

CLAIM SUMMARY / DETERMINATION¹

Claim Number:	J19004-URC002
Claimant:	Alaska Department of Environmental Conservation (ADEC)
Type of Claimant:	State
Type of Claim:	Removal Costs
Claim Manager:	(b) (6)
Amount Requested:	\$13,278.87
Action Taken:	Offer in the amount of \$13,278.87

EXECUTIVE SUMMARY:

On December 9, 2018 at 10:30 local time, the National Response Center (NRC) received a report that the sunken commercial fishing vessel, NORDIC VIKING, discharged black oil into Seward Harbor, a tributary of Resurrection Bay, a navigable waterway of the United States.² Upon notification, the United States Coast Guard (USCG) Sector Anchorage Pollution Responders (“PR” or “FOSC”)³ conducted a preliminary investigation and interviewed the reporting party⁴ and determined that the source of the discharge was the capsized commercial fishing vessel.

The reporting party described the discharge to the PR as a 60’x1500’ rainbow sheen. The PR from Sector Anchorage made the determination, in conjunction with the Sector’s duty officer, that the NRC report necessitated a response and USCG personnel from Marine Safety Detachment (MSD) Seward were dispatched to the incident.⁵ The FOSC confirmed a heavy sheen in Seward Harbor as far down as the campground 1.5 miles south of the vessel.⁶ On December 10, 2018, the FOSC opened Federal Project Number (FPN) J19004 and assumed control of the response and hired a response contractor and salvage company.⁷ The State of Alaska Department of Environmental Conservation Spill Prevention & Response (“ADEC” or

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 NRC Report #1232468 dated 12/9/2018

³ USCG Pollution Responder is also referred to as the Federal On Scene Coordinator (FOSC) for the incident and the federal authority in charge of the incident response.

⁴ Mr. (b) (6) of the City of Seward reported the incident to the NRC as documented in NRC Report # 1232468

⁵ USCG SITREP-POL One dated December 11, 2018.

⁶ USCG SITREP-POL Two dated December 14, 2018

⁷ See, March 6, 2019, email statement to NPFC providing detailed explanation of incident response and actions performed.

“Claimant”) responded to the incident in its capacity as the State On Scene Coordinator (SOSC) and worked closely with the FOSC.⁸

On September 26, 2023, ADEC presented its removal costs to the National Pollution Funds Center (NPFC) in the amount of \$13,278.87.⁹ The NPFC has thoroughly reviewed all documentation submitted with the claim, analyzed the applicable law and regulations, and after careful consideration has determined that all costs may be paid from the OSLTF.

I. INCIDENT, RESPONSIBLE PARTY AND RECOVERY OPERATIONS:

Incident

On December 9, 2018 at 10:30 local time, the National Response Center (NRC) received a report that the sunken commercial fishing vessel, NORDIC VIKING, discharged black oil into Seward Harbor, a tributary of Resurrection Bay, a navigable waterway of the United States.¹⁰ Upon notification, the United States Coast Guard (USCG) Sector Anchorage Pollution Responders (“PR” or “FOSC”)¹¹ conducted a preliminary investigation and interviewed the reporting party¹² and determined that the source of the discharge was the capsized commercial fishing vessel.

The reporting party described the discharge to the PR as a 60’x1500’ rainbow sheen. The PR from Sector Anchorage made the determination, in conjunction with the Sector’s duty officer, that the NRC report necessitated a response and USCG personnel from Marine Safety Detachment (MSD) Seward were dispatched to the incident.¹³ The FOSC confirmed a heavy sheen in Seward Harbor and as far down as the campground 1.5 miles south of the vessel.¹⁴

On December 10, 2018, the FOSC opened Federal Project Number (FPN) J19004 and assumed control of the response and hired a response contractor.¹⁵ The State of Alaska Department of Environmental Conservation Spill Prevention & Response (“ADEC” or “Claimant”) responded to the incident in its capacity as the State On Scene Coordinator (SOSC) and worked closely with the FOSC.¹⁶

⁸ USCG SITREP-POL One dated December 11, 2018, section 1L entitled Command Status.

⁹ ADEC claim submission received September 26, 2023.

¹⁰ NRC Report #1232468 dated 12/9/2018

¹¹ USCG Pollution Responder is also referred to as the Federal On Scene Coordinator (FOSC) for the incident and the federal authority in charge of the incident response.

¹² Mr. (b) (6) of the City of Seward reported the incident to the NRC as documented in NRC Report # 1232468

¹³ USCG SITREP-POL One dated December 11, 2018.

¹⁴ USCG SITREP-POL Two dated December 14, 2018

¹⁵ See, March 6, 2019, email statement to NPFC providing detailed explanation of incident response and actions performed.

¹⁶ USCG SITREP-POL One dated December 11, 2018, section 1L entitled Command Status.

Responsible Party

The Oil Pollution Act identifies the owner or operator of a vessel resulting in an OPA incident to be the Responsible Party (RP) for that incident.¹⁷ The FOSC and SOSC both identified Mr. (b) (6) as the owner of the vessel, NORDIC VIKING, that discharged the oil.¹⁸ The NPFC issued a Responsible Party (RP) Notification letter dated September 29, 2023 to Mr. (b) (6).¹⁹ An RP Notification letter notifies the RP that a claim was presented to the National Pollution Funds Center (NPFC) 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.

Recovery Operations

The FOSC and the SOSC oversaw the response, removal, and salvage operations.²⁰ On December 9, 2018, the RP hired Storm Chasers to clean up the oil, conduct dive operations, and to plug vents in the hull's fuel tanks.²¹ On December 9, 2018, the Harbormaster deployed absorbent boom and Storm Chasers deployed containment boom. Initially, the containment boom failed after the vessel shifted and pulled the boom under.²² Storm Chasers plugged the vessel's fuel tank vents and retrieved the boom then redeployed it.²³ On December 11, 2018, the FOSC issued Mr. (b) (6) a Notice of Federal Assumption (NOFA) because his actions to abate the threat and to remove the oil were unsatisfactory and the RP was unable to provide the FOSC confirmation that he possessed pollution insurance.²⁴

On December 12, 2018, Storm Chasers removed the 500-gallon deck tank.²⁵ On December 13, 2018, the RP's insurance contracted with Global Diving and Salvage, Inc. (Global) to complete salvage operations.²⁶ Alaska Chadux Corporation (Chadux) was hired by the FOSC for pollution response.²⁷ Chadux also supported pollution mitigation related to salvage operations.²⁸

From December 19, 2018, to December 21, 2018, ADEC staff were onsite to observe the salvage and recovery of the vessel and to ensure pollution mitigation.²⁹ USCG considered the response complete on December 21, 2018.³⁰

¹⁷ 33 U.S.C. § 2701(32).

¹⁸ USCG SITREP-POL One dated December 11, 2018, and Alaska DEC Situation Report, Four and Final dated December 21, 2018.

¹⁹ See, 33 U.S.C. § 2701. See also, Responsible Party (RP) Notification Letter dated September 29, 2023.

²⁰ USCG SITREP-POL Four and Final dated March 20, 2019, and Alaska DEC Situation Report Four and Final dated December 21, 2018.

²¹ Alaska DEC Situation Report Four and Final dated December 21, 2018

²² *Id.*

²³ Alaska DEC Situation Report Four and Final dated December 21, 2018.

²⁴ See, USCG Notice of Federal Assumption dated December 11, 2018; See, Email statement from FOSC to NPFC dated March 6, 2019, outlining incident details.

²⁵ Alaska DEC Situation Report Four and Final dated December 21, 2018.

²⁶ USCG SITREP-POL Three dated December 18, 2018; Alaska DEC Situation Report Four and Final dated December 21, 2018.

²⁷ See, Email statement from FOSC to NPFC dated March 6, 2019, outlining incident details.

²⁸ Alaska DEC Situation Report Four and Final dated December 21, 2018.

²⁹ Alaska DEC Situation Report Four and Final dated December 21, 2018.

