

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

<b>Claim Number:</b>	UCGP25011-URC001
<b>Claimant:</b>	State of Washington Department of Ecology (WADOE)
<b>Type of Claimant:</b>	State
<b>Type of Claim:</b>	Removal Costs
<b>Claim Manager:</b>	(b) (6)
<b>Amount Requested:</b>	\$ 8,551.48
<b>Action Taken:</b>	Offer in the amount of \$7,008.56.

### **EXECUTIVE SUMMARY:**

On January 20, 2019 at 12:58 pm local time, the United States Coast Guard (“USCG”) National Response Center (“NRC”) received report # 1235636, that a vessel was discovered washed up on onto the beach during low tide near Timothy Way on Camano Island, Washington.<sup>2</sup> The shoreline where the incident occurred is surrounded by the Saratoga Passage, a navigable waterway of the United States.<sup>3</sup> The USCG Sector Puget Sound is the Federal On Scene Coordinator (“FOSC”) for the incident and a Pollution Investigator arrived on scene on January 21, 2019,<sup>4</sup> stuck the vessel tanks and determined that there was approximately 5 gallons of fuel onboard.<sup>5</sup> Washington Department of Ecology (“WADOE” or “Claimant”), responded to the incident on January 21, 2019 as the State On Scene Coordinator (“SOSC”).<sup>6</sup> No owner for the vessel has been identified based on the Washington State Registration Number [REDACTED].<sup>7</sup>

The FOSC determined that the incident in fact posed a substantial threat of discharge into a navigable waterway and determined the actions performed by WADOE and NRC Environmental Services were consistent with the National Contingency Plan (NCP).<sup>8</sup> On January 21, 2019, WADOE determined the vessel posed a substantial threat of discharge so it hired NRC Environmental Services, state contracted Oil Spill Response Organization (OSRO), to respond to the incident and remove fuel from the vessel.<sup>9</sup>

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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 (NRC) Report # 1235636 dated January 20, 2019

<sup>3</sup> GIS map of navigable waterway near incident location.

<sup>4</sup> See, State of Washington Department of Ecology modified claim form, question 3, P.1/5 dated January 23, 2025.

<sup>5</sup> Washington Department of Ecology Spill Program Integrated Information System Report # 104292, ERTS # 686770, section Incident Detail, P.2/5, printed on January 23, 2025.

<sup>6</sup> See, State of Washington Department of Ecology modified claim form, question 3, P.1/5 dated January 23, 2025.

<sup>7</sup> See, State of Washington Department of Ecology modified claim form, question 7, P.2/5 dated January 23, 2025.

<sup>8</sup> Email and coordination statement from the FOSC to NPFC dated March 21, 2025.

<sup>9</sup> Washington Department of Ecology Spill Program Integrated Information System Report # 104292, ERTS # 686770, section Incident Detail, P.5/5, printed on January 23, 2025.

On January 30, 2025, WADOE presented its removal cost claim to the National Pollution Funds Center (“NPFC”) in the amount of \$8,551.48.<sup>10</sup> The NPFC has thoroughly reviewed all documentation submitted with the claim, and analyzed the applicable law and regulations, and after careful consideration has determined that \$7,008.56 of the claimed costs are compensable and offers this amount as full and final compensation of this claim.

## **I. DETERMINATION PROCESS:**

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).<sup>11</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>12</sup> The NPFC may rely upon, but is not bound by the findings of fact, opinions, or conclusions reached by other entities.<sup>13</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.

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

### ***Incident***

On January 20, 2019, at 12:58 pm local time, the United States Coast Guard (“USCG”) National Response Center (“NRC”) received notification that a vessel was discovered washed up on onto the beach during low tide near Timothy Way on Camano Island, Washington.<sup>14</sup> The shoreline where the incident occurred is surrounded by the Saratoga Passage waterway, a navigable waterway of the United States.<sup>15</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. No responsible party has

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<sup>10</sup> WADOE Original Claim submission received January 30, 2025.

<sup>11</sup> 33 CFR Part 136.

<sup>12</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>13</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>14</sup> National Response Center (NRC) Report # 1235636 dated January 20, 2019

<sup>15</sup> GIS map of navigable waterway near incident location.

been identified at this time for abandoned vessel that is the subject of this claim.<sup>16</sup>

### ***Recovery Operations***

On January 21, 2019, staff from WADOE responded to the incident site and observed a hole in the vessel's hull near the starboard aft.<sup>17</sup> WADOE hired NRC Environmental Services to defuel the vessel and perform disposal.<sup>18</sup> NRC defueled the vessel and separated the hazardous materials found onboard the vessel from the oily water waste and disposed of them separately.<sup>19</sup> Hazardous materials that were removed from the vessel, were sent to Waste Management and the oily water waste was sent to MarVac.<sup>20</sup>

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

On January 30, 2025, WADOE presented its removal cost claim to the NPFC for \$8,551.48.<sup>21</sup> The submission included a cover sheet, a modified claim form, an invoice from WADOE, a labor/FTE cost summary sheet, a labor breakdown sheet by response personnel, a payment register for a lunch allowance for (b) (6) on 1/21/19 listed as travel costs associated with the incident, proof of payment in the form of an official payment register for NRC's invoiced costs, the NRC invoice voucher with supporting documentation, NRC's rate schedule, a disposal manifest from Waste Management for hazardous paint related materials, Marvac invoice for the disposal of oily water waste and petroleum contaminated sorbent pads, National Response Center report # 1235636, a map of the incident location, and a photo of the grounded vessel.<sup>22</sup>

On February 10, 2025, the NPFC requested the following items:

1. Requested clarification of the timeline of the incident as it appears the vessel was involved in an incident on January 9, 2019, and then again on January 20, 2019, which is the incident date subject of the claim submission, and
2. Requested information regarding what appeared to be response actions associated with both oil removal and hazardous materials removal/disposal. The NPFC requested details on who performed which activity and what costs were associated with each category.

WADOE responded with additional information on February 11, 2025<sup>23</sup>, however the NPFC made an amplifying request for information on February 12, 2025, seeking a more detailed description of employee actions and the NPFC provided an example of support documentation

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<sup>16</sup> State of Washington Department of Ecology modified claim form, question 3, P.1/5 dated January 23, 2025.

<sup>17</sup> Washington Department of Ecology Spill Program Integrated Information System Report # 104292, ERTS # 686770, section Incident Detail, P.5/5, printed on January 23, 2025.

<sup>18</sup> See, March 6, 2025, email with NRC Detailed Invoice and associated documentation.

<sup>19</sup> *Id.*

<sup>20</sup> WADOE Original Claim submission received January 30, 2025.

<sup>21</sup> WADOE Original Claim submission received January 30, 2025.

<sup>22</sup> *Id.*

<sup>23</sup> Email from WADOE to NPFC with additional documentation dated February 11, 2025.

that WADOE provided in a previous claim submission.<sup>24</sup> On February 25, 2025, WADOE provided the requested information.<sup>25</sup> On February 27, 2025, the NPFC requested the loaded hourly rate for WADOE employees. In a secondary request on this same date, the NPFC requested further clarification of NRC daily field logs with employee names, positions, start and stop times, and hourly rates. An additional request was made for the delineation of costs associated with both Waste Management costs and disposal and the Marvac costs and disposal.<sup>26</sup> On March 7, 2025, WADOE provided accurate invoices, NRC daily service log, rate schedule that they received from NRC which provided more details about the response and disposal costs along with actions taken during the incident.<sup>27</sup>

### **III. 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>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

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<sup>24</sup> Email from NPFC to WADOE dated February 12, 2025, with attachment examples.

<sup>25</sup> Email from WADOE to NPFC dated February 25, 2025, with additional information.

<sup>26</sup> Two emails from NPFC to WADOE dated February 27, 2025, requesting additional information.

<sup>27</sup> Email from WADOE to NPFC dated March 6, 2025, with responses and attachments.

<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.

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;
- (d) That the removal costs were uncompensated and reasonable.<sup>36</sup>

WADOE seeks reimbursement of \$8,551.48 for state labor, lunch, state indirect costs and NRC contractor invoiced costs in the amount of \$6,327.69 for the response to an abandoned 1966 30' Trojan unnamed recreational vessel on the shore of Comano Island, WA on January 21, 2019 through January 24, 2019.<sup>37</sup> WADOE responded in in their capacity as the State On Scene Coordinator (SOSC) to oversee the response and defueling of the vessel after hiring NRC as its state contractor.<sup>38</sup>

There was some initial communication with Sector Puget Sound on January 21, 2019, when a pollution investigator met WADOE on scene and performed an initial assessment of the vessel and determined that WADOE would take the lead on response.<sup>39</sup> After receipt of the claim, the NPFC reached out to Sector Puget Sound, the Federal On Scene Coordinator (FOSC), who provided after-the-fact coordination of WADOE's actions and determined the response actions were in accordance with the National Contingency Plan (NCP).<sup>40</sup>

After analyzing the documentation provided by WADOE, the NPFC finds most of the costs claimed are compensable removal costs however the disposal costs associated with the removal and disposal of hazardous paint related materials removed from the vessel are denied as CERCLA costs vice compensable removal costs and as such, the NPFC denies the following costs in the total amount of \$1,005.35 of costs invoiced by NRC and a total of \$505.56 of Indirect Costs invoiced by WA DOE bringing the total denied costs to \$1,510.91:

1. Waste Management invoice # 0006863-2236-3 in the amount of \$417.29 for the disposal of CERCLA products that are not compensable oil removal costs,
2. NRC ESIC fee in the amount of \$505.04 is denied as it is not outlined in the NRC rate sheet provided on 3/6/25 labeled as WC WA DES 2017 Rate Schedule (ER Planned) identified in Tab J pages 1-3 of 7, and

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

<sup>36</sup> 33 CFR 136.203; 33 CFR 136.205.

<sup>37</sup> WADOE Original Claim submission received January 30, 2025.

<sup>38</sup> Washington Department of Ecology Spill Program Integrated Information System Report # 104292, ERTS # 686770, section Incident Detail, P.1-5/5, printed on January 23, 2025.

<sup>39</sup> State of Washington Department of Ecology modified claim form, question 4, P.2/5 dated January 23, 2025.

<sup>40</sup> Email from FOSC to NPFC dated March 21, 2025.

3. Sales Tax of .0870 based on the total amount invoiced amount of \$5,821.24 totaling \$506.45 has been reduced based on the total amount of approved costs in the amount of \$4,866.91 which resulted in a total denied amount of \$83.03.

**Total NRC Denied Costs = \$1,005.35<sup>41</sup>**

1. WA DOE Indirect Costs in the amount of \$505.56 are denied as unsupported by the record. The NPFC requested supporting documentation for the Indirect Costs however no Indirect Cost Methodology documentation has been provided to date therefore the costs are denied.

**Total WA DOE Denied Costs = \$505.56<sup>42</sup>**

**OVERALL DENIED COSTS - \$1,510.91<sup>43</sup>**

#### **IV. CONCLUSION:**

After careful analysis of all the supporting documentation provided by WADOE and the entire administrative record, the NPFC determines and finds as a matter of fact that a vessel ran aground on Camano Island, located off the Saratoga Passage, a navigable waterway of the United States. The vessel contained a maximum estimate of 20 gallons of gasoline.<sup>44</sup> WADOE hired NRC Environmental Services to respond to the incident and defuel the vessel and handle proper disposal. NRC contractors defueled the vessel and used sorbents to clean the petroleum products released from the vessel. NRC separated the refuse between oil products and hazardous paint related materials which are not OPA compensable removal costs and as such are denied. Additionally, the WA DOE indirect costs in the amount of \$505.56 are denied as not supported by adequate indirect cost documentation.

Based on a comprehensive review of the record, the applicable law and regulations, and for the reasons outlined above, the Washington State Department of Ecology's request for uncompensated removal costs is approved in the amount of **\$7,008.56**.

This determination is a settlement offer,<sup>45</sup> WADOE has 60 days in which to accept this offer. Failure to do so automatically voids the offer.<sup>46</sup> The NPFC reserves the right to revoke a

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<sup>41</sup> Enclosure 3, NRC tab, lines 6, 43, and 44.

<sup>42</sup> Enclosure 3, WA DOE tab, line 11.

<sup>43</sup> Enclosure 3

<sup>44</sup> WADOE Original Claim submission received January 30, 2025.

<sup>45</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>46</sup> 33 CFR 136.115(b).

settlement offer at any time prior to acceptance.<sup>47</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: *4/15/2025*

Supervisor Action: *Offer Approved*

Supervisor's Comments:

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<sup>47</sup> 33 CFR 136.115(b).