

U.S. Department  
of Homeland Security

United States  
Coast Guard



Director  
United States Coast Guard  
National Pollution Funds Center  
Natural Resource Damage (NRD)  
Claims Division

U.S. Coast Guard Stop 7100  
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Arlington, VA 22203-1804  
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16480

January 10, 2011

*CERTIFIED MAIL* Number: [REDACTED]

[REDACTED]  
Gulfport, MS 39503-3254

RE: Claim Number: N10036-0117

Dear [REDACTED]

The National Pollution Funds Center (NPFC) has reviewed your claim for lost subsistence use of natural resources resulting from the Deepwater Horizon oil spill. We have determined that you have not met your burden of proving a subsistence use loss as defined by the Oil Pollution Act (OPA, 33 U.S.C. § 2701 *et seq.*) and OPA claims regulations (33 CFR Part U.S.C. §136). Accordingly, the NPFC denies payment of your claim. The basis of this determination follows.

### ***Background***

On or about April 20, 2010, the Mobile Offshore Drilling Unit Deepwater Horizon (Deepwater Horizon) exploded and sank in the Gulf of Mexico. As a result, oil was discharged and the federal government and Gulf coast states closed certain waters to commercial and recreational fishing for varying periods of time. 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 August 23, 2010, the Gulf Coast Claims Facility (GCCF), a representative for the RP, began accepting and adjudicating individual and business claims on behalf of BP.

### ***Facts of Your Claim***

On August 23, 2010, you presented a claim for Emergency Advance Payment to the GCCF, which was denied on October 28, 2010. On November 19, 2010, you presented your claim to the NPFC for lost subsistence use of natural resources following the Deepwater Horizon incident. You seek \$13,144.20 as damages for lost subsistence use, determined as the cost to replace fish that you claim you would have caught and used for subsistence food during a six month period if the spill had not occurred. You used quotes

from three seafood companies that do business over the internet to determine the replacement cost.

### ***Applicable Law***

OPA provides that the Oil Spill Liability Trust Fund (OSLTF) is available to pay claims for damages resulting from oil pollution incidents. 33 U.S.C. § 2712(a)(4). Damages include loss of subsistence use of natural resources. 33 U.S.C. § 2702(b)(2)(C). The regulations at 33 CFR Part 136 include general claim requirements and requirements specific to lost subsistence use claims.

### **General Claim Requirements**

Claims, including those for lost subsistence use of natural resources, must be: (a) in writing for a sum certain (33 C.F.R. §136.105(b)), (b) submitted to the NPFC within three years after the date on which the injury and its connection with the incident were reasonably discoverable (33 C.F.R. §136.101(a)), and (c) presented first to the (RP or guarantor and that claim is denied or not settled after 90 days before submission to the NPFC for payment (except as noted in 33 C.F.R. §136.103(a)). The NPFC finds that your claim meets the general claim requirements.

### **Subsistence Use Loss Claim Requirements**

The claims regulations (33 C.F.R. §§136.219-223) provide additional requirements for lost subsistence use claims. Specifically, each claim for loss of subsistence use of natural resources must:

- 1) be for lost subsistence use and submitted by an eligible claimant;
- 2) identify and describe the actual subsistence use of each specific natural resource for which compensation is being claimed;
- 3) describe how and to what extent the claimant's subsistence use was affected by injury to or loss of each specific natural resource;
- 4) describe efforts to mitigate the subsistence use loss; and
- 5) be based on the reasonable cost to replace the lost subsistence use of natural resources.

### ***Claim Submission and Documentation***

The claim you submitted to the NPFC by fax on November 19, 2010 included a letter with the following supporting documents: a letter from the GCCF dated October 28, 2010 denying your claim for Emergency Advance Payment (Claimant Identification Number: [REDACTED]), citing lack of proof of subsistence use and/or damages incurred due to loss of subsistence use of natural resources injured or destroyed as a result of the spill; three estimates for seafood from companies that sell and ship seafood from outside the Gulf region, which you assert represent similar types and quantities to those you regularly harvested for subsistence purposes; an affidavit from a witness testifying to your

subsistence use of natural resources from the Gulf of Mexico; unemployment verification for the benefit period May 30, 2010 to May 29, 2011, from the Mississippi Department of Employment Security; a fishing closure advisory for Mississippi state waters; various blog and news articles about the spill; and a copy of a recreational fishing license from the state of Mississippi that appears to have been issued in August of 2010<sup>1</sup>.

### ***NPFC Determination***

Your claim for lost subsistence use is denied because you have not met your burden of proving a subsistence use loss as defined by the Oil Pollution Act (OPA, 33 U.S.C. § 2701 *et seq.*) and OPA claims regulations (33 CFR Part 136). While you provided a copy of your recreational fishing license from August 2010, you have not provided sufficient evidence for the NPFC to determine whether you had a valid fishing license for the time period prior to the incident, and documentation necessary to demonstrate lawful fishing activities for this period. Moreover, the period of your claimed loss exceeds the closure period in your area. Therefore, your loss of subsistence use for a part of the period for which you claim a loss did not result from the Deepwater Horizon oil spill but from your choice not to fish in your area. Additionally, while you included a fishing closure advisory for Mississippi state waters in your documentation, you have not shown that you attempted to mitigate subsistence use losses, to the extent that they occurred, by fishing in locations that were not closed to fishing. Lastly, the internet-based cost estimates you provided do not reflect the reasonable replacement cost of the natural resource for which you seek compensation nor did you provide evidence that you incurred any replacement costs.

### ***Request for Reconsideration***

Under OPA, you may ask the NPFC to reconsider this determination. Reconsideration requests must be received by the NPFC in writing within 60 days of the date of this letter, and will be based upon the additional factual or legal information that you provide with your request. A claim may be reconsidered only once, and written disposition of a reconsideration request constitutes final agency action. If the NPFC fails to issue a written decision within 90 days after receipt of a request for reconsideration, this determination, at the option of the claimant, shall be deemed final agency action.

Should you choose to request NPFC reconsideration of this determination, please mail the request and additional claim information with the appropriate claim number (N10036-0117) to:

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<sup>1</sup> The copy of the fishing license provided to the NPFC is illegible. The NPFC cannot definitively determine to whom and when the license was issued.

Chief (Cn)  
National Pollution Funds Center  
U.S. Coast Guard, Stop 7100  
4200 Wilson Boulevard, Suite 1000  
Arlington, VA 20598-7100

If you have any questions about reconsideration, please feel free to contact me at the above address or by phone at [REDACTED].

Sincerely,



U.S. Coast Guard