

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]
Gretna, LA 70053

RE: Claim Number: NI0036-0166

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 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 claims for certain individual and business claims on behalf of BP.

Facts of Your Claim

On September 17, 2010, you presented a claim for Emergency Advance Payment to the GCCF, which was denied. On November 29, 2010, you presented your claim to the NPFC for lost subsistence use of natural resources following the Deepwater Horizon incident. The claim form that you submitted states that you seek \$3,500 as damages for lost subsistence use for the period from winter 2010 through early 2011. You submitted no additional information with your claim form.

Applicable Law

OPA provides that the Oil Spill Liability Trust Fund (OSLTF) is available pay claims for uncompensated damages resulting from oil pollution incidents. 33 U.S.C. § 2712 (a)(4). Damages include the loss of subsistence use of natural resources. 33 U.S.C. § 2702(b)(2)(C).

General Claim Requirements

The regulations at 33 CFR Part 136 include general claim requirements and requirements specific to lost subsistence use claims.

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

On November 29, 2010, the NPFC received your claim for lost subsistence use of natural resources from the Deepwater Horizon spill. While you included a claim form stating that you seek \$3,500 as damages for lost subsistence use, there was no additional documentation to support the claim.

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 U.S.C. §136). You have not identified the

specific natural resource that was injured or lost, or described your subsistence use of that resource and how and to what extent such use was affected by the spill. Further, you have not provided information on how you mitigated your alleged loss or determined the reasonable replacement cost of the natural resource for which you seek compensation. It is also unclear the time period for which you are seeking compensation. If the time period is the winter 2010 through early 2011, this is a future time period for which you have not yet suffered a loss of subsistence use.

Request for Reconsideration

You may request 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 with claim number (N10036-0166) to:

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

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

Sincerely, [REDACTED]

[REDACTED]
U.S. Coast Guard