

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

<b>Claim Number:</b>	UCGPJ21010-URC001
<b>Claimant:</b>	Alaska Department of Environmental Conservation
<b>Type of Claimant:</b>	State
<b>Type of Claim:</b>	Removal Costs
<b>Claim Manager:</b>	(b) (6)
<b>Amount Requested:</b>	\$8,185.92
<b>Action Taken:</b>	Offer in the amount of \$8,024.18

### **EXECUTIVE SUMMARY::**

On August 3, 2021, at approximately 1:40pm local time, the National Response Center (NRC) received a report of a mystery sheen in Womens Bay located in Kodiak, Alaska.<sup>2</sup> The United States Coast Guard (USCG) Marine Safety Detachment Kodiak (MSD Kodiak) investigated the initial report but found no evidence of the spill.<sup>3</sup> On August 5, 2021, the USCG and the Alaska Department of Environmental Conservation (“ADEC” or “SOSC”) received additional reports of sheening in Womens Bay.<sup>4</sup> MSD Kodiak found a sheen after conducting an overflight and harbor patrol in Womens Bay.<sup>5</sup> Divers discovered the cause of the spill was a diesel fuel leak from several pinholes in the vessel hull where the heads of rivets corroded away. The F/V *ST. PATRICK*, was moored in Womens Bay from 1981 to 1989.<sup>6</sup> The USCG in its capacity as the Federal On Scene Coordinator (FOSC) for the incident, was unable to find an owner to act as the responsible party for this incident so they opened Federal Project Number UCGPJ21010 and hired a response contractor for response planning, to determine the source of the spill, and to perform response actions.<sup>7</sup>

ADEC submitted its uncompensated removal cost claim to the National Pollutions Funds Center (NPFC) in the amount of \$8,185.92 on September 11, 2023.<sup>8</sup> The NPFC has thoroughly reviewed all documentation submitted with the claim, analyzed the applicable laws and regulations, and after careful consideration has determined that \$8,024.18 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 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> NRC Report #1312675 dated August, 3, 2021.

<sup>3</sup> ADEC Situation Report (SITREP) 1 dated, August 17, 2021.

<sup>4</sup> *Id.*

<sup>5</sup> ADEC claim submission received September 11, 2023, ADEC Spill Summary Report, page 3 of 33.

<sup>6</sup> See, ADEC SITREP 1 dated August 17, 2021, under the ‘Cause of Spill’ section, page 1 of 4.

<sup>7</sup> See, USCG Pollution Responder Statement of LT (b) (6) dated February 14, 2023.

<sup>8</sup> ADEC claim submission received September 11, 2023.

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

### ***Incident***

On August 3, 2021, at approximately 1:40pm local time, the National Response Center (NRC) received a report of a mystery sheen in Womens Bay located in Kodiak, Alaska.<sup>9</sup> The United States Coast Guard (USCG) Marine Safety Detachment Kodiak (MSD Kodiak) investigated the initial report but found no evidence of the spill.<sup>10</sup> On August 5, 2021, the USCG and the Alaska Department of Environmental Conservation (“ADEC” or “SOSC”) received additional reports of sheening in Womens Bay.<sup>11</sup> MSD Kodiak found a sheen after conducting an overflight and harbor patrol in Womens Bay.<sup>12</sup> Divers discovered the cause of the spill was a diesel fuel leak from several pinholes in the vessel hull where the heads of rivets corroded away. The F/V *ST. PATRICK*, was moored in Womens Bay from 1981 to 1989.<sup>13</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>14</sup> The USCG in its capacity as the Federal On Scene Coordinator (FOSC) for the incident, was unable to find an owner to act as the responsible party for this incident so they opened Federal Project Number.<sup>15</sup>

### ***Recovery Operations***

USCG Sector Anchorage in its capacity as the Federal On Scene Coordinator (FOSC), assisted MSD Kodiak due to their absence of a qualified FOSC throughout the incident response.<sup>16</sup> ADEC also coordinated response efforts with USCG.<sup>17</sup> Contractors Global Diving & Salvage, Inc (Global), Alaska Chadux Network, and Paradigm Marine, LLC were hired for clean-up efforts.<sup>18</sup> Containment and absorbent booms were deployed around the wreck. Since 8/10/21, daily diving operations have continued and those efforts included maintaining the seals on the compromised rivets, cleaning areas around the vessel’s frame, and assessing the vessel’s condition, including the use of an underwater Non-Destructive Testing metal thickness gauge and a 3D side scan sonar.

Divers drilled holes in the vessel and used suction to recover remaining oil. Response crews continued to maintain double boom, lined by absorbent boom to recover any oil that escapes from the vessel. Divers used specialized equipment to clear spaces of silt, including mechanical spaces, and living quarters within the hull of the ship to allow for removal of any oil that

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<sup>9</sup> NRC Report #1312675 dated August 3, 2021.

<sup>10</sup> ADEC Situation Report (SITREP) 1 dated, August 17, 2021.

<sup>11</sup> *Id.*

<sup>12</sup> ADEC claim submission received September 11, 2023, ADEC Spill Summary Report, page 3 of 33.

<sup>13</sup> *See*, ADEC SITREP 1 dated August 17, 2021, under the ‘Cause of Spill’ section, page 1 of 4.

<sup>14</sup> 33 U.S.C. § 2701(32).

<sup>15</sup> *See*, USCG Pollution Responder Statement of LT (b) (6) dated February 14, 2023.

