

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

<b>Claim Number</b>	UCGPJ20009-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>	\$1,571.22
<b>Action Taken:</b>	Offer in the amount of \$1,571.21

### **EXECUTIVE SUMMARY::**

On April 11, 2020 at approximately 8:00 am local time, the National Response Center (NRC) was notified by the Port of Homer, of a vessel that was sinking and was releasing diesel fuel in the Homer Harbor, a tributary of Kachemak Bay, a navigable waterway of the United States.<sup>2</sup> The spill was first discovered on April 8, 2020 by the Deputy Harbormaster when he observed an oily bilge water leak coming from the abandoned vessel *NORTH PACIFIC GOLD*.<sup>3</sup>

The United States Coast Guard (USCG) Sector Juneau was identified as the Federal On Scene Coordinator (FOSC) for the incident. In its capacity as the FOSC, Sector Juneau federalized the incident and hired a contractor for remediation activities. State of Alaska Dept. of Environmental Conservation, Spill Prevention & Response (“ADEC” or “Claimant”) as the State on Scene Coordinator (SOSC) communicated with the FOSC and sent a Letter of State Interest to the owner of record and responsible parties, (b) (6) and City of Homer & Harbor.<sup>4</sup>

Alaska DEC presented its uncompensated removal cost claim to the National Pollution Funds Center (NPFC) for \$1,571.22 on September 22, 2023. The NPFC has thoroughly reviewed all documentation submitted with the claim, analyzed the applicable law and regulations, and after careful consideration has determined that \$1,571.21 is compensable and offers this amount as full and final compensation of this claim.

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<sup>1</sup> This determination is written for the sole purpose of adjudicating a claim against the Oil Spill Liability Trust Fund (OSLTF). This determination adjudicates whether the claimant is entitled to OSLTF reimbursement of claimed removal costs or damages under the Oil Pollution Act of 1990. This determination does not adjudicate any rights or defenses any Responsible Party or Guarantor may have or may otherwise be able to raise in any future litigation or administrative actions, to include a lawsuit or other action initiated by the United States to recover the costs associated this incident. After a claim has been paid, the OSLTF becomes subrogated to all 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 Incident Report # 1275399 dated April 11, 2020.

<sup>3</sup> Original Claim submission dated September 21, 2023 received on September 22, 2023, page 3 of 37, Spill Summary Report 20239909801.

<sup>4</sup> See, Original Claim submission dated September 21, 2023 received on September 22, 2023, pages 6 through 9 of 37, Letters of State Interest dated April 15, 2020, respectively; and USCG Investigator Statement of MST2 (b) (6) dated August 5, 2020.

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

### ***Incident***

On April 8, 2020, the Deputy Harbormaster for the City of Homer notified ADEC of an oily bilge water leak that was coming from the abandoned vessel *NORTH PACIFIC GOLD*, which the City of Homer Harbor took possession of in 2018.<sup>5</sup> On April 11, 2020, the vessel began to take on water and the Homer Harbormaster notified the NRC<sup>6</sup> and USCG Sector Juneau responded to the incident.<sup>7</sup> The City of Homer hired divers to inspect hull and set soft patch<sup>8</sup>. On July 17, 2020, USCG opened the project number J20009<sup>9</sup> and contracted Global Diving & Salvage to survey the vessel for pollution liabilities and determine best practices to mitigate those liabilities.<sup>10</sup>

### ***Responsible Party***

In accordance with the Oil Pollution Act of 1990, the owner/operator of the source which caused the oil spill is the Responsible Party (RP) for the incident.<sup>11</sup> On June 17, 2020, a Notice of Federal Interest (NOFI) was issued to The City of Homer Harbormaster; a owner/operator of the M/V NORTH PACIFIC GOLD.<sup>12</sup> Additionally, on June 26, 2020, a Notice of Federal Interest (NOFI) was also issued to (b) (6); owner of the M/V NORTH PACIFIC GOLD.<sup>13</sup>

The FOSC documented (b) (6) and the Harbormaster as possible Responsible Parties because of the possibility of shared ownership and/or liability by both parties.<sup>14</sup> On April 15, 2020, ADEC issued a Letter of State Interest (LOSI) to the owner of record, (b) (6) and to the City of Homer Harbormaster.<sup>15</sup> On July 8, 2020, the FOSC gave (b) (6) as owner of the vessel, a verbal Administrative Order for the removal of all liquids aboard the vessel and requested a plan for moving forward.<sup>16</sup> On July 22, 2020, the FOSC gave a Notice of

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<sup>5</sup> Original Claim submission dated September 21, 2023 received on September 22, 2023, Spill Summary Report, page 4 of 37, Spill Summary Report 20239909801.

