

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd. Suite 1000
Arlington, VA 20598-7100
Staff Symbol: (CA)
Phone: 800-280-7118
E-mail: arl-pf-npfcclaimsinfo@uscg.mil
Fax: 703-872-6113

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7012 2210 0001 7215 0148

5890/DWHZ
01 May 2013

Erasto Garcia Ramirez
[REDACTED]

Re: Claim Number: N10036-1912

Dear Mr. Ramirez,

The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq. (OPA) and the associated regulations at 33 C.F.R. Part 136, denies payment on the claim number N10036-1912 involving the Deepwater Horizon oil spill. Please see the attached Claim Summary/Determination Form for further explanation.

You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you find that you will be unable to gather particular information within the time period, you may include a request for an extension of time for a specified duration with your reconsideration request.

Reconsideration of the denial will be based upon the information provided. A claim may be reconsidered only once. Disposition of that reconsideration in writing will constitute final agency action. Failure of the NPFC to issue a written decision within 90 days after receipt of a timely request for reconsideration shall, at the option of the claimant, be deemed final agency action. All correspondence should include claim number N10036-1912.

Mail reconsideration requests to:

Director (ca)
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd, Suite 1000
Arlington, VA 20598-7100

Sincerely,
[REDACTED]

Claims Adjudication Division
National Pollution Funds Center
U.S. Coast Guard

Enclosure: Claim Summary/Determination

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1912
Claimant	Erasto Garcia Ramirez
Type of Claimant	Private (US)
Type of Claim	Loss of Profits or Impairment of Earning Capacity
Amount Requested	\$5,205.00

FACTS

On or about 20 April 2010, the Mobile Offshore Drilling Unit Deepwater Horizon (Deepwater Horizon) exploded and sank in the Gulf of Mexico. As a result of the explosion and sinking, oil discharged. The Coast Guard designated the source of the discharge and identified BP as a responsible party (RP). BP accepted the designation and advertised its OPA claims process. On 23 August 2010, the Gulf Coast Claims Facility (GCCF) began accepting and adjudicating certain individual and business claims on behalf of BP.

On 08 March 2012, the United States District Court, Eastern District of Louisiana issued a "Transition Order" (TO) limiting the GCCF's ability to accept, process, or pay claims except as provided in that order. The TO created a Transition Process (TP) to facilitate the transition of the claims process from the GCCF to a proposed Court Supervised Settlement Program (CSSP). The Court granted Preliminary Approval of the proposed settlement agreement on 02 May 2012, and the CSSP began processing claims on 04 June 2012.

CLAIM AND CLAIMANT

On 18 April 2013, Mr. Erasto Garcia Ramirez, ("the Claimant") submitted a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$5,205.00 in loss of profits or impairment of earning capacity damages allegedly resulting from the Deepwater Horizon oil spill.¹

The Claimant resides in Port Isabel, Texas where he works as a commercial fisherman. As a result of the oil spill, the Claimant alleged that he was "unable to go shrimping in area closed south of Louisiana in the Gulf of Mexico."²

As a result of the closures, the Claimant alleged to have lost \$5,205.00 in profits for 2010.

APPLICABLE LAW

Under the Oil Pollution Act of 1990 (OPA), at 33 U.S.C. § 2702(a), responsible parties are liable for removal costs and damages resulting from the discharge of oil into or upon the navigable water, adjoining shorelines, or the exclusive economic zone of the United States, as described in § 2702(b) of OPA.

The OSLTF is available to pay claims for uncompensated damages pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136. One type of damages available pursuant to 33 C.F.R. § 136.231 is a claim for loss of profits or impairment of earning capacity due to injury to or destruction of natural resources.

¹ Optional OSLTF Claim Form, received on 18 April 2013.

² Optional OSLTF Claim Form, received on 18 April 2013.

Under 33 C.F.R. § 136.233 a claimant must establish the following:

- (a) That real or personal property or natural resources have been injured, destroyed, or lost;
- (b) That the claimant's income was reduced as a consequence of injury to, destruction of, or loss of property or natural resources, and the amount of that reduction;
- (c) The amount of the claimant's profits or earnings in comparable periods and during the period when the claimed loss or impairment was suffered, as established by income tax returns, financial statements, and similar documents. In addition, comparative figures for profits or earnings for the same or similar activities outside of the area affected by the incident also must be established; and
- (d) Whether alternative employment or business was available and undertaken and, if so, the amount of income received. All income that a claimant received as a result of the incident must be clearly indicated and any saved overhead and other normal expenses not incurred as a result of the incident must be established.

Under 33 C.F.R. § 136.105(a) and § 136.105(e)(6), the claimant bears the burden of providing to the NPFC, all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim.

Under 33 C.F.R. § 136.235, the amount of compensation allowable for a claim involving loss of profits or impairment of earning capacity is limited to the actual net reduction or loss of earnings or profits suffered. Calculations for net reductions or losses must clearly reflect adjustments for—

- (a) All income resulting from the incident;
- (b) All income from alternative employment or business undertaken;
- (c) Potential income from alternative employment or business not undertaken, but reasonably available;
- (d) Any saved overhead or normal expenses not incurred as a result of the incident; and
- (e) State, local, and Federal taxes.

