

CLAIM SUMMARY / DETERMINATION¹

Claim Number:	UCGPJ18013-URC002
Claimant:	State of Alaska, Dept. of Environmental Conservation, Spill Prevention & Response
Type of Claimant:	State
Type of Claim:	Removal Costs
Claim Manager:	(b) (6)
Amount Requested:	\$5,428.62
Action Taken:	Offer in the amount of \$4,964.11

EXECUTIVE SUMMARY:

On July 25, 2018, the United States Coast Guard (“USCG”) National Response Center (“NRC”) received notification that a fishing vessel named F/V PACIFIC KNIGHT, had capsized approximately 11 miles south of Dillingham, AK in the waters of the Nushagak Bay; a navigable waterway of the United States.² State of Alaska, Department of Environmental Conservation, Spill Prevention & Response (“ADEC” or “Claimant”) received a report of the incident and began immediate communication with USCG Sector Anchorage (“Sector Anchorage” or “FOSC”).³

On July 26, 2018, reports of sheen were received by the Alaska Department of Fish and Game (“ADF&G”), who issued an Emergency Order reporting fuel spilling from the vessel’s tender and notifying fisherman to avoid the area.⁴ Lone Fisherman, Inc. (“Lone Fisherman” or “RP”), owner and operator of the vessel is responsible for the oil spill, and was identified as the Responsible Party (RP),⁵ as defined by the Oil Pollution Act of 1990.⁶

On July 26, 2018, Lone Fisherman hired Resolve Magone Marine (“Resolve Magone” or “OSRO”) to aide in cleanup and mitigation of the spill.⁷ On July 31, 2018, Resolve Magone

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 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.

² National Response Center Report #1219513 dated July 25, 2018.

³ ADEC Original Claim Submission received March 27, 2024. *See*, Attachment A: ADEC Spill Summary Report #18269920601, pg. 2 of 46.

⁴ *Id.*

⁵ *See*, Email from FOSC to NPFC dated April 25, 2024.

⁶ 33 U.S.C. § 2701 (32).

⁷ ADEC Original Claim Submission received March 27, 2024. *See*, Attachment A: ADEC Spill Summary Report #18269920601, pg. 2 of 46.

successfully pumped all remaining fuel out of the port diesel tank, and secured all the hydraulic fluid tank vents.⁸

On August 1, 2018, Sector Anchorage received notification from Resolve Magone that they removed all fuel from the vessel's starboard fuel tank and all diesel fuel from the vessel and reporting all vents on the vessel had been secured.⁹ Overall, it was determined that 1439 gallons of diesel and 716 gallons of an oily water mix were recovered before the case was closed.¹⁰

The FOSC determined the incident posed a substantial threat of discharge of oil into a navigable waterway of the United States, and determined all actions taken by the ADEC were consistent with the National Contingency Plan ("NCP").¹¹

On March 27, 2024, ADEC presented its removal costs claim to the National Pollution Funds Center (NPFC) for \$5,428.62.¹² The NPFC has thoroughly reviewed all documentation submitted with the claim, analyzed the applicable law and regulations, and after careful consideration has determined that \$4,964.11 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 July 25, 2018, the USCG NRC received notification from Sector Anchorage of a fishing vessel named F/V PACIFIC KNIGHT, which had capsized approximately 11 miles south of Dillingham, AK in the waters of the Nushagak Bay; a navigable waterway of the United States.¹³ An estimated 800 gallons of diesel fuel and 300 gallons of hydraulic fluid were alleged onboard when the vessel sunk.¹⁴

ADEC received a report of the incident and began immediate communication with Sector Anchorage and local fishing vessels.¹⁵ On July 26, 2018, reports of sheen were received by the ADF&G, who at 0900 hours, issued an Emergency Order reporting fuel spilling from the F/V PACIFIC KNIGHT tender, and notifying fisherman to avoid the area.¹⁶ An Emergency Order Closure was issued for the entire Nushagak District, effective July 26, 2018 at 1300 hours.¹⁷

Responsible Party

⁸ *Id.* pg. 3 of 46.

⁹ *Id.* pg. 4 of 46.

¹⁰ *Id.* pg. 1 of 46.

¹¹ Email from FOSCR to NPFC dated May 14, 2024.

¹² ADEC Original Claim Submission received March 27, 2024.

¹³ National Response Center Report #1219513 dated July 25, 2018.

¹⁴ ADEC Original Claim Submission received March 27, 2024. *See*, Attachment A: ADEC Situation Report #1 dated July 26, 2024, pg. 10 of 46.

¹⁵ ADEC Original Claim Submission received March 27, 2024. *See*, Attachment A: ADEC Spill Summary Report #18269920601, pg. 2 of 46.

¹⁶ *Id.*

¹⁷ *Id.*

OPA defines the Responsible Party (RP) for a discharge from a vessel as “any person owning, operating, or demise chartering the vessel.”¹⁸ Lone Fisherman, Inc. (“Lone Fisherman” or “RP”), is the confirmed owner/operator of the F/V PACIFIC Knight when the spill incident occurred.¹⁹ As such, Lone Fisherman is identified as the responsible party (RP), as defined by the Oil Pollution Act of 1990.²⁰

On March 27, 2024, the NPFC issued an RP Notification Letter to Lone Fisherman via email.²¹ An RP Notification letter notifies the owner/operator that a claim was presented to the NPFC seeking reimbursement of uncompensated removal costs incurred as a result of a discharge of oil to navigable waters of the United States.

Recovery Operations

On July 26, 2018, Lone Fisherman hired Resolve Magone Marine (“Resolve Magone” or “OSRO”) to aide in cleanup and mitigation of the spill.²² On July 31, 2018, Resolve Magone successfully pumped all remaining fuel out of the port diesel tank, and secured all the hydraulic fluid tank vents.²³

On August 1, 2018, Sector Anchorage received notification from Resolve Magone confirming they had removed all fuel from the vessel’s starboard fuel tank and all diesel fuel from the vessel, and confirming all vents on the vessel were secured.²⁴ Overall, it was determined that 1439 gallons of diesel and 716 gallons of an oily water mix were recovered before the case was closed.²⁵

II. CLAIMANT AND NPFC:

On March 27, 2024, ADEC presented its removal costs claim to the National Pollution Funds Center (NPFC) for \$5,428.62.²⁶ The claim included ADEC’s signed OSLTF form, ADEC’s spill summary report #18269920601, ADEC’s Situation Reports 1, 2 and 3, a document containing F/V PACIFIC Knight vessel information, a USCG news release dated July 25, 2018, ADF&G Emergency Orders 42, 43, 44, 45, 46 and 48, various news articles affiliated with the spill, ADEC’s statement cover page for Invoice #SPR-157198, a copy of Invoice #SPR-157198, and a list containing ADEC Employee rates.²⁷

On March 28, 2024, the NPFC requested any timesheets, supervisor logs, and/or Incident Action Plans (IAPs) affiliated with the costs submitted with ADEC’s claim, and any sample analyses, if taken from the spill location, of the spilled material affiliated with the costs being

¹⁸ 33 U.S.C. § 2701(32).

¹⁹ Email from FOSCR to NPFC dated April 25, 2024.

²⁰ 33 U.S.C. § 2701(32).

²¹ NPFC RP Notification Letter dated March 27, 2024.

²² ADEC Original Claim Submission received March 27, 2024. *See*, Attachment A: ADEC Spill Summary Report #18269920601, pg. 2 of 46.

²³ *Id.* pg. 3 of 46.

²⁴ *Id.* 4 of 46.

²⁵ *Id.* 1 of 46.

²⁶ ADEC Original Claim Submission received March 27, 2024.

²⁷ *Id.* with Attachments.

claimed.²⁸ On March 28, 2024, ADEC notified the NPFC that the Unified Command did not create IAPs for the response, and stated it is not common for PPR to take samples for vessel incidents in remote locations where the source of the pollution is clearly linked to the vessel incident.²⁹ In response to the NPFC's request for timesheets, ADEC included copies of all timesheets affiliated with the costs submitted with their claim.³⁰

IV. DETERMINATION PROCESS:

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).³¹ 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.³² The NPFC may rely upon, is not bound by the findings of fact, opinions, or conclusions reached by other entities.³³ 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.³⁴ An RP's liability is strict, joint, and several.³⁵ 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."³⁶ 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

²⁸ Email from NPFC to ADEC dated March 28, 2024.

²⁹ Email from ADEC to NPFC dated March 28, 2024.

³⁰ *Id. See*, Timesheets included as attachments.

³¹ 33 CFR Part 136.

³² *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)).

³³ *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).

³⁴ 33 U.S.C. § 2702(a).

³⁵ *See*, H.R. Rep. No 101-653, at 102 (1990), reprinted in 1990 U.S.C.C.A.N. 779, 780.

³⁶ *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).

threat of a discharge of oil, the costs to prevent, minimize, or mitigate oil pollution from an incident.”³⁷ 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.”³⁸

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan (NCP).³⁹ The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.⁴⁰ 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.⁴¹

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.⁴²
- (d) That the removal costs were uncompensated and reasonable.⁴³

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).⁴⁴

Upon adjudication of the costs, the NPFC has determined that the amount of compensable removal costs is \$4,964.11 while \$464.51 is denied for the following reasons:⁴⁵

³⁷ 33 U.S.C. § 2701(31).