<sup>6</sup> National Response Center Incident Report # 1275399 dated April 11, 2020.

<sup>7</sup> Original Claim submission dated September 21, 2023 received on September 22, 2023, Spill Summary Report, page 4 of 37, Spill Summary Report 20239909801.

<sup>8</sup> USCG SITREP-POL One dated August 20, 2020 and USCG Investigator Statement of MST2 (b) (6) dated August 5, 2020.

<sup>9</sup> *Id.*

<sup>10</sup> Original Claim submission dated September 21, 2023 received on September 22, 2023, Spill Summary Report, page 26 of 37, Environmental Survey for: F/V NORTH PACIFIC, No. 511698.

<sup>11</sup> 33 U.S.C. § 2701(32).

<sup>12</sup> Notice of Federal Interest dated June 17, 2020.

<sup>13</sup> Notice of Federal Interest dated June 26, 2020.

<sup>14</sup> USCG Investigator Statement of MST2 (b) (6) dated August 5, 2020.

<sup>15</sup> Original Claim submission dated September 21, 2023 received on September 22, 2023, Spill Summary Report, page 4 of 37, Spill Summary Report 20239909801.

<sup>16</sup> USCG Investigator Statement of MST2 (b) (6) dated August 5, 2020.

Federal Assumption to both the City of Homer<sup>17</sup> and one was sent via email and mailed certified return receipt to (b) (6) dated July 22, 2020.<sup>18</sup>

### ***Recovery Operations***

Global Diving & Salvage (Global) was hired by USCG for clean up and removal of the vessel.<sup>19</sup> On August 27, 2020, Global arrived and began set up for removal operations.<sup>20</sup> Global conducted an environmental survey above the waterline to locate ship systems and measure volumes of hydrocarbons onboard.<sup>21</sup> All spaces that were safe for entry without confined entry constraints were tested by ship yard competent crew were accessed and assessed.<sup>22</sup> Removal operations continued from August 28, 2020 through September 1, 2020 and approximately 21,000 gallons were lightered from the vessel.<sup>23</sup>

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

On September 22, 2023, the NPFC received a claim for \$1,521.22 from ADEC.<sup>24</sup> ADEC provided the NPFC with an OSLTF claim form, ADEC Spill Summary Report #20239909801, miscellaneous emails from ADEC, ADEC Letters of State Interest to City of Homer and to (b) (6) (b) (6) dated April 15, 2020, Coding Request information, a costs statement, Invoice #SPR-167859, #SPR-170636, #SPR-171273, Boat Database on NORTH PACIFIC GOLD, and Global Environmental Survey for F/V NORTH PACIFIC, 511698 dated July 22, 2020.<sup>25</sup>

### **III. CLAIMANT AND RP:**

Absent limited circumstances, the Federal Regulations implementing the Oil Pollution Act of 1990 (OPA) require all claims for removal costs or damages must be presented to the RP before seeking compensation from the NPFC.

On April 15, 2020, ADEC issued a Letter of State Interest to the owner on record, (b) (6). The claimant presented its claim in the form of an invoice to (b) (6) Jr., owner of North Pacific Gold on September 21, 2023 and to date, Mr. (b) (6) has not paid the Claimant.<sup>26</sup>

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<sup>17</sup> See, USCG NOFA issued to City of Homer dated July 22, 2020 and signed by (b) (6) for the City of Homer.

<sup>18</sup> USCG Investigator Statement of MST2 (b) (6) dated August 5, 2020; and USCG NOFA issued to (b) (6) (b) (6) dated July 22, 2020.

<sup>19</sup> USCG SITREP-POL One dated August 20, 2020.

<sup>20</sup> USCG SITREP-POL Two dated September 20, 2020.

<sup>21</sup> Original Claim submission dated September 21, 2023 received on September 22, 2023, Spill Summary Report, page 28 of 37, Environmental Survey for: F/V NORTH PACIFIC GOLD, No. 511698.

<sup>22</sup> Original Claim submission dated September 21, 2023 received on September 22, 2023, Spill Summary Report, page 28 of 37, Environmental Survey for: F/V NORTH PACIFIC GOLD, No. 511698.

<sup>23</sup> USCG SITREP-POL Two dated September 20, 2020.

<sup>24</sup> Original Claim submission dated September 21, 2023 received on September 22, 2023.

<sup>25</sup> *Id.*

<sup>26</sup> Original Claim submission dated September 21, 2023 received on September 22, 2023.

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

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).<sup>27</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>28</sup> The NPFC may rely upon, is not bound by the findings of fact, opinions, or conclusions reached by other entities.<sup>29</sup> If there is conflicting evidence in the record, the NPFC makes a determination as to what evidence is more credible or deserves greater weight, and makes its determination based on the preponderance of the credible evidence.

#### **V. DISCUSSION:**

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>30</sup> An RP's liability is strict, joint, and several.<sup>31</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>32</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>33</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>34</sup>

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<sup>27</sup> 33 CFR Part 136.

<sup>28</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>29</sup> See, e.g., *Use of Reports of Marine Casualty in Claims Process by National Pollution Funds Center*, 71 Fed. Reg. 60553 (October 13, 2006) and *Use of Reports of Marine Casualty in Claims Process by National Pollution Funds Center* 72 Fed. Reg. 17574 (concluding that NPFC may consider marine casualty reports but is not bound by them).

<sup>30</sup> 33 U.S.C. § 2702(a).

<sup>31</sup> See, H.R. Rep. No 101-653, at 102 (1990), reprinted in 1990 U.S.C.C.A.N. 779, 780.

<sup>32</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>33</sup> 33 U.S.C. § 2701(31).

<sup>34</sup> 33 U.S.C. § 2701(30).

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan (NCP).<sup>35</sup> The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.<sup>36</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>37</sup>

Before reimbursement can be authorized for uncompensated removal costs, the claimant must demonstrate by a preponderance of the evidence:

- (a) That the actions taken were necessary to prevent, minimize, or mitigate the effects of the incident;
- (b) That the removal costs were incurred as a result of these actions;
- (c) That the actions taken were directed by the FOSC or determined by the FOSC to be consistent with the National Contingency Plan.<sup>38</sup>
- (d) That the removal costs were uncompensated and reasonable.<sup>39</sup>

The NPFC analyzed each of these factors and determined that all 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 State of AK, Dept. of Environmental Conservation, Spill Prevention & Response published rates and all approved costs were supported by adequate documentation and were determined by the FOSC to be consistent with the National Contingency Plan (NCP).

Based on the location of this incident, the FOSC for this incident is USCG Sector Juneau. The administrative record demonstrates that ADEC communicated with the FOSC for this incident during the response and ongoing removal operations performed by Global under the direction of the FOSC.

After a complete review of all documentation, the NPFC has determined that the invoiced costs were billed in accordance with the rate schedule in place at the time services were rendered and the NPFC has determined that the claimant demonstrated proper presentment of costs to the RP.

Upon adjudication of the costs, the NPFC has determined that the amount of compensable removal costs is \$1,571.21 while \$.01 is deemed non-compensable for the following reason:

1. Invoice # SPR-171273 dated September 20, 2020 totals \$96.82, there is an unsupported difference of \$0.01 and the invoice items actually total \$96.81. The NPFC has adjusted the total to coincide with the correct sum of all invoiced items.

**Overall Denied Costs** = \$0.01<sup>40</sup>

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<sup>35</sup> See generally, 33 U.S.C. § 2712(a) (4); 33 U.S.C. § 2713; and 33 CFR Part 136.

<sup>36</sup> 33 CFR Part 136.

<sup>37</sup> 33 CFR 136.105.

<sup>38</sup> In conjunction with the FOSC, ADEC was involved in the RP notification process.

<sup>39</sup> 33 CFR 136.203; 33 CFR 136.205.

<sup>40</sup> Enclosure 3 to this determination provides a detailed analysis of the amounts approved and denied by the NPFC.

## **VI. CONCLUSION:**

Based on a comprehensive review of the record, the applicable law and regulations, and for the reasons outlined above, State of AK, Dept. of Environmental Conservation, Spill Prevention & Response request for uncompensated removal costs is approved in the amount of \$1,571.21.

This determination is a settlement offer,<sup>41</sup> the claimant has 60 days in which to accept this offer. Failure to do so automatically voids the offer.<sup>42</sup> The NPFC reserves the right to revoke a settlement offer at any time prior to acceptance.<sup>43</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: *11/8/23*

Supervisor Action: *Approved*

Supervisor's Comments:

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<sup>41</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>42</sup> 33 CFR § 136.115(b).

<sup>43</sup> 33 CFR § 136.115(b).