Under 33 U.S.C. § 2712(f), payment of any claim or obligation by the Fund under OPA shall be subject to the United States Government acquiring, by subrogation, all rights of the claimant or State to recover from the responsible party.

DETERMINATION OF LOSS

Claimant's Submission to the NPFC

The Claimant submitted the following documentation in support of this claim:

- Optional OSLTF Claim Form, received on 18 April 2013;
- 2011 Form 1040, showing business income of \$9,023.00;
- 2011 Schedule C Form 1040, showing gross sales of \$15,873.00;
- 2011 Schedule SE Form 1040;
- 2010 Form 1040, showing business income of \$13,409.00;
- 2010 Schedule C-EZ (Form 1040), showing gross sales of \$15,424.00;
- 2010 Schedule SE (Form 1040);
- 2010 Schedule EIC (Form 1040A or 1040);
- 2010 Schedule M (Form 1040A or 1040);
- 2010 Forms 1099-MISC;

- 2011 Form 1099-MISC;
- 2009 Form 1040, showing business income of \$2,201.00;
- 2009 Schedule C-EZ (Form 1040);
- 2009 Schedule SE (Form 1040);
- 2009 Schedule EIC (Form 1040A or 1040);
- 2009 Form 1099 MISC;
- 2007 Form 1040, showing business income of \$12,425.00;
- 2007 Schedule SE Form 1040;
- 2007 Schedule EIC (Form 1040A or 1040);
- 2007 Forms 1099-MISC;
- Statement regarding the Claimant's unemployment in 2008.

On 18 April 2013, the Claimant presented this claim to the NPFC, seeking to recover \$5,205.00 in loss of profits or impairment of earning capacity damages resulting from the Deepwater Horizon oil spill. The Claimant alleged that this claim was first presented to the Responsible Party in May of 2010 and that no determination has yet been issued on the claim.³ The NPFC does not have access to information necessary to verify this assertion, but shall adjudicate this claim to the extent that presentment requirements under OPA have been satisfied. If any of the damages now before the NPFC were not previously presented to the Responsible Party, these damages are denied for improper presentment.⁴

Furthermore, evidence in this claim submission indicates that the Claimant may be a member of the Deepwater Horizon oil spill economic and property damages class action settlement (the E&PD Settlement).⁵

NPFC Determination

Under 33 U.S.C. § 2702(b)(2)(E) and 33 C.F.R. Part 136, a claimant must prove that any loss of income was due to injury, destruction or loss of real or personal property or of a natural resource as a result of a discharge or substantial threat of a discharge of oil. Under 33 C.F.R. § 136.105(a) and § 136.105(e)(6), the claimant bears the burden of providing all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim.

As an initial matter, it appears that the Claimant may be a member of the E&PD Settlement. If so, this claim would be considered to have been settled, and the Claimant would be ineligible to recover funds from the OSLTF. According to OPA, the payment of any claim by the NPFC is subject to the NPFC's ability to obtain, by subrogation, the rights to recover all costs and damages from the responsible party. If a claim has been settled, the claimant no longer has rights to the claim and therefore cannot subrogate the NPFC to those rights.

If the Claimant disagrees that he is a member of the economic damages class of the E&PD Settlement, he should submit evidence to indicate that he has either opted out or is excluded from the E&PD Settlement in his request for reconsideration of this claim.

However, this claim is also denied on its merits. In order to prove a claim for loss of profits damages, a Claimant must provide evidence sufficient to prove (1) that the Claimant sustained a

³ Optional OSLTF Claim Form, received on 18 April 2013.

⁴ 33 C.F.R. § 136.103(c)(2).

⁵ The Claimant alleged to have been a fisherman working in south Louisiana.

loss or reduction in income, and (2) that the financial loss was caused by the discharge of oil resulting from the Deepwater Horizon oil spill.

The Claimant has failed to provide any evidence to demonstrate that he sustained a financial loss as a result of the oil spill. In support of this claim, the Claimant provided federal income tax returns which indicate that the Claimant earned more income in 2010 than in any other year from 2007 to 2011. Furthermore, the Claimant has provided no evidence to prove that he was prevented from fishing at any time as a result of the Deepwater Horizon oil spill. Should the Claimant wish to pursue this claim on reconsideration, he should provide trip tickets or other records to indicate that he usually fished waters which were closed in 2010 as a result of the oil spill, and that he was unable to make up for his lost earnings during the time of the closures.

Based on the foregoing, this claim is denied because the Claimant has failed to provide evidence sufficient to prove (1) that he sustained a financial loss in the amount \$5,205.00, or (2) that the alleged loss is due to the injury, destruction, or loss of property or natural resources as a result of a discharge or substantial threat of discharge of oil. Additionally, if the Claimant is a member of the E&PD Settlement Class, then this claim would be considered to have been settled and would not be eligible for compensation from the OSLTF.


Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *5/1/13*

Supervisor's Action: *Denial approved*

Supervisor's Comments: