

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

<b>Claim Number:</b>	UCGP925022-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) (6)
<b>Amount Requested:</b>	\$10,957.26
<b>Action Taken:</b>	Offer in the amount of \$8,932.94

### **EXECUTIVE SUMMARY:**

On April 14, 2020 at 17:16 local time, the United States Coast Guard (“USCG”) National Response Center (“NRC”) received report # 1275408, that a fuel sheen was discovered on the surface waters of Salmon Bay, a navigable waterway of the United States.<sup>2</sup> The State of Washington Department of Ecology (“Claimant” or “WADOE”) also received a report the same date via WADOE Incident Report # 110844, that there was a fuel sheen on the waters of Salmon Bay from an unknown source. The caller also stated a dead duck was found in the sheen.<sup>3</sup> The USCG Sector Seattle was the Federal On Scene Coordinator (“FOSC”) for the incident as identified in the WADOE Incident description and FOSC Coordination Question & Statement document.<sup>4</sup> The FOSC arrived on scene on April 14, 2020 at 1950 local time.<sup>5</sup> WADOE responded in its capacity as the State On Scene Coordinator (“SOSC”) and found a significant accumulation of oil around the boathouses and B dock at Ballard Mill Marina. A Responsible Party (“RP”) was never identified.<sup>6</sup>

On July 14, 2025, WADOE presented its removal cost claim to the NPFC for \$10,957.26.<sup>7</sup> The NPFC thoroughly reviewed all documentation submitted with the claim, analyzed the applicable law and regulations, and after careful consideration has determined that \$8,392.94 of the claimed costs are compensable and offers this amount as full and final compensation as detailed below.

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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 # 1275408 dated April 14, 2020.

<sup>3</sup> State of Washington Department of Ecology (WADOE) Incident Report # 110844 dated April 14, 2020.

<sup>4</sup> WADOE original claim submission, section U.3 entitled FO SC Comms, undated.

<sup>5</sup> WADOE original claim submission, section U.2 entitled FO SC Comms dated April 14, 2020.

<sup>6</sup> WADOE original claim submission, undated Incident Description.

<sup>7</sup> WADOE original claim submission dated July 11, 2025, Tab B.

## **I. DETERMINATION PROCESS:**

The NPFC utilizes an informal process when adjudicating claims against the Oil Spill Liability Trust Fund (OSLTF).<sup>8</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>9</sup> The NPFC may rely upon, but is not bound by the findings of fact, opinions, or conclusions reached by other entities.<sup>10</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 April 14, 2020 at 17:16 local time, the United States Coast Guard (“USCG”) National Response Center (“NRC”) received report # 1275408, that a fuel sheen was discovered on the surface waters of Salmon Bay, a navigable waterway of the United States.<sup>11</sup> WADOE responded to the report of a sheen at Ballard Mill Marina and found a significant accumulation of oil around the boathouses and B dock.<sup>12</sup> WADOE estimated that 25-35 gallons of oil discharged into Salmon Bay, a navigable waterway of the United States.<sup>13</sup>

### ***Responsible Party***

Investigators checked the boats present in the boathouses and near the docks and determined none of them were the source of the spill. A responsible party (RP) was not able to be identified.<sup>14</sup>

### ***Recovery Operations***

On April 14, 2020, upon arrival WADOE deployed absorbent pads however the spill was too large for WADOE’s response capabilities. After consultation with the FOSC, Sector Seattle, WADOE hired Global Diving & Salvage (“GDS”) to conduct cleanup of the recoverable oil in

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<sup>8</sup> 33 CFR Part 136.

<sup>9</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>10</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>11</sup> National Response Center (NRC) Report # 1275408 dated April 14, 2020.

<sup>12</sup> WADOE original claim submission, undated Incident Description.

<sup>13</sup> See, National Response Center (NRC) Report # 1275408 dated April 14, 2020; See also, WADOE original claim submission, undated Incident Description.

the water.<sup>15</sup> GDS arrived on scene on April 14, 2020 and deployed 8 bales of sorbent sweep and 1 bale of boom around the oil sheen. The total amount of oil recovered could not be determined. Oil samples taken by WADOE detected “diesel range organics”.<sup>16</sup> Response ended on April 17, 2020.<sup>17</sup>

### **III. CLAIMANT AND NPFC:**

On July 14, 2025, WADOE presented its removal cost claim to the NPFC for \$10,957.26.<sup>18</sup> The submission included a cover sheet, a modified claim form, an invoice summary of costs which included WADOE salaries & benefits, Indirect Overhead costs, and Goods & services.<sup>19</sup> A summary sheet breaking down labor costs<sup>20</sup>, record of WADOE labor costs<sup>21</sup>, WADOE indirect percentage memo<sup>22</sup>, WADOE lab costs<sup>23</sup>, GDS proof of payment<sup>24</sup>, GDS Invoice documentation<sup>25</sup>, GDS daily invoice logs<sup>26</sup>, GDS rate sheet<sup>27</sup>, Disposal Manifest from GDS<sup>28</sup>, OnSite Environmental Inc lab analysis report<sup>29</sup>, ICS Forms<sup>30</sup>, NRC report<sup>31</sup>, ERTS and SPIIS Report from WADOE<sup>32</sup>, Map, Photos and Sketch<sup>33</sup>, and FOSC Comms<sup>34</sup>.

On July 15, 2025, the NPFC requested the following items:

1. Tab K, the rate sheet for Global Diving and Salvage is from 2022. We would need the rate sheet from 2020, at the time of the incident.
2. Tab C, the employee rates, does not include the employee rate schedule for 2020. Please provide the employee rate sheets for 2020.
3. Tab C.3 also includes the overhead rate calculation, but please provide any documentation (like a rate memo) for the overhead rate of .2970.

WADOE responded with additional information on both July 29<sup>th</sup> and 31<sup>st</sup>, 2025, however the NPFC made an additional request regarding the Global Diving & Salvage rate sheet that was provided requesting clarification of labor rates.<sup>35</sup>

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<sup>15</sup> See, WADOE original claim submission, Oil Spill Liability Trust Fund Modified Claim Form, Question 13 on page 3 of 4, dated July 11, 2025.

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

<sup>17</sup> WADOE original claim submission, Tab J Global Diving & Salvage invoice #IN-135734 dated April 24, 2020.

<sup>18</sup> WADOE original claim submission dated July 11, 2025, Tab B.

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

<sup>20</sup> WADOE original claim submission dated July 11, 2025, Tab C1.

<sup>21</sup> WADOE original claim submission dated July 11, 2025, Tab C2.

<sup>22</sup> WADOE original claim submission dated July 11, 2025, Tab C3.

<sup>23</sup> WADOE original claim submission dated July 11, 2025, Tab G.

<sup>24</sup> WADOE original claim submission dated July 11, 2025, Tab I.

<sup>25</sup> WADOE original claim submission dated July 11, 2025, Tab J.

<sup>26</sup> WADOE original claim submission dated July 11, 2025, Tab J.2.

<sup>27</sup> WADOE original claim submission dated July 11, 2025, Tab K.

<sup>28</sup> WADOE original claim submission dated July 11, 2025, Tab O.

<sup>29</sup> WADOE original claim submission dated July 11, 2025, Tab P.

<sup>30</sup> WADOE original claim submission dated July 11, 2025, Tabs Q.1-Q4.

<sup>31</sup> WADOE original claim submission dated July 11, 2025, Tab R.1.

<sup>32</sup> WADOE original claim submission dated July 11, 2025, Tab R.2.

<sup>33</sup> WADOE original claim submission dated July 11, 2025, Tabs S.1-S.3.

<sup>34</sup> WADOE original claim submission dated July 11, 2025, Tabs U.1-U.3.

<sup>35</sup> Email from NPFC to WADOE dated August 19, 2025.

#### **IV. 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>36</sup> An RP's liability is strict, joint, and several.<sup>37</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>38</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>39</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>40</sup>

The NPFC is authorized to pay claims for uncompensated removal costs that are consistent with the National Contingency Plan (NCP).<sup>41</sup> The NPFC has promulgated a comprehensive set of regulations governing the presentment, filing, processing, settling, and adjudicating such claims.<sup>42</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>43</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>44</sup>
- (d) That the removal costs were uncompensated and reasonable.<sup>45</sup>

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<sup>36</sup> 33 U.S.C. § 2702(a).

<sup>37</sup> See, H.R. Rep. No 101-653, at 102 (1990), *reprinted in* 1990 U.S.C.C.A.N. 779, 780.

<sup>38</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>39</sup> 33 U.S.C. § 2701(31).

<sup>40</sup> 33 U.S.C. § 2701(30).

<sup>41</sup> See generally, 33 U.S.C. § 2712 (a) (4); 33 U.S.C. § 2713; and 33 CFR Part 136.

<sup>42</sup> 33 CFR Part 136.

<sup>43</sup> 33 CFR 136.105.