³⁰ USCG SITREP-POL Four and Final dated March 20, 2019.

II. CLAIMANT AND RP:

Absent limited circumstances, the federal regulations implementing the Oil Pollution Act of 1990 (OPA)³¹ require all claims for removal costs or damages must be presented to the responsible party before seeking compensation from the NPFC.³²

ADEC sent the RP a Letter of State Interest on December 10, 2018.³³ ADEC also presented bills to the RP on March 18, 2019, and April 23, 2019.³⁴ Lastly, ADEC sent an Inability to Pay Analysis Results letter to the RP dated October 4, 2019 informing the RP that the financial documentation presented in support of his inability to pay has been upheld and as such, ADEC will not pursue cost recovery.³⁵

III. CLAIMANT AND NPFC:

On September 26, 2023, the NPFC received a claim for \$13,278.87 from ADEC.³⁶ ADEC provided the NPFC with an OSTLF form; NRC report; letter of State Interest to the RP; the results of ADEC's ability to pay analysis; several media pieces regarding the spill incident; invoices and receipts for the Department staff who responded to the incident and billing rates for the staff.³⁷

IV. DETERMINATION PROCESS:

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).³⁸ 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.³⁹ The NPFC may rely upon, is not bound by the findings of fact, opinions, or conclusions reached by other entities.⁴⁰ If there is conflicting evidence in the record, the

³¹ 33 U.S.C. § 2701 *et seq.*

³² 33 CFR 136.103.

³³ *See*, State of Alaska claim submission dated September 25, 2023, page 21 of 68.

³⁴ State of Alaska claim submission dated September 25, 2023, pages 45-51 of 68 for copies of bills sent to the RP.

³⁵ *See*, State of Alaska claim submission dated September 25, 2023, page 44 of 68.

³⁶ State of Alaska claim submission received September 26, 2023.

³⁷ *Id.*

³⁸ 33 CFR Part 136.

³⁹ *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)).

⁴⁰ *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.⁴¹ An RP's liability is strict, joint, and several.⁴² 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."⁴³ 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."⁴⁴ 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."⁴⁵

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan (NCP).⁴⁶ The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.⁴⁷ 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.⁴⁸

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.

⁴¹ 33 U.S.C. § 2702(a).

⁴² See, H.R. Rep. No 101-653, at 102 (1990), *reprinted in* 1990 U.S.C.C.A.N. 779, 780.

⁴³ *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).

⁴⁴ 33 U.S.C. § 2701(31).

⁴⁵ 33 U.S.C. § 2701(30).

⁴⁶ See generally, 33 U.S.C. § 2712 (a) (4); 33 U.S.C. § 2713; and 33 CFR Part 136.

⁴⁷ 33 CFR Part 136.

⁴⁸ 33 CFR 136.105.

(d) That the removal costs were uncompensated and reasonable.⁴⁹

The Alaska Department of Conservation submitted a thorough claim package, including the OSTLF form, the NRC report, the State of Alaska incident report, news articles relating to the incident, bills and statements sent to the RP, and billing rates. All claimed costs were supported by invoices, incident reports, and receipts and all actions performed were coordinated with the FOSC and outlined in the Situation Reports associated with the incident.⁵⁰

VI. CONCLUSION:

Based on a comprehensive review of the record, the applicable law and regulations, and for the reasons outlined above, the Alaska Department of Environmental Conservation's request for uncompensated removal costs is approved in the amount of \$13,278.87

This determination is a settlement offer,⁵¹ the claimant has 60 days in which to accept this offer. Failure to do so automatically voids the offer.⁵² The NPFC reserves the right to revoke a settlement offer at any time prior to acceptance.⁵³ 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: *11/13/23*

Supervisor Action: *Offer Approved*

⁴⁹ 33 CFR 136.203; 33 CFR 136.205.

⁵⁰ See, State of Alaska claim submission received September 26, 2023, and all USCG SITREP-POL reports One through Four and final.

⁵¹ 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).

⁵² 33 CFR § 136.115(b).

⁵³ 33 CFR § 136.115(b).