³⁸ 33 U.S.C. § 2701(30).

³⁹ *See generally*, 33 U.S.C. § 2712 (a)(4); 33 U.S.C. § 2713; and 33 CFR Part 136.

⁴⁰ 33 CFR Part 136.

⁴¹ 33 CFR 136.105.

⁴² 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 Sector Anchorage to the NPFC dated May 14, 2024.

⁴³ 33 CFR 136.203; 33 CFR 136.205.

⁴⁴ Email from FOSCR to NPFC dated May 14, 2024.

⁴⁵ Enclosure 3 provides a detailed analysis of the amounts approved by the NPFC.

1. ADEC is seeking a total of \$197.44 for costs associated with 1.75 hours of ADEC Case Management personnel activities for July 25, 2018.⁴⁶ The incident timeline does not introduce removal activity until July 26, 2018,⁴⁷ and prior activity was strictly search and rescue, which is not an OPA compensable response cost. Total costs denied: 197.44.⁴⁸
2. ADEC is seeking \$56.41 for costs associated with .5 hours of ADEC Administrative, General personnel activities for August 27, 2018,⁴⁹ and \$56.41 for costs associated with .5 hours of ADEC Administrative, General personnel activities for August 28, 2018.⁵⁰ The description of duties on the evidence submitted suggests “PIO” was the prime activity affiliated with the costs claimed.⁵¹ Public affairs and media costs are not an OPA compensable response cost. Total costs denied: \$112.82.⁵²
3. ADEC is seeking a total of \$154.23 for costs associated with 1.5 hours of ADEC Incident Management Team personnel’s “SITREP review and release” for December 21, 2018.⁵³ However, ADEC’s third and final SITREP for this spill was released to the public on August 22, 2018,⁵⁴ and evidence supports all cleanup operations were officially closed as of August 31, 2018.⁵⁵ The affiliated Attendance Report supports costs were attributed to activities dated December 21, 2018.⁵⁶ As such, the costs claimed fall outside the range of cleanup operations and FOSC oversight. Total costs denied: 154.23.⁵⁷
4. ADEC claimed \$5,428.62 as the total of all removal costs submitted with their claim.⁵⁸ However, the actual total of all costs submitted equals \$5,428.60.⁵⁹ The additional \$.02 is unsupported. Total costs denied: \$0.2.⁶⁰

Overall Denied Costs: \$464.51⁶¹

VI. CONCLUSION:

⁴⁶ ADEC Original Claim Submission received March 27, 2024. *See*, Attachment A: ADEC Invoice SPR-157198, pg. 42 of 46.

⁴⁷ ADEC Original Claim Submission received March 27, 2024. *See*, Attachment A: ADEC Spill Summary Report #18269920601, pg. 2 of 46; *See also*, USCG Case Timeline pg. 10 of 11.

⁴⁸ *See*, Enclosure 3, Sheet 2, Line 3.

⁴⁹ ADEC Original Claim Submission received March 27, 2024. *See*, Attachment A: ADEC Invoice SPR-157198, pg. 44 of 46.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *See*, Enclosure 3, Sheet 2, Lines 62, and 66.

⁵³ ADEC Original Claim Submission received March 27, 2024. *See*, Attachment A: ADEC Invoice SPR-157198, pg. 44 of 46.

⁵⁴ ADEC Original Claim Submission received March 27, 2024. *See*, Attachment A: ADEC Situation Report #3 and Final dated August 22, 2024, pg. 16 of 46.

⁵⁵ ADEC Original Claim Submission received March 27, 2024. *See*, Attachment A: ADEC Spill Summary Report #18269920601, pg. 7 of 46.

⁵⁶ Email from ADEC to NPFC dated March 28, 2024. *See*, Merrell-1231118-332093 pages 1-2 of 2.

⁵⁷ *See*, Enclosure 3, Sheet 2, Line 70.

⁵⁸ ADEC Original Claim Submission received March 27, 2024.

⁵⁹ *See*, Enclosure 3, Sheet 2, Line 74.

⁶⁰ *Id.*

⁶¹ Enclosure 3 provides a detailed analysis of the amounts approved by the NPFC.

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 **\$4,964.11**.

This determination is a settlement offer,⁶² the claimant has 60 days in which to accept this offer. Failure to do so automatically voids the offer.⁶³ The NPFC reserves the right to revoke a settlement offer at any time prior to acceptance.⁶⁴ 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: 5/15/24

Supervisor Action: *Approved*

⁶² 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).

⁶³ 33 CFR 136.115(b).

⁶⁴ *Id.*