<sup>44</sup> Email from FOSC to NPFC dated July 24, 2025.

<sup>45</sup> 33 CFR 136.203; 33 CFR 136.205.

WADOE seeks reimbursement of \$10,957.26 for state labor, state indirect costs, OnSite Environmental Inc lab report costs and Global Diving & Salvage invoiced costs for the response to a mystery spill that occurred at Ballard Mill Marina.<sup>46</sup> WADOE responded in their capacity as the State On Scene Coordinator (“SOSC”) to oversee the response after hiring its state contractor, Global Diving & Salvage.<sup>47</sup>

After analyzing the documentation provided by WADOE, the NPFC finds the majority of the costs claimed are compensable removal costs however general laborer rates were invoiced at an incorrect rate when compared to the Global Diving & Salvage rate sheet provided by WADOE. Also one time entry rate was overcharged by a half hour based on the supporting documentation and as such, the NPFC denied the following costs in the total amount of \$1,984.32 invoiced by Global Diving & Salvage:

1. General Laborer straight time rate of \$105.28 was improperly billed compared to the Skilled Laborer rate of \$42.00 in accordance with the Global Diving & Salvage rate sheet.  
**Total straight time hourly rate denied: \$949.20;**
2. General Laborer overtime rate of \$131.60 was improperly billed compared to the Skilled Laborer rate of \$55.00 in accordance with the Global Diving & Salvage rate sheet.  
**Total overtime hourly rate denied: \$919.20;**
3. On 4/17/20, Global Diving invoiced the General Laborer straight time rate of \$105.28 was improperly billed in rate and time. The daily documentation shows (b) (6) (b) (6) only actually worked one hour vice the 1.5 hr invoiced.  
**Total time denied for (b) (6)(b) (6)(b) (6) on 4/17/20: \$115.92**

**OVERALL DENIED COSTS: \$1,984.32<sup>48</sup>**

## **VI. CONCLUSION:**

After careful analysis of all the supporting documentation provided by the claimant and the entire administrative record, the NPFC determines and finds as a matter of fact that that a mystery spill of oil occurred at Ballard Mill Marina and was recovered from Salmon Bay, a navigable waterway of the United States.<sup>49</sup> WADOE responded in its capacity as the SOSC and performed a joint investigation with the FOSC.<sup>50</sup> WADOE hired Global Diving & Salvage to cleanup the oil since no Responsible Party was identified.<sup>51</sup> During joint on scene investigation, WADOE met with the FOSC who advised they should hire a contractor and submit a claim to the NPFC and the FOSC would endorse the claim submission.<sup>52</sup> The FOSC provided

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<sup>46</sup> WADOE original claim submission dated July 11, 2025.

<sup>47</sup> WADOE original claim submission dated July 11, 2025, Tab R.2.

<sup>48</sup> Enclosure 3, Global Diving Invoice tab, lines 4, 7, 10, 12, 30, 33, 36, 39, 42, 57, 60, 63, 66, and 79.

<sup>49</sup> National Response Center (NRC) Report # 1275408 dated April 14, 2020.

<sup>50</sup> WADOE original claim submission, section U.3 entitled FOSC Comms, undated.

<sup>51</sup> WADOE original claim submission, undated Incident Description.

<sup>52</sup> WADOE original claim submission dated July 11, 2025, Tabs U.1-U.3.

coordination for the WADOE claim and incident response and has determined that the actions taken were determined to be consistent with the National Contingency Plan (NCP).<sup>53</sup>

Based on a comprehensive review of the record, the applicable law and regulations, and for the reasons outlined above State of Washington Department of Ecology's (WADOE) request for uncompensated removal costs is approved in the amount of **\$8,932.94**.

This determination is a settlement offer,<sup>54</sup> the claimant has 60 days in which to accept this offer. Failure to do so automatically voids the offer.<sup>55</sup> The NPFC reserves the right to revoke a settlement offer at any time prior to acceptance.<sup>56</sup> Moreover, this settlement offer is based upon the unique facts giving rise to this claim and is not precedential.

Claim Supervisor: (b) (6)(b) (6)(b) (6)	(b) (6)
Date of Supervisor's review: <i>9/16/25</i>	
Supervisor Action: <i>Offer Approved</i>	
Supervisor's Comments:	

<sup>53</sup> Email from the FOSC to NPFC dated July 24, 2025 providing FOSC coordination for the claim.

<sup>54</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>55</sup> 33 CFR 136.115(b).

<sup>56</sup> 33 CFR 136.115(b).