

CLAIM SUMMARY / DETERMINATION¹

Claim Number:	UCGPE24902-DRP001
Claimant:	Aztec Marine LLC dba Yacht Deck
Type of Claimant:	Business
Type of Claim:	Property Damage And Removal Costs
Claim Manager:	(b) (6)
Amount Requested:	\$728,502.85
Action Taken:	Denial on Reconsideration

EXECUTIVE SUMMARY:

On January 22, 2024, over four inches of rain fell in the San Diego watershed area.² Rain drained into Chollas Creek, a thirty-mile-long natural and concrete creek flood basin.³ Chollas Creek is generally a dry creek upstream of the confluence of the north and south Chollas Creek channels.⁴ The location of the claimant's business is upstream of the confluence.⁵ The rain caused the water level to rise in some places of the creek to five feet above ground level flooding some businesses in the Logan Barrio of San Diego.⁶

The United States Environmental Protection Agency (EPA) Region IX provided the Federal On-Scene Coordinator (FOSC) for the incident and produced three Pollution Reports (POLREP) for the event.⁷ The POLREPs covered five sites (A through E) that correspond to various locations impacted by the flooding. The claimant's business is located at 3373 National Avenue in San Diego.⁸ This location corresponds to "Site B" in the EPA POLREPs.⁹ The EPA stated in its POLREPs as to "Site B": "When the flood waters at site B recede[d], they deposited a large amount of mud inside all of the businesses on the property. The oil released from the auto shops on the property is commingled with this mud in the form of heavy sheen and black oil. The mud is both inside the buildings and outside the buildings. The automotive shop, where the majority

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 POLREP 1, section 1.1.2 Site Description dated January 25, 2024.

³ *Id.*

⁴ California Regional Water Quality Control Board, San Diego Region Investigative Order No. R9-2015-0058 report, page 2.

⁵ For the sole purposes of providing a detailed analysis and articulating the other deficiencies attendant with this claim that render it non-compensable, the NPFC will assume without deciding that the area where the claimant's actions took place qualifies as "navigable waters" as that term is defined by OPA. *See*, 33 U.S.C. § 2701(21).

⁶ POLREP 1, section 1.1.2.1 Location dated January 25, 2024.

⁷ POLREP 1 dated January 25, 2024; POLREP 2 dated January 26, 2024; POLREP 3 dated January 30, 2024 (collectively "POLREPs").

⁸ Original Claim submission received March 6, 2024.

⁹ POLREPs. The EPA later refers to Site B as "Division B" with no discernible difference.

of the oil is believed to have originated from, has a large quantity of free oil inside the shop. All of the storm drains on the property are clogged with sediment and oil. Additionally, over 100 cars were submerged in the flood, their contribution to the quantity of petroleum released is unknown.”¹⁰ The Pollution Reports continue, “[p]etroleum products released as a result of the flooding has been mixed with the sediment deposited from the flood waters on the street along [other nearby areas]. The petroleum products are believed to be a mixture of waste oil, motor oils and hydraulic fluids (oils). It has also been deposited all over industrial park at Site B.”¹¹ After its initial POLREP, the EPA added the following information as it related to Site B “... there is tow yard next to the industrial park that a large quantity of cars that were submerged in the flood, that may have leaked petroleum products into the flood waters”.¹²

A letter provided by the EPA FOSC stated the claimant provided assistance during the cleanup of the property where the claimant’s facility is located.¹³

On March 6, 2024, the NPFC received the claimant’s submission seeking reimbursement of property damages, lost profits and removal costs totaling \$728,502.85.¹⁴ At that point, the claimant had not properly presented its claim to the responsible party that owned the facility that the FOSC had identified as discharging the oil that allegedly caused the claimant’s damages.¹⁵ The claimant later presented the claim to the identified responsible party and NPFC began adjudicating the claim. The NPFC denied the claim on July 14, 2025.¹⁶

The claimant requested reconsideration via email dated September 12, 2025.¹⁷ The claimant and the NPFC then entered into a tolling agreement to allow the claimant time to provide additional information to support the request¹⁸ by March 11, 2026.¹⁹ The NPFC sent an email on March 11, 2026, to remind the claimant of the deadline.²⁰ The tolling agreement extending the deadline to submit additional information to support the request for consideration has expired; the claimant did not provide any additional information.

The NPFC has thoroughly reviewed all documentation submitted with the claim, information it has collected independently, and analyzed the applicable law and regulations. After careful consideration, the NPFC finds that claimant still has not provided sufficient documentation that the claimed damages and removal costs were incurred solely as a result of a discharge of oil as

¹⁰ *Id.*

¹¹ *Id.*

¹² POLREPs 2 and 3.

¹³ U.S. EPA letter dated January 29, 2024, submitted with claim as Attachment C2.

¹⁴ Original Claim submission received March 6, 2024. The EPA FOSC identified and designated the source of the oil pertaining to the claimant. Motor Car Services, a neighboring business in the same industrial area as the claimant, owned the oil drums that released oil into the flood waters and may have affected the claimant’s business. For this reason, the NPFC instructed the claimant to present his claim to the owner of that source.

¹⁵ *See*, 33 U.S.C. § 2713(a); 33 CFR 136.103.

¹⁶ Initial Claim Determination sent to the Claimant via email dated July 14, 2025 and DoDSAFE website the same day. Claimant’s receipt was confirmed the next day. Claimant later requested the determination be sent to him again, which was done by the NPFC on September 4, 2025.

¹⁷ Email from Claimant to NPFC dated September 12, 2025 (In the email, he stated “I would like to officially [sic] request a reconsideration of my claim due to the fact that we did indeed have oil from the flood in our workshop.”)

¹⁸ *See*, 33 CFR 136.115(d).

¹⁹ Tolling Agreement executed between the parties dated September 23, 2025.

²⁰ Email from NPFC to Claimant dated March 11, 2026.

defined by the Oil Pollution Act of 1990.²¹ Additionally, the claim also fails because the claimant did not provide the necessary information to satisfy the required elements of proof for either the claimed removal costs or property damages.²² As such, the claim must be denied after reconsideration.²³

I. DETERMINATION PROCESS:

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).²⁴ 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.²⁵ The NPFC may rely upon, is not bound by the findings of fact, opinions, or conclusions reached by other entities.²⁶ 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.

II. CLAIM HISTORY:

On March 6, 2024, Aztec Marine LLC dba Yacht Deck (Aztec or Claimant) presented its original claim to the NPFC for property damage, removal costs and loss of profits totaling \$728,502.85. The NPFC thoroughly reviewed the original claim, all information provided by the claimant and obtained independently, the relevant statutes and regulations, and ultimately denied the claim. The NPFC's initial determination is hereby incorporated by reference.

III. REQUEST FOR RECONSIDERATION:

The regulations implementing OPA require requests for reconsideration of an initial determination to be in writing and include the factual or legal grounds for the relief requested, along with any additional support for the claim.²⁷ The claimant has the burden of providing all evidence, information, and documentation deemed necessary by NPFC's Director to support the claim.²⁸ When analyzing a request for reconsideration, the NPFC performs a *de novo* review of the entire claim submission, including any new information provided by the

²¹ See, 33 U.S.C. § 2701(23).

²² See, 33 CFR 136.203 (removal costs) and 33 CFR 136.215 (property damage).

²³ See, 33 CFR 136.105; *see generally*, 33 CFR Part 136.

²⁴ 33 CFR Part 136.

²⁵ 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)).

²⁶ 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).

²⁷ 33 CFR 136.115(d).

²⁸ 33 CFR 136.105(a).

Claimant in support of its request for reconsideration. The written decision by the NPFC is final.²⁹

On September 12, 2025, the NPFC received Aztec's timely email request for reconsideration with no new evidence purporting to support their claim.³⁰

IV. ANALYSIS ON RECONSIDERATION:

The regulations implementing OPA require requests for reconsideration of an initial determination to be in writing and include the factual or legal grounds for the relief requested, along with any additional support for the claim in accordance with our governing claims regulations at 33 CFR 136.115(d).

The NPFC has thoroughly reviewed and considered the Claimants' request for reconsideration.

In its request for reconsideration, Aztec did not provide any additional evidence to contradict the NPFC's initial findings and decision. As the basis for its request, Aztec argued that it did have oil from the flood in its workshop based on the allegation that the FOSC directed them to remove their plywood lofting floor so the Emergency and Rapid Response Services (ERRS) could clean up oil-contaminated mud and debris.³¹ They further referenced the NPFC's email detailing a conversation with the FOSC where he clearly stated that the oil ruined their teak and nothing else caused it.³²

While the NPFC did have a conversation with the FOSC who stated that the oil ruined the teak, the evidence provided by the claimant, including 80+ photographs did not support the FOSC's statement or show that the property was damaged by oil. Additionally, the NPFC found that the record did not demonstrate that the spill was solely oil as defined by OPA.³³ Even if the claimant had proven the spill was solely oil and caused damage, the claimant also failed to provide the necessary information to satisfy the required elements of proof for either the claimed removal costs or property damages.³⁴ The claim record was devoid of evidence regarding the claimant's alleged removal costs for removing and replacing its lofting floor; and the claimed lost profits for claim preparation are specifically excluded from payment by the claims regulations.³⁵

The claimant did not provide any new factual or legal bases or any additional information that overcome the rationale for the NPFC's initial denial of the claim.³⁶ Therefore, the NPFC must deny the claim after reconsideration.

²⁹ 33 CFR 136.115(d).

³⁰ Email from Aztec to NPFC dated September 12, 2025.

³¹ *Id.*

³² Email from NPFC to EPA FOSC dated April 17, 2024.

³³ *See*, 33 U.S.C. § 2701(23).

³⁴ *See*, 33 CFR 136.203 (removal costs) and 33 CFR 136.215 (property damage).

³⁵ *See*, 33 CFR 136.105(e)(8).

³⁶ *See*, 33 CFR 136.115(d).

V. CONCLUSION:

After careful analysis of all the supporting documentation provided by the claimant and the entire administrative record, the NPFC determines and finds as a matter of fact that the claimant has not proven that oil was solely discharged. The NPFC also determines and finds as a matter of fact that claimant has not proven damage to its property by oil, that it incurred compensable removal costs, or that it incurred compensable lost profits.

The NPFC has thoroughly reviewed all documentation submitted with the claim, analyzed the applicable law and regulations, and as discussed in detail above, has concluded that the claimant has not demonstrated, by a preponderance of the evidence, that it is entitled to payment for its claim. As such, it is denied.

Claim Supervisor:

(b) (6)

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Date of Supervisor's review: May 12, 2026

Supervisor Action: ***Denial Approved.***