \$152.95 per hour.<sup>79</sup> Costs are attributed to work on a non-holiday Friday, of which the personnel worked a total of 7.25 hours. Customarily, overtime hours are not recognized until 8 hours of standard time have been reached, or if work takes place on weekends, off periods, or holidays. However, no explanation was provided to support the OT rate.<sup>80</sup> Total costs denied: \$90.29.<sup>81</sup>
4. ADEC claimed \$32,568.12 as the total of all removal costs submitted with Invoice SPAR20182425.<sup>82</sup> Upon review, the NPFC found the total of all costs submitted equaled \$32,568.08. The additional \$.04 is unsupported. Total costs denied: \$0.04.<sup>83</sup>
5. Rounding issues in the amount of \$.01, \$.02, and \$.01 are unsupported and denied.<sup>84</sup>

**Total: \$1,671.58**

**Invoice SPR-201091:**

1. ADEC is seeking \$136.42 for costs associated with a total of .8 hours of ADEC personnel activities for February 2, 2023.<sup>85</sup> USCG's SITREP 10 and Final dated August 2, 2018 indicates that all response actions have concluded.<sup>86</sup> As such, the costs claimed fall outside the range of cleanup operations and FOSC oversight. Total costs denied: \$136.42.<sup>87</sup>

**Total: \$136.42**

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<sup>75</sup> ADEC Original Claim Submission received February 22, 2024. *See*, ADEC Invoice SPAR20182425 in Attachments Package; pg. 1 of 6 for costs breakdown with description of duties.

<sup>76</sup> *See*, 33 U.S.C. § 2701(31).

<sup>77</sup> *See*, Enclosure 3, Sheet 3, Lines 21, 39, 123, 143, and 147.

<sup>78</sup> ADEC Original Claim Submission received February 22, 2024. *See*, ADEC Invoice SPAR20182425 in Attachments Package; pg. 2 of 6 for costs breakdown with description of duties.

<sup>79</sup> ADEC Original Claim Submission received February 22, 2024. *See*, Employee Bill Rates in Attachments Package; pg. 1 of 2.

<sup>80</sup> ADEC Original Claim Submission received February 22, 2024. *See*, ADEC Invoice SPAR20182425 in Attachments Package; pg. 2 of 6 for costs breakdown with description of duties.

<sup>81</sup> *See*, Enclosure 3, Sheet 3, Line 51.

<sup>82</sup> ADEC Original Claim Submission received February 22, 2024. *See*, ADEC Invoice SPAR20182425 in Attachments Package; pages 1 and 5 of 6 for claimed total.

<sup>83</sup> *See*, Enclosure 3, Sheet 3, Line 178.

<sup>84</sup> *See*, Enclosure 3, Sheet 3, Line 159, 174, and 179.

<sup>85</sup> ADEC Original Claim Submission received February 22, 2024. *See*, ADEC Invoice SPR-201091 in Attachments Package; pg. 1 of 1 for costs breakdown and description of duties.

<sup>86</sup> *See*, USCG SITREP-POL 10 and Final dated August 2, 2018.

<sup>87</sup> *See*, Enclosure 3, Sheet 4, Line 3.

**Invoice SPR-203252:**

1. ADEC is seeking \$443.37 for costs associated with a total of 4.4 hours of ADEC personnel activities ranging from March 21, 2023, to July 31, 2023.<sup>88</sup> USCG's SITREP 10 and Final dated August 2, 2018 indicates that all response actions concluded at the time the SITREP was issued.<sup>89</sup> Because the costs claimed fall outside the date range of cleanup operations and FOSC oversight. Total costs denied: \$443.37.<sup>90</sup>
2. ADEC issued a credit on this invoice in the amount of \$221.66.<sup>91</sup> The credit balance reduced the claimed total from \$443.37 to \$221.71 which is denied as referenced above.<sup>92</sup>

**Total: \$221.71**

**Invoice SPR-203963:**

1. ADEC is seeking \$119.37 for costs associated with a total of 0.7 hours of ADEC personnel activities for April 30, 2023.<sup>93</sup> USCG's SITREP 10 and Final dated August 2, 2018 indicates that all response actions concluded at the time the SITREP was issued.<sup>94</sup> As such, the costs claimed fall outside the range of cleanup operations and FOSC oversight. Total costs denied: \$119.37.<sup>95</sup>

**Total: \$119.37**

**Invoice SPAR20183068:**

1. ADEC is seeking \$7,621.80 for costs associated with a total of 37.75 hours of ADEC personnel activities from May 1, 2018, to May 15, 2018.<sup>96</sup> The NPFC denies an unidentified difference in the amount of \$.03.<sup>97</sup>

**Total: \$0.03**

**Invoice SPAR-20182756:**

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<sup>88</sup> ADEC Original Claim Submission received February 22, 2024. *See*, ADEC Invoice SPR-203252 in Attachments Package; pg. 1 of 1 for costs breakdown and description of duties.

<sup>89</sup> *See*, USCG SITREP-POL 10 and Final dated August 2, 2018.

<sup>90</sup> *See*, Enclosure 3, Sheet 5, Lines 3 through 9.

<sup>91</sup> ADEC Original Claim Submission received February 22, 2024. *See*, ADEC Bill to RP in Attachments Package; pg. 1 of 2 for specification of costs claimed.

<sup>92</sup> *See*, Enclosure 3, Sheet 5, Line 15.

<sup>93</sup> ADEC Original Claim Submission received February 22, 2024. *See*, ADEC Invoice SPR-203963 in Attachments Package; pages 1-2 of 2 (labeled pg. 3) for costs breakdown and description of duties.

<sup>94</sup> *See*, USCG SITREP-POL 10 and Final dated August 2, 2018.

<sup>95</sup> *See*, Enclosure 3, Sheet 6, Lines 3 through 5.

<sup>96</sup> ADEC Original Claim Submission received February 22, 2024. *See*, ADEC Invoice SPAR-20183068 in Attachments Package; pages 1-2 of 4 for costs breakdown and description of duties.

<sup>97</sup> *See*, Enclosure 3, Sheet 7, Line 21.

1. ADEC is seeking \$394.87 for costs associated with 3.5 hours of ADEC Incident Management Team personnel activities for March 1, 2018.<sup>98</sup> The description of duties on the evidence submitted suggests “Port William Shayuk Is.” as the prime activity affiliated with the costs claimed.<sup>99</sup> The claimant did not provide any documentation to support that these costs were incurred to prevent, minimize, or mitigate oil pollution.<sup>100</sup> As such, they must be denied. Total costs denied: \$394.87.<sup>101</sup>
2. ADEC is seeking a total of \$787.44 for costs associated with 5.5 hours of ADEC Case Management personnel activities for April 3, 2018,<sup>102</sup> and \$715.85 for 5 hours of ADEC Incident Management Team personnel activities for March 8, 2018.<sup>103</sup> The description of duties on the evidence submitted suggests “discussion with Legal” as an activity affiliated with the costs claimed for April 3, 2018,<sup>104</sup> and suggests “Legal follow-up” as an activity affiliated with the costs claimed for March 8, 2018.<sup>105</sup> Costs attributed to legal services are not removal costs as defined by OPA<sup>106</sup> and must be denied. Total costs denied: \$1,503.29.<sup>107</sup>
3. ADEC is seeking a total of \$479.49 for March 6, 2018, \$507.69 for March 6, 2018, \$451.28 for March 7, 2018, \$451.28 for March 7, 2018, \$394.87 for March 8, 2018, \$338.46 for March 8, 2018, \$282.05 for March 9, 2018, \$250.06 for March 10, 2018, \$115.28 for March 14, 2018, \$69.17 for March 15, 2018, \$112.82 for March 22, 2018, \$56.41 for March 30, 2018, \$56.41 for March 30, 2018 and \$56.41 for March 30, 2018, for costs associated with ADEC personnel activities whose descriptions suggest RP cost recovery actions as part, or all the activity.<sup>108</sup> State activities associated with preparing RP liability documentation are not considered OPA compensable removal costs.<sup>109</sup> Total costs denied: \$3,621.68.<sup>110</sup>
4. ADEC is seeking a total of \$572.68 for March 1, 2018, \$787.44 for March 2, 2018, \$394.87 for March 2, 2018, \$382.38 for March 2, 2018, \$114.71 for March 2, 2018, \$141.03 for March 2, 2018, \$644.27 for March 3, 2018, \$286.34 for March 12, 2018, \$644.27 for March 14, 2018, and \$286.34 for March 23, 2018, for costs associated with personnel activities whose descriptions suggest Public Affairs and Media related actions

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<sup>98</sup> ADEC Original Claim Submission received February 22, 2024. *See*, ADEC Invoice SPR-20182756 in Attachments Package; pg. 2 of 17 for costs breakdown and description of duties.

<sup>99</sup> *Id.*

<sup>100</sup> *See*, 33 U.S.C. § 2701(31).

<sup>101</sup> *See*, Enclosure 3, Sheet 8, Line 19.

<sup>102</sup> ADEC Original Claim Submission received February 22, 2024. *See*, ADEC Invoice SPR-20182756 in Attachments Package; pg. 5 of 17 for costs breakdown and description of duties.

<sup>103</sup> ADEC Original Claim Submission received February 22, 2024. *See*, ADEC Invoice SPR-20182756 in Attachments Package; pg. 6 of 17 for costs breakdown and description of duties.

<sup>104</sup> ADEC Original Claim Submission received February 22, 2024. *See*, ADEC Invoice SPR-20182756 in Attachments Package; pg. 5 of 17 for costs breakdown and description of duties.

<sup>105</sup> ADEC Original Claim Submission received February 22, 2024. *See*, ADEC Invoice SPR-20182756 in Attachments Package; pg. 6 of 17 for costs breakdown and description of duties.

<sup>106</sup> *See*, 33 U.S.C. § 2701(31).

<sup>107</sup> *See*, Enclosure 3, Sheet 8, Lines 109 and 133.

<sup>108</sup> ADEC Original Claim Submission received February 22, 2024. *See*, ADEC Invoice SPR-20182756 in Attachments Package; pages 5, 6, 7, 9, 10, 12 and 15 of 17 for costs breakdown and description of duties.

<sup>109</sup> *See*, 33 U.S.C. § 2701(31).

<sup>110</sup> *See*, Enclosure 3, Sheet 8, Lines 93, 102, 108, 115, 123, 129, 140, 158, 208, 219, 281, 374, 375 and 380.

as part, or all the activity.<sup>111</sup> Public affairs and media activities are not considered OPA compensable removal costs and must be denied.<sup>112</sup> Total costs denied: \$4,254.33.<sup>113</sup>

5. ADEC is seeking a total of \$8,527.01 for ADEC personnel activity billed using overtime (OT) billing rates.<sup>114</sup> All OT and standard billing rates for ADEC personnel submitted with the claim are substantiated in the Employee Bill Rates document submitted with the original claim.<sup>115</sup> However, no explanation or documentation was provided by ADEC to explain why OT rates were used for the costs submitted with their claim.

Customarily, OT billing rates are not recognized until 8 hours of standard time have been worked, or if hours are worked by an employee during their off period, during a weekend or during a holiday. While reviewing the OT hours submitted with ADEC's claim, the NPFC has confirmed \$2,106.87 must be denied due to a lack of documentation supporting the use of OT rates. Costs denied is the difference in hours billed at the OT rate versus hours billed using the standard rates, as supported by the Employee Bill Rates document. Total costs denied: \$2,106.87.<sup>116</sup>

6. ADEC is seeking a total of \$106,268.43 for all Labor Costs claimed on Invoice SPAR-182756.<sup>117</sup> However, the total amount of Labor Costs billed on Invoice SPAR-182756, actually equates to \$105,985.97. The \$282.46 difference between the amount requested and the amount invoiced is considered unsupported by the record. Total costs denied: \$282.46.<sup>118</sup>

**Total: \$12,163.50**

**Invoice SPAR2019124:**

1. ADEC is seeking \$15,063.12 for non-labor costs from June 6, 2018, to June 21, 2018.<sup>119</sup> Legal fees and joint IT support are denied because these costs are not removal costs as defined by OPA. Total costs denied: \$15,063.12.<sup>120</sup>

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<sup>111</sup> ADEC Original Claim Submission received February 22, 2024. *See*, ADEC Invoice SPR-20182756 in Attachments Package; pages 1, 2, 3, 4, 8, 9 and 12 of 17 for costs breakdown and description of duties.

<sup>112</sup> *See*, 33 U.S.C. § 2701(31).

<sup>113</sup> *See*, Enclosure 3, Sheet 8, Lines 12, 29, 33, 34, 35, 38, 57, 185, 207, 298.

<sup>114</sup> ADEC Original Claim Submission received February 22, 2024. *See*, ADEC Invoice SPR-20182756 in Attachments Package; pages 2, 10, 12, 13, 14, and 15 of 17 for costs breakdown and description of duties.

<sup>115</sup> ADEC Original Claim Submission received February 22, 2024. *See*, ADEC Employee Bill Rates in Attachments Package; pg. 1 of 2 for supported billing rates.

<sup>116</sup> *See*, Enclosure 3, Sheet 8, Lines 26, 27, 30, 234, 236, 239, 301, 320 through 325, 354, 355, 358, 362, 364, 372, 373 and 376.

<sup>117</sup> ADEC Original Claim Submission received February 22, 2024. *See*, ADEC Invoice SPR-20182756 in Attachments Package; pg. 15 of 17 for total Labor Costs claimed.

<sup>118</sup> *See*, Enclosure 3, Sheet 8, Line 393.

<sup>119</sup> ADEC Original Claim Submission received February 22, 2024. *See*, ADEC Invoice SPAR-2019124 in Attachments Package; pg. 1 of 3 for costs breakdown and description of duties.

<sup>120</sup> *See*, Enclosure 3, Sheet 9, Lines 9 through 12.

2. ADEC issued a credit of \$1,723.39 on this invoice.<sup>121</sup> The credit reduced the total amount claimed from \$15,429.79, to \$13,706.40.<sup>122</sup>
3. Rounding issue in the amount of \$.01 is unsupported and denied.<sup>123</sup>

**Total: \$13,339.73**

**Invoice SPR-155464:**

1. ADEC is seeking \$11,157.93 for “Contractual / IT Equipment” costs for August 28, 2018.<sup>124</sup> USCG’s SITREP 10 and Final dated August 2, 2018, indicates that all response actions concluded at the time the SITREP was issued.<sup>125</sup> As such, the costs claimed fall outside the range of cleanup operations and FOSC oversight. Total costs denied: \$11,157.93.<sup>126</sup>

**Total: \$11,157.93**

**Invoice SPR-191351:**

1. ADEC is seeking \$429.90 for unspecified Travel and Airfare costs for dates, ranging from April 10, 2018, to November 2018.<sup>127</sup> No explanation or evidence was submitted to support how the costs are removal costs as defined by OPA.<sup>128</sup> Total costs denied: \$429.90.<sup>129</sup>
2. ADEC submitted a credit of \$179.13 on this invoice.<sup>130</sup> The credit reduced the claimed total from \$429.90, to \$250.77.<sup>131</sup>

**Total: \$250.77**

**Invoice SPR-193387:**

1. ADEC is seeking \$172.49 for costs associated with a total of 3 hours of “Legal Services” for dates ranging from February 1, 2022, to April 30, 2022.<sup>132</sup> Costs attributed to legal

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<sup>121</sup> ADEC Original Claim Submission received February 22, 2024. *See*, ADEC Bill to RP in Attachments Package; pg. 1 of 2 for specification of costs claimed.

<sup>122</sup> *See*, Enclosure 3, Sheet 9, Line 17.

<sup>123</sup> *See*, Enclosure 3, Sheet 9, Line 18.

<sup>124</sup> ADEC Original Claim Submission received February 22, 2024. *See*, ADEC Invoice SPR-155464 in Attachments Package; pg. 1 of 3 for costs breakdown and description of duties.

<sup>125</sup> *See*, USCG SITREP-POL 10 and Final dated August 2, 2018.

<sup>126</sup> *See*, Enclosure 3, Sheet 10, Lines 3 through 5.

<sup>127</sup> ADEC Original Claim Submission received February 22, 2024. *See*, ADEC Invoice SPR-191351 in Attachments Package; pg. 1 of 2 for costs breakdown and description of duties.

<sup>128</sup> 33 U.S.C. § 2701(31).

<sup>129</sup> *See*, Enclosure 3, Sheet 11, Line 3.

<sup>130</sup> ADEC Original Claim Submission received February 22, 2024. *See*, ADEC Bill to RP in Attachments Package; pg. 1 of 2 for specification of costs claimed.

<sup>131</sup> *See*, Enclosure 3, Sheet 11, Line 4.

<sup>132</sup> ADEC Original Claim Submission received February 22, 2024. *See*, ADEC Invoice SPR-193387 in Attachments Package; pg. 1 of 3 for costs breakdown and description of duties.

**Total: \$154.64**

**Invoice SPR-170825:**

1. ADEC is seeking \$232.80 for costs associated with a total of 3 hours of ADEC's Assessment-Characterization personnel activities for June 23, 2020.<sup>144</sup> USCG's SITREP 10 and Final dated August 2, 2018, indicates that all response actions concluded at the time the SITREP was issued.<sup>145</sup> Total costs denied: \$232.80.<sup>146</sup>
2. ADEC is seeking \$1,923.08 for costs associated with a total of 4 hours of "Legal Services" for dates ranging from November 1, 2019, to March 30, 2020.<sup>147</sup> Costs attributed to legal services are denied because these costs are not removal costs as defined by OPA.<sup>148</sup> Furthermore, USCG's SITREP 10 and Final dated August 2, 2018, indicates that all response actions concluded at the time the SITREP was issued.<sup>149</sup> Total costs denied: \$1,923.08.<sup>150</sup>

**Total: \$2,155.88**

**Overall Denied Costs:    \$45,380.33<sup>151</sup>**

**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 approved in the amount of **\$138,621.25**.

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<sup>144</sup> ADEC Original Claim Submission received February 22, 2024. *See*, ADEC Invoice SPAR-170825 in Attachments Package; pg. 1 of 2 for costs breakdown and description of duties.

<sup>145</sup> *See*, USCG SITREP-POL 10 and Final dated August 2, 2018.

<sup>146</sup> *See*, Enclosure 3, Sheet 16, Lines 3 through 5.

<sup>147</sup> ADEC Original Claim Submission received February 22, 2024. *See*, ADEC Invoice SPR-170825 in Attachments Package; pg. 1 of 2 for costs breakdown and description of duties.

<sup>148</sup> *See*, 33 U.S.C. § 2701(31).

<sup>149</sup> *See*, USCG SITREP-POL 10 and Final dated August 2, 2018.

<sup>150</sup> *See*, Enclosure 3 Sheet 16, Lines 9 through 13.

<sup>151</sup> Enclosure 3 provides a detailed analysis of the amounts approved by the NPFC.

This determination is a settlement offer,<sup>152</sup> the claimant has 60 days in which to accept this offer. Failure to do so automatically voids the offer.<sup>153</sup> The NPFC reserves the right to revoke a settlement offer at any time prior to acceptance.<sup>154</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: *6/17/2024*

Supervisor Action: *Determination approved*

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<sup>152</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>153</sup> 33 CFR 136.115(b).

<sup>154</sup> *Id.*