<sup>16</sup> *Id.*

<sup>17</sup> ADEC SITREP 3<sup>rd</sup> and Final dated September 17, 2021 under the ‘Response Action section, page 2 of 4.

<sup>18</sup> *Id.*

remained trapped in these voids. All spaces were investigated for pollution and any oil discovered was removed. Field operations were demobilized and a total of 11,955 gallons of oily water and 606 bags of oiled absorbents were recovered.<sup>19</sup>

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

On September 11, 2023, the NPFC received a claim for \$8,185.92 from ADEC.<sup>20</sup> ADEC provided the NPFC with an OSLTF claim form, ADEC spill summary report, ADEC situation report, NRC report, Wildlife Observation Form, invoices, employee bill rates, pictures of the incident and email verification of Womans Bay being federally owned.

On September 28, 2023, the NPFC requested additional information from ADEC relative to their costs claimed.<sup>21</sup> The same day, ADEC replied to the NPFC's request, providing receipts for travel costs, per diem rate, and an explanation of ADEC's response to NRC #1338872 incident.<sup>22</sup> On October 12, 2023, the NPFC requested additional information from ADEC relative to their costs claimed.<sup>23</sup> The same day, ADEC replied to the NPFC's request, providing the Unified Command their State On-Scene Coordinator (SOSC) worked with.<sup>24</sup>

## **III. DETERMINATION PROCESS:**

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).<sup>25</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>26</sup> The NPFC may rely upon, is not bound by the findings of fact, opinions, or conclusions reached by other entities.<sup>27</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.

## **IV. DISCUSSION:**

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<sup>19</sup> ADEC SITREP 3<sup>rd</sup> and Final dated September 17, 2021 under the 'Response Action section, page 2 of 4.

<sup>20</sup> ADEC claim submission received September 11, 2023.

<sup>21</sup> Email from NPFC to Claimant dated September 28, 2023.

<sup>22</sup> Email from Claimant to NPFC dated September 28, 2023.

<sup>23</sup> Email from NPFC to Claimant dated October 12, 2023.

<sup>24</sup> Email from Claimant to NPFC dated October 12, 2023.

<sup>25</sup> 33 CFR Part 136.

<sup>26</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>27</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).

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>28</sup> An RP's liability is strict, joint, and several.<sup>29</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>30</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>31</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>32</sup>

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan (NCP).<sup>33</sup> The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.<sup>34</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>35</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>36</sup>
- (d) That the removal costs were uncompensated and reasonable.<sup>37</sup>

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

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<sup>28</sup> 33 U.S.C. § 2702(a).

<sup>29</sup> See, H.R. Rep. No 101-653, at 102 (1990), *reprinted in* 1990 U.S.C.C.A.N. 779, 780.

<sup>30</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>31</sup> 33 U.S.C. § 2701(31).

<sup>32</sup> 33 U.S.C. § 2701(30).

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

<sup>34</sup> 33 CFR Part 136.

<sup>35</sup> 33 CFR 136.105.

<sup>36</sup> SITREP-POL Fifth and Final dated January 7, 2022.

<sup>37</sup> 33 CFR 136.203; 33 CFR 136.205.

incident, invoicing, and billing rates. The majority of the claimed costs were supported by invoices, incident reports, receipts and most actions performed were coordinated with the FOSC and outlined in the Situation Reports associated with the incident.<sup>38</sup> Upon adjudication, the amount of compensable removal costs is \$8,024.18 while \$161.74 is denied as follows:

***ADEC Invoice SPR-192644 actions billed on June 16, 2022***

On June 16, 2022, ADEC invoiced “Assessment/Characterization Follow up with USCG regarding sheen sighted in Womens Bay” in the amount of \$161.74.<sup>39</sup> Incident response started August 6, 2021<sup>40</sup> and ended on December 1, 2021<sup>41</sup>. All actions performed after the response end date of December 1, 2021 would not be associated with FPNJ21010 or considered coordinated with the FOSC. As such, the two hours billed on June 16, 2022 in the total amount of \$161.74 is denied on the basis that the actions performed are (1) not associated with the incident identified by the FOSC under FPN UCGPJ21010, and (2) the actions have not been coordinated with the FOSC and are therefore denied.

**V. CONCLUSION:**

Based on a comprehensive review of the record, the applicable law and regulations, and for the reasons outlined above, Alaska Department of Environmental Conservation request for uncompensated removal costs is approved in the amount of **\$8,024.18**.

This determination is a settlement offer,<sup>42</sup> the claimant has 60 days in which to accept this offer. Failure to do so automatically voids the offer.<sup>43</sup> The NPFC reserves the right to revoke a settlement offer at any time prior to acceptance.<sup>44</sup> Moreover, this settlement offer is based upon the unique facts giving rise to this claim and is not precedential.

(b) (6)

<sup>38</sup> See, State of Alaska claim submission received September 11, 2023, and all USCG SITREP-POL reports One through Five and final.

<sup>39</sup> ADEC claim submission received September 11, 2023, ADEC Invoice SPR-192644 dated July 31, 2022.

<sup>40</sup> See, SITREP-POL Fifth and Final dated January 7, 2022, section 2A.

<sup>41</sup> See, SITREP-POL Fifth and Final dated January 7, 2022, section 2N.

<sup>42</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>43</sup> 33 CFR § 136.115(b).

<sup>44</sup> 33 CFR § 136.115(b).

Claim Supervisor: (b) (6)

Date of Supervisor's review: *1/17/2024*

Supervisor Action: *Offer Approved*

Supervisor's Comments: