

CLAIM SUMMARY / DETERMINATION FORM

Date : 9/29/2010
Claim Number : N10036-0001
Claimant : [REDACTED]
Type of Claimant : Private (US)
Type of Claim : Loss of Profits and Earning Capacity
Claim Manager : [REDACTED]
Amount Requested : \$21,000.00

FACTS:

Claimant [REDACTED] presented an optional OSLTF claim form to the NPFC on 05 July 2010. His form claimed a total of \$21,000 for Profits and Lost Earnings due to lost wages resulting from fisheries closures in the Gulf of Mexico resulting from the Deepwater Horizon oil spill. [REDACTED] is a marine biologist who is regularly employed by NOAA to conduct fisheries research in the Gulf of Mexico.¹ [REDACTED] claimed that he could not be employed by NOAA this year as a result of fisheries closures in the Gulf. [REDACTED] reported submitting his BP claim on 06 May 10. Follow up with BP indicated that he had already been paid \$15,296 which amount was confirmed by [REDACTED]. [REDACTED] also submitted a claim with the Gulf Coast Claims Facility (GCCF). On 20 September 2010 the GCCF notified the Coast Guard that [REDACTED] was paid \$20,300.³ [REDACTED] confirmed receipt of the GCCF payment on 27 September 2010 and stated that he was fully satisfied with the payments he received from the Responsible Party for 2010 totaling 35,596.⁴

APPLICABLE LAW:

Under OPA 90, at 33 USC § 2702(a), responsible parties are liable for removal costs and damages resulting from the discharge of oil into navigable waters and adjoining shorelines, as described in Section 2702(b) of OPA 90.

The Oil Spill Liability Trust Fund (OSLTF), which is administered by the NPFC, is available, pursuant to 33 USC §§ 2712(a)(4) and 2713 and the OSLTF claims adjudication regulations at 33 CFR Part 136, to pay claims for uncompensated damages. One type of damages available pursuant to 33 CFR §136.231 is a claim for loss of profits or impairment of earning capacity due to injury to or destruction of natural resources.

Under 33 CFR 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 CFR 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;

¹ Email from [REDACTED] Worley Catastrophe Response to [REDACTED] NPFC dtd 05 August 2010.

² Email between [REDACTED] of the NPFC and [REDACTED] dtd 19 August 2010.

³ Weekly status report from GCCF to Coast Guard via Email from [REDACTED] (Garden City Group) to [REDACTED] dtd 20 SEP 10.

⁴ Notes of phone conversation between [REDACTED] of the NPFC and [REDACTED] dtd 27 September 10.

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)

Fax: 202-493-6937

5890

9 November 2010

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number [REDACTED]

Email: [REDACTED]

Claim Number: N10036-0002

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies your claim. The NPFC is unable to establish that the profits of MarcAir were reduced as a consequence of the cancelled flights that are the basis of your claim. Please see the attached claim summary 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 N10036-0002.

Mail reconsideration requests to:

Director (ca)

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

Sincerely,

[REDACTED]
Lieutenant Commander
U.S. Coast Guard
Claims Manager

Attachment: (1) Claim Summary/Determination Form

09/13/11

FOIA2011-3380-00000003

CLAIM SUMMARY / DETERMINATION FORM

Date 11/09/2010
Claim Number N10036-0002
Claimant [REDACTED]
Type of Claimant Private (US)
Type of Claim Loss of Profits and Earning Capacity
Claim Manager [REDACTED]
Amount Requested \$25,000.00

FACTS:

On or about April 21, 2010, the Mobile Offshore Drilling Unit (MODU) Deepwater Horizon exploded and sank in the Gulf of Mexico. As a result of the explosion and sinking, oil was discharged from an offshore facility associated with the MODU and located on the Mississippi Canyon, Block 252. This area was leased by BP Exploration and Production, Inc. (BP). The Coast Guard designated the offshore facility as the source of the discharge and BP as the responsible party for the discharge. BP accepted the designation, advertised its OPA claims process, and compensated claimants. In August 2010 the Gulf Coast Claims Facility (GCCF) began accepting adjudicating claims on behalf of BP.

CLAIM AND CLAIMANT:

[REDACTED] doing business as [REDACTED] submitted an Oil Spill Liability Trust Fund (OSLTF) Claim Form to the NPFC on May 20, 2010, signed by its president, [REDACTED] [REDACTED] based in San Luis Obispo, California, owns two aircraft and charters passenger flights. It also brokers flights to other airline companies, if demand exceeds services [REDACTED] own planes can provide. [REDACTED] had two charter flights scheduled during the month of July from San Luis Obispo, CA to the Gulf of Mexico. One flight was for an unspecified date and the second was to occur during the last two weeks of July. Clients for these flights cancelled the flights because of the Deepwater Horizon oil spill (the oil spill). [REDACTED] submitted a claim for \$25,000.00 to the NPFC for lost profits or earnings due to the cancellation of the chartered flights.

[REDACTED] submitted his initial claim to the RP (BP) on May 21, 2010 and was issued the Claim Number # [REDACTED] With the takeover of the BP claims process by the GCCF, [REDACTED] claim number was converted to claimant ID # [REDACTED] He subsequently refilled his claim with the GCCF on September 02, 2010 and was issued the GCCF Claim # [REDACTED]

APPLICABLE LAW:

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or economic zone is liable for removal costs and damages. Pursuant to 33 U.S.C. § 2702(a), damages include the loss of profits or impairment of earning capacity due to the injury, destruction or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant under 33 U.S.C. § 2702(b)(2)(E).

The OSLTF, which is administered by the NPFC, is available to pay claims for uncompensated damages pursuant to 33 USC §§ 2712(a)(4) and 2713 and the OSLTF claims adjudication regulations at 33 CFR Part 136. With certain exceptions, a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

Pursuant to the claims regulations 33 CFR § 136.233, a claimant must establish the following to prove loss of profits or impairment of earning capacity:

- (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.
- (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 CFR 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 CFR 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.

DETERMINATION OF LOSS:

A. Documentation Provided by [REDACTED]

The NPFC received the following documentation relevant to [REDACTED] from [REDACTED]

- (1) Reconstructed Service Quotes for the two cancelled flights.
- (2) Letter from a client confirming cancellation of flight dated 10 June 2010.

- (3) [REDACTED]'s flight calendars for 2007, 2008, 2009 and 2010.
- (4) Monthly cash flow statements from January 2007 through August 2010.
- (5) Manufacturer's schedule of aircraft specific operating costs.
- (6) Service quotes and invoices from 2007 through 2010.
- (7) QuickenQIF file containing bank transactions from 1998 through 2010.
- (8) Letter from [REDACTED] to NPFC dated 12 May 2010.
- (9) Letter from [REDACTED] to [REDACTED] BP dated 14 June 2010.
- (10) Letter from [REDACTED] to [REDACTED] USCG dated 16 August 2010.
- (11) Copy of GCCF Claim Form 2000-C signed 28 August 2010.
- (12) E-Mail from [REDACTED] to [REDACTED] NPFC dated 20 September 2010.
- (13) Letter from [REDACTED] to [REDACTED] dated 23 September 2010.
- (14) Letter from [REDACTED] to [REDACTED] NPFC dated 13 October 2010.
- (15) E-Mail from [REDACTED] to [REDACTED] dated 13 October 2010.

B. NPFC Review of the Documentation Provided

The documents submitted by the Claimant evidence the following:

1. The flight for \$24,296 for air travel from San Luis Obispo, CA to Gulfport, MS and return was scheduled for the last two weeks of July 2010. The signed letter of cancellation from the charter client indicated cancellation was due to the oil spill and was dated June 10, 2010. Insufficient documentation has been provided to determine the lost profit on this flight.
2. [REDACTED] flight schedule for the month of July shows that during the last two weeks of July 2010, when the flight above to Gulfport, MS was scheduled, other flights were scheduled for those weeks. These flights would mitigate the loss of profit on the cancelled flight. Profit from any mitigation should be deducted from the loss of any profit. The date of the cancellation should have provided ample time to reschedule other flights.
3. The second flight was scheduled at a cost of \$36,365 but no specific date was provided. Claimant submitted no documentation to reflect the lost revenue, cost and profit on this flight. Without any documentation, no determination can be made.
4. Based on the monthly cash flow reports for 2008, the revenues for [REDACTED] were \$39,400 for June, \$86,600 for July and \$67,600 for August. Based on the monthly cash flow reports 2009, the revenues for [REDACTED] were \$67,000 for June, \$154,100 for July and \$39,500 for August. Based on the review of the monthly cash flow reports for 2010, the revenues for [REDACTED] were \$88,600 for June, \$82,300 for July and \$93,600 for August. August was the last month of cash flow reports. It would appear that monthly revenues are consistent, and the effects of the two cancelled flights were not material to the overall operation of [REDACTED]

LEGAL ANALYSIS:

Pursuant to 33 CFR Part 136.105, the claimant bears the burden of proving his loss. Despite an extensive phone interview, review of the documentation provided by [REDACTED] by forensic accountants, and a review of [REDACTED] cash flow as described in paragraph 4 above, the NPFC cannot establish, based upon the evidence presented, that [REDACTED] has experienced any economic loss as a result of the two cancelled flights. Further, evidence submitted by [REDACTED] indicates that he was able to mitigate the loss of the flights with later flight bookings to cover the same time period. As a result, [REDACTED] has not proved by a preponderance of the evidence that [REDACTED] lost profits or earnings during the month of July 2010 as a result of the two cancelled flights.

Since [REDACTED] has not met his burden with regards to proving that [REDACTED] has lost profits or earnings, this analysis does not reach a conclusion with regards to causation.

AMOUNT: \$0.00

DETERMINATION: [REDACTED] claim for \$25,000 to the OSLTF is denied.

Claim Supervisor:

[REDACTED]

Date of Review:

11/9/10

Supervisor's Comments:

Denial Approved

CLAIM SUMMARY / DETERMINATION FORM

Date : 9/30/2010
Claim Number : N10036-0003
Claimant : [REDACTED]
Type of Claimant : Private (US)
Type of Claim : Removal/Personal Property Damage
Claim Manager : [REDACTED]
Amount Requested : \$15.75

FACTS:

Claimant [REDACTED] presented an optional OSLTF claim form to the NPFC on 07 June 2010. His form claimed a total of \$15.75 damage to personal property (his boat) or possibly for removal costs. [REDACTED] provided no phone number or email address to allow for expedited processing. Summary denial is submitted based upon the discussion presented in the denial letter.

APPLICABLE LAW:

See NPFC letter 5890 dtd 30SEP10

DETERMINATION OF LOSS:

See NPFC letter 5890 dtd 30SEP10

AMOUNT: \$0.00

DETERMINATION:

Claim Supervisor: [REDACTED]

Date of Supervisor's review: 9/30/10

Supervisor Action: DENIAL APPROVED

Supervisor's Comments:

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)

Fax: 202-493-6937

5890

9/30/2010

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: [REDACTED]

RE: Claim Number: N10036-0003

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number N10036-0003 involving Deepwater Horizon. The basis for your claim as indicated on your optional Oil Spill Liability Trust Fund claim form is that you seek fifteen dollars and seventy five cents (\$15.75) in damages to your personal property (your boat). The explanation you have provided on your form indicates that you are, in fact, seeking reimbursement for the costs of removing oil from your boat that you believe is the result of the Deepwater Horizon (DWH) oil spill. In either case, you have submitted virtually no evidence to support either claim. The NPFC has determined that a denial is appropriate in your case because you are unlikely to meet the evidentiary burdens associated with either claim. If you disagree, please submit evidence in accordance with paragraph (3) below as part of your request for reconsideration.

Claims Generally

We have accepted your claim on face value and assume that you will be able to provide the information to prove that it was oil from the DWH spill that oiled your vessel. At a minimum, you will need to submit information relating to your vessel's position on the date and time it was impacted by oil so that we can ascertain whether it was oil from the DWH rig that oiled your vessel. This information can be provided in various forms, such as a log book entry, a print out from an electronic chart plotter, or a corroborating witness statement. Please also explain why you have submitted an Oil Spill Liability Trust Fund optional claim form (OSLTF Form) with a home address located in California but have claimed damage to a boat in the Gulf of Mexico. Any documentation that you can provide that shows that you either owned or leased a vessel

located in the Gulf of Mexico to substantiate your claim will be helpful to our analysis. Additionally, pursuant to our letter of 20 September 2010, we have requested that you provide us with your BP claim number to verify your submission date of 25 May 2010 and that you requested a "sum certain" to the Responsible Party. If you decide to request reconsideration of this denial as described below, please be sure to include your BP claim number and GCCF claim number if you have one.

Damage to Personal Property

You have requested reimbursement for \$15.75 for the removal of oil to from your boat. Pursuant to 33 CFR § 136.213, "a claim for injury to . . . real or personal property may be presented only by the claimant leasing or owning the property." Assuming that you can prove that it was oil from the DWH oil rig that soiled your boat, you will also need to prove:

- (1) that the amount you are claiming is appropriate;
- (2) that you owned or leased the boat at the time of the spill; and,
- (3) that the boat was injured or destroyed as the result of the spill.

To prove the above, you must provide evidence that supports your claim, and you can use whatever documentation you believe best supports that claim. Listed in attachment one are examples of documentation often submitted with damage claims for boats.

Removal Claim

Your OSLTF claim form indicates that you seek reimbursement for "boat cleanup from oilspill." While you have filed the claim as relating to damages to real or personal property, your phraseology indicates a claim for removal costs. If in fact you are claiming removal costs, than you must show the following:

- (1) That your actions were reasonable and consistent with the National Contingency Plan (The easiest way to meet this requirement is to show that you coordinated your efforts with the Federal On-Scene Coordinator); and,
- (2) You must prove that your actions aided in the spill clean-up and that the amount you are claiming is appropriate:
 - a. Show that your actions were necessary to prevent or reduce the effects of the spill.
 - b. Show that the removal costs you are claiming resulted from these actions.

To prove the above, you must provide evidence that supports your claim, and you can use whatever documentation you believe best supports that claim. Also listed in enclosure (1) are examples of documentation often submitted with removal cost claims.

You may make a written request for reconsideration of this claim. If you do so, please indicate whether you wish to make a claim for removal costs or for damage to your personal property. 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 N10036-0003.

Mail reconsideration requests to:

Director (ca)
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd, Suite 1000
Arlington, VA 20598-71

Sincerely,

A large black rectangular redaction box covering the signature of the U.S. Coast Guard Claims Manager.

U.S. Coast Guard
Claims Manager

Encl: Types of Documentation Commonly Submitted

Enclosure – Types of Documentation Commonly Submitted

Types of documentation often submitted for damage claims for boats.

- Photographs of damage
- Date and evidence of last hull painting
- Vessel name
- The year the vessel was built
- Copy of boat title or other proof of ownership
- Vessel length
- Vessel construction (wood, fiberglass, aluminum)
- Location where boat was contaminated by oil
- Date and location of boat cleaning
- HIN or VIN (Hull Identification Number or Vessel Identification Number)
- Any other documentation you feel supports your claim

Types of documentation often submitted to support a removal cost claim.

- Photographs or videos of the incident and the response actions
- Reports from local, State, or Federal agencies
- Analysis of spill substance
- Report or statement from the Federal On-Scene Coordinator stating:
 - That your response was consistent with the National Contingency Plan
 - That your level of effort to clean the spill was reasonable and necessary based on the magnitude of the incident,
 - That the oil spill falls under the Oil Pollution Act and
 - The date the actions were completed.
- Proof of payment (copies of cancelled checks or receipts) for your cleaning materials.
- Disposal manifests provided by the disposal facility
- Disposal facility's invoice (and proof of payment)
- Affidavits/witness statements
- Any other documentation you feel supports your claim

CLAIM SUMMARY / DETERMINATION FORM

Date 17 November 2010
Claim Number N10036-0004
Claimant [REDACTED]
Type of Claimant Private (US)
Type of Claim Loss of Profits and Earning Capacity
Claim Manager [REDACTED]
Amount Requested \$55,000.00

FACTS

On or about 20 April 2010, the Mobile Offshore Drilling Unit (MODU) Deepwater Horizon exploded and sank in the Gulf of Mexico. As a result of the explosion and sinking, oil was discharged from an offshore facility associated with the MODU and located on the Mississippi Canyon, Block 252 (the Deepwater Horizon Oil Spill). This area was leased by BP Exploration and Production, Inc. (BP). The Coast Guard designated the offshore facility as the source of the discharge and BP as the responsible party for the discharge. BP accepted the designation, advertised its OPA claims process, and compensated claimants. On 23 August 2010, the Gulf Coast Claims Facility (GCCF) began accepting adjudicating claims on behalf of BP.

CLAIM AND CLAIMANT

Claimant [REDACTED] doing business as [REDACTED] submitted an Oil Spill Liability Trust Fund (OSLTF) Claim Form to the NPFC on 28 July 2010. [REDACTED] is the owner of [REDACTED] a company located in Seattle, WA. [REDACTED] submitted a claim for \$55,000.00 for lost profits and earnings due to the failure to realize [REDACTED] first season crop of shrimp and red fish as a result of the Deepwater Horizon oil spill (the oil spill).

[REDACTED] based in Seattle, WA, claims to be unable to order usual products (i.e., shrimp, red snapper, flounder, grouper, red fish, gulf trout, wahoo, etc.) because the shrimp processors have no product, the ban on commercial fishing, and the frozen product available is inappropriate for sale in the Seattle area.

[REDACTED] reported submitting the initial emergency advance payment claim to BP on 31 May 2010 Claim Number # [REDACTED] and, subsequently, received GCCF Claim # [REDACTED] with a 2 September 2010 filing date. As of the 01 November 2010 GCCF Program Report, [REDACTED] GCCF claim for a claimed amount of \$30,000 was under review.

APPLICABLE LAW

Under the Oil Pollution Act of 1990 (OPA) 33 U.S.C. § 2702(a), responsible parties are liable for removal costs and damages resulting from the discharge of oil into navigable waters and adjoining shorelines, as described in Section 2702(b) of OPA.

The OSLTF, which is administered by the NPFC, 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.

Under 33 CFR § 136.233 a claimant must establish the following to prove loss of profits or impairment of earning capacity

- (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.
- (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 undertake, 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.

DETERMINATION OF LOSS

A. After repeated requests for additional information, no additional information was received.

The NPFC received the following documentation relevant to [REDACTED] claim:

- (1) Legal entity registration Unified Business ID # [REDACTED] (expires 06-03-2011)
- (2) State of Washington Certificate of Formation dated 24 June 2009
- (3) [REDACTED] Invoice 1273420 of 6/30/2009

B. NPFC Review of the Documentation Provided

Based on our review of the documents above, we have insufficient evidence to adjudicate the claim. We have not received any additional information.

LEGAL ANALYSIS

Under 33 C.F.R. Part 136, the claimant bears the burden of proving his loss. The NPFC requested additional documentation from [REDACTED] but it was not provided. The documentation submitted by White does not establish that he or his corporation have suffered a loss of profits resulting from the Deepwater Horizon Oil Spill.

AMOUNT \$0.00

DETERMINATION [REDACTED] claim for \$55,000 to the OSLTF is denied.

Claim Supervisor [REDACTED]

Date of Review

11/22/10

Supervisor's Comments

Approved

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: [REDACTED]

E-mail: [REDACTED]

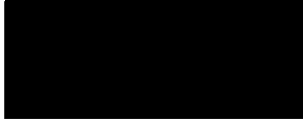
Fax: 202-493-6937

5890

19 October 2010

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]



Email: [REDACTED]@yahoo.com

RE: Claim Number: N10036-0005

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on claim number N10036-0005 involving Deepwater Horizon. Compensation is denied because you were recently paid \$5,500.00 and \$27,400.00 in two payments by the Gulf Coast Claims Facility for a total of \$32,900.00. This payment exceeds the \$13,000.00 loss of profits and earning capacity documented on the claim signed and submitted to the NPFC on 28 July 2010 using the optional OSLTF claim form. In view of the amount you have been paid in comparison to the amount you requested from the NPFC, we have determined that you have been fully compensated for any lost profits or earning capacity for the period of April 21 through September 30, 2010. This determination has no effect on any claims you may choose to submit for damages after September 30, 2010.

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 N10036-0005.

Mail reconsideration requests to:

Director (ca)

NPFC CA MS 7100

US COAST GUARD

4200 Wilson Blvd, Suite 1000

Arlington, VA 20598-7100

Sincerely,



U.S. Coast Guard
Claims Manager

09/13/11

FOIA2011-3380-00000017

CLAIM SUMMARY / DETERMINATION FORM

Date : 10/19/2010
Claim Number : N10036-0005
Claimant : [REDACTED]
Type of Claimant : Private (US)
Type of Claim : Loss of Profits and Earning Capacity
Claim Manager : [REDACTED]
Amount Requested : \$13,000.00

FACTS:

Claimant [REDACTED] presented an optional OSLTF claim form to the NPFC on 28 July 2010. Her form claimed a total of \$13,000.00 for Profits and Lost Earnings due to lost wages resulting from losing her job cleaning beach houses in the Gulf of Mexico resulting from the Deepwater Horizon oil spill. [REDACTED] claimed that she lost profits and earnings due to a reduction in tourists visiting the beaches.¹ [REDACTED] also submitted a BP claim. Follow up with BP confirmed [REDACTED]'s initial submission to them on 10 June 2010 (BP Claim Number [REDACTED]), that her claim had not been denied, but it had not been paid.² On 18 October 2010, the Coast Guard became aware that [REDACTED] was paid by GCCF. The NPFC confirmed [REDACTED]'s receipt of \$32,900.00 payment with [REDACTED], who was satisfied with the payment she received from the GCCF on behalf of the Responsible Party.³

APPLICABLE LAW:

Under OPA 90, at 33 USC § 2702(a), responsible parties are liable for removal costs and damages resulting from the discharge of oil into navigable waters and adjoining shorelines, as described in Section 2702(b) of OPA 90.

The Oil Spill Liability Trust Fund (OSLTF), which is administered by the NPFC, is available, pursuant to 33 USC §§ 2712(a)(4) and 2713 and the OSLTF claims adjudication regulations at 33 CFR Part 136, to pay claims for uncompensated damages. One type of damages available pursuant to 33 CFR §136.231 is a claim for loss of profits or impairment of earning capacity due to injury to or destruction of natural resources.

Under 33 CFR 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 CFR 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 undertake, but reasonably available;
- (d) Any saved overhead or normal expenses not incurred as a result of the incident; and

¹ [REDACTED]'s Optional OSLTF Claims Form signed 28 July 2010 (attached).

² Email from [REDACTED] Worley Catastrophe Response, to [REDACTED] NPFC dated 5 Aug 2010.

³ Notes of phone conversation between [REDACTED] and [REDACTED] on 18 Oct 2010.

(e) State, local, and Federal taxes.

DETERMINATION OF LOSS:

[REDACTED] presented an OSLTF claim form in the amount of \$13,000.00 for the period of April 26 through July 12, 2010. [REDACTED] was paid a total of \$32,900.00 by the Responsible Party. [REDACTED] confirmed that she has been compensated more than what she requested of the NPFC for the period of April through September, 2010.

AMOUNT: \$0.00

DETERMINATION: [REDACTED] claim for \$13,000.00 to the OSLTF will be denied in whole as a result of receiving full compensation from the Responsible Party.

Claim Supervisor: [REDACTED]

Date of Supervisor's review: 12/19/10

Supervisor Action: review 12/19/10

Supervisor's Comments:

U.S. Department of
Homeland Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd. Suite 1000
Arlington, VA 20598-7100
Staff Symbol: (CA)

Fax: 202-493-6937

5890
5/27/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number [REDACTED]

[REDACTED]
Gulfport, MS 39501

RE: Claim Number: N10036-0006

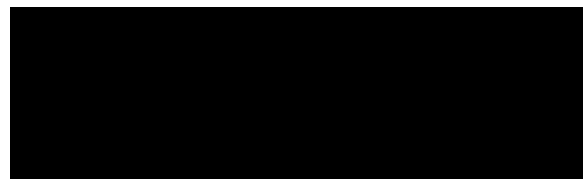
Dear [REDACTED]

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 claim number N10036-0006 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination Form for further explanation.

Disposition of this reconsideration constitutes final agency action.

If you have any questions or would like to discuss the matter, you may contact me at the above address and phone number.

Sincerely,



U.S. Coast Guard

ENCL: Claim Summary / Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Date	: 5/27/2011
Claim Number	: N10036-0006
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: \$2,000,000.00

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

CLAIM AND CLAIMANT:

On 20 July 2010, [REDACTED] (Owner) of [REDACTED] (Claimant) presented a lost profits & earnings claim in the amount of \$2,000,000.00 to the National Pollution Funds Center (NPFC) for reimbursement. The Claimant asserted that he was not able to catch and distribute seafood products as a result of the Deepwater Horizon incident.

The Claimant is a commercial fisherman operating as a sole proprietorship, fishing in the waters off the coast of Biloxi, Mississippi. The Claimant verbally indicated to the NPFC during a telephone conference on 11 November 2010, that during 2008 and 2009, he operated a single 35 foot wood hulled fishing vessel named the F/V [REDACTED]. The F/V [REDACTED] was described as being outfitted with equipment to catch oysters, crab and shrimp. The Claimant stated that in prior years, he sold his seafood directly to customers, mainly through "road-side" stands.

During April 2009, the Claimant registered a corporation named [REDACTED] within the State of Mississippi in hopes of starting a seafood distribution business. Prior to the incorporation date, the Claimant acquired a second fishing vessel, the F/V [REDACTED] a 47 foot steel hulled vessel that was damaged during Hurricane Katrina. The Claimant acquired the vessel with the hopes of renovating it for use in his commercial fishing business and to source seafood for his seafood brokering business planned for 2010. The Claimant stated that although the F/V [REDACTED] continued to be renovated during 2010, it would have been operational by August 2009. The F/V Miss Emily was not operational during 2009 because the Claimant stated he could not find a crew to work on it.

Additionally, the Claimant stated that during 2009, he entered into a verbal sales agreement with Denny's Market, a grocery store located in Flint, Michigan, to sell and deliver seafood directly to the market during 2010 beginning 01 May 2010. The Claimant stated that a written sales

¹ Telephone conference conducted between NPFC, Claimant and Claimant's legal counsel, [REDACTED] on 11 November 2010.

agreement does not exist to support this arrangement, but indicated that he was expecting to deliver 8,000 pounds of seafood per week at a price of \$5.00 per pound, or \$40,000 in sales per week. In comparison, the Claimant's 2009 income for the entire year only totaled \$52,439.

During 2010, the Claimant sold the [REDACTED] in exchange for a 23 foot aluminum hulled vessel named the [REDACTED]. The Claimant described the oyster season as generally running from September through April, as evidenced by his 2009 and 2010 trip tickets². The Claimant indicated that during 2010, he was not able to catch any seafood in order to then make sales to Denny's Market.

The Claimant stated that he would have sourced seafood for his wholesale business from his own catch as well as purchasing product from other fisherman. As a result of the Deepwater Horizon incident, the Claimant alleged that he was not able to catch or purchase seafood to fulfill his verbal sales agreement with Denny's Market and is making a claim of \$2,000,000 (\$40,000 per week x 50 Weeks). On 29 October 2010, the Claimant's attorney prepared a letter to the GCCF indicating the claimed amount was "inadvertently" stated and it should have been \$200,000.00 but failed to provide an explanation of how the figure was computed³. It is important to note that the \$2,000,000.00 requested of the NPFC was not amended prior to an initial determination being made.

REQUEST FOR RECONSIDERATION:

On May 11, 2011, the Claimant sent a request for reconsideration to the NPFC stating he would like the NPFC to reconsider his claim. The NPFC denied the claim originally on March 17, 2011 because the Claimant has failed to meet his burden to (1) demonstrate a loss of profits due to the injury, destruction or loss of real or personal property or a natural resource as a result of a discharge or substantial threat of a discharge of oil or (2) demonstrate the loss of profits in the amount requested therefore he has failed to prove a loss of profits and earnings. On reconsideration, the Claimant has amended their sum certain from \$2,000,000.00 to \$1,000,000.00.

RECONSIDERATION CLAIM ANALYSIS:

The claimant requested reconsideration via mail which was received by the NPFC on May 11, 2011. To support his request for reconsideration, the claimant provided the documents listed in Enclosure (2).

NPFC Determination on Reconsideration

Under 33 CFR 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 CFR § 136.233, a claimant must establish loss of profits or impairment of earning capacity. The NPFC considered all the documentation submitted by the Claimant. The request for reconsideration must be in writing and include the factual or legal grounds for the relief requested, providing any additional support for the claim. 33 CFR 136.115(d).

The NPFC performed a *de novo* review of the entire claim submission upon reconsideration.

² See, Mississippi Department of Marine Resources trip tickets for oyster catches.

³ See, Letter from [REDACTED] on behalf of Claimant to GCCF dated 29 October 2010.

The NPFC performed a complete review of the documentation presented by the Claimant. On reconsideration, the Claimant's legal representative amended the sum certain from \$2,000,000.00 to \$1,000,000.00.⁴ It is important to note that this claim that has been presented to the NPFC as a 'combined' claim as stated by the Claimant's legal representative. [REDACTED] Owner of [REDACTED] presented a claim as an individual to the Responsible Party as well as having submitted a business claim under his business name therefore it is important to make the link between this claim which is essentially the claimed losses for [REDACTED] as an individual as well as business losses for [REDACTED]

The NPFC contacted the GCCF in order to confirm what exactly has been presented by the Claimant both as an individual and as a business entity to ensure proper presentment of costs had been made pursuant to the governing claims regulations found at 33 CFR 136. The GCCF has provided the following recap of claims presented..." [REDACTED] GCCF Claimant [REDACTED] BP paid [REDACTED] a total of \$20,841.82 in approximately 5 payments. Rice's file was transferred to GCCF and [REDACTED] was assigned Claimant ID [REDACTED] but [REDACTED] did not file a GCCF claim and GCCF has not made any payments to [REDACTED]

[REDACTED] (owner) - GCCF Claimant [REDACTED]. The same letter from [REDACTED] attorney that commenced [REDACTED] BP claim addressed both [REDACTED] we see no BP payments to [REDACTED] other than the [REDACTED] payments above). [REDACTED] filed an online EAP claim for LEP-6 month damages of \$100,000 on October 18, 2010, [REDACTED] was assigned Claimant ID [REDACTED] and a \$30,000 payment was issued to claimant on November 18, 2010. A Final claim for \$1,000,000 was filed on April 16, 2011."

The Claimant's OSLTF claim form dated July 8, 2010 indicated only one payment was made by BP to the Claimant in the amount of \$5,000.00. As noted above by the GCCF, BP has in fact made approximately five (5) payments to the Claimant in the total amount of \$20,841.82 and one payment was made by the GCCF to [REDACTED] in the amount of \$30,000.00 making the total amount paid by the RP to [REDACTED] and [REDACTED] \$50,841.82.

Based on the information provided by the Claimant and the RP with respect to proper presentment of costs, only \$100,000.00 had been properly presented to the RP at the time the claim was initially submitted to the NPFC as well as when the initial denial determination was issued on March 17, 2011. Additionally, at no time has the Claimant nor his legal representative provided update information with respect to receiving additional payments from BP or GCCF over and above the amount of \$5,000.00 reported on the OSLTF claim form. It is the responsibility of the Claimant and/or his legal representative to provide updates to the NPFC when payments have been made by an RP which are subject of the claim before the Fund, see 33 CFR § 136.113 Other compensation.

A claimant must include an accounting, including the source and value, of all other compensation received, applied for, or potentially available as a consequence of the incident out of which the claim arises including, but not limited to, monetary payments, goods or services, or other benefits.

The NPFC again denies the claim because (1) the Claimant failed to demonstrate that proper presentment pursuant to 33 C.F.R. § 136.103(a), which states that all claims for removal costs or damages must be presented first to the responsible party. Based on information the NPFC obtained from the RP, a

⁴See, Letter from [REDACTED] on behalf of Claimant to NPFC dated 4 May 2011.

claim for \$1,000,000.00 was not submitted to the RP for consideration until April 16, 2011 for which a denial has not yet been issued by the RP nor has the expiration of 90 days been reached therefore all amounts in excess of the \$100,000.00 that was properly presented to the RP is denied, (2) the Claimant failed to provide the NPFC with information regarding the \$50,841.82 in payments made by the RP to date therefore the Claimant has intentionally omitted material facts in this case pursuant to 33 C.F.R. § 136.9, persons submitting false OSLTF claims or making false statements in connection with OSLTF claims may be subject to prosecution under Federal law, including but not limited to 18 U.S.C. §§ 287 and 1001. In addition, persons submitting written documentation in support of OSLTF claims which they know, or should know, is false or **omit a material fact** may be subject to a civil penalty for each claim, (3) the Claimant has failed to address in detail the saved expenses associated with his business when determining his loss of profits and earnings pursuant to 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—

- 1) All income resulting from the incident;
- 2) All income from alternative employment or business undertaken;
- 3) Potential income from alternative employment or business not undertake, but reasonably available;
- 4) Any saved overhead or normal expenses not incurred as a result of the incident; and
- 5) State, local, and Federal taxes,

and (4) the Claimant has failed to provide documentation in support of the alleged Seafood One LLC costs referenced on page two of the Claimant's reconsideration letter which implies that the costs itemized in the letter that make up the sum certain on reconsideration are actual and not speculative. If the costs used are speculative, the Claimant failed to provide sufficient information on how he arrived at the itemized weekly costs delineated in the letter (i.e., provide estimates, actual invoices, proof of salary paid, etc) and if the costs were actual, the Claimant has failed to provide all of the actual documentation.

Based on the foregoing information, this claim is denied upon reconsideration.

Claim Supervisor

Date of Supervisor's review: *5/27/11*

Supervisor Action: *Denial on reconsideration approved*

Supervisor's Comments:

U.S. Department of
Homeland Security

**United States
Coast Guard**

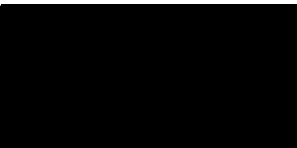


Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd. Suite 1000
Arlington, VA 20598-7100
Staff Symbol: (CA)
Phone: 202-493-1201
E-mail:

5890
3/17/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED



RE: Claim Number: N10036-0006

Dear [REDACTED]

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 claim number N10036-0006 involving the Deepwater Horizon incident. Please see the enclosed 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 N10036-0006.

Mail reconsideration requests to:

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

Sincerely, [Signature]



Claims Manager
U.S. Coast Guard

Encl: Claim Summary / Determination Form
09/13/11

FOIA2011-3380-00000025

CLAIM SUMMARY / DETERMINATION FORM

Date	March 17, 2011
Claim Number	N10036-0006
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
Claim Manager	[REDACTED]
Amount Requested	\$2,000,000.00

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

CLAIM AND CLAIMANT

On 20 July 2010, [REDACTED] (Claimant) presented a lost profits & earnings claim in the amount of \$2,000,000.00 to the National Pollution Funds Center (NPFC) for reimbursement. The Claimant asserted that he was not able to catch and distribute seafood products as a result of the Deepwater Horizon incident.

The Claimant is a commercial fisherman operating as a sole proprietorship, fishing in the waters off the coast of Biloxi, Mississippi. The Claimant verbally indicated to the NPFC during a telephone conference on 11 November 2010, that during 2008 and 2009 he operated a single 35 foot wood hulled fishing vessel named the F/V [REDACTED]. The [REDACTED] was described as being outfitted with equipment to catch oysters, crab and shrimp. The Claimant stated that in prior years, he sold his seafood directly to customers, mainly through "road-side" stands.

During April 2009, the Claimant registered a corporation named [REDACTED] within the state of Mississippi in hopes of starting a seafood distribution business. Prior to the incorporation date, the Claimant acquired a second fishing vessel, the F/V [REDACTED], a 47 foot steel hulled vessel that was damaged during Hurricane Katrina. The Claimant acquired the vessel with the hopes of renovating it for use in his commercial fishing business and to source seafood for his seafood brokering business planned for 2010. The Claimant stated that although the [REDACTED] continued to be renovated during 2010, it would have been operational by August 2009. The F/V [REDACTED] was not operational during 2009 because the Claimant stated he could not find a crew to work on it.

Additionally, the Claimant stated that during 2009, he entered into a verbal sales agreement with Denny's Market, a grocery store located in Flint, Michigan, to sell and deliver seafood directly to the market during 2010 beginning 01 May 2010. The Claimant stated that a written sales agreement does not exist to support this arrangement, but indicated that he was expecting to

¹ Telephone conference conducted between NPFC, Claimant and Claimant's legal counsel, Mr. [REDACTED] on 11 November 2010.

deliver 8,000 pounds of seafood per week at a price of \$5.00 per pound, or \$40,000 in sales per week. In comparison, the Claimant's 2009 income for the entire year only totaled \$52,439.

During 2010, the Claimant sold the F/V [REDACTED] in exchange for a 23 foot aluminum hulled vessel named the F/V [REDACTED]. The Claimant described the oyster season as generally running from September through April, as evidenced by his 2009 and 2010 trip tickets². The Claimant indicated that during 2010, he was not able to catch any seafood in order to then make sales to Denny's Market.

The Claimant stated that he would have sourced seafood for his wholesale business from his own catch as well as purchasing product from other fisherman. As a result of the Deepwater Horizon incident, the Claimant alleged that he was not able to catch or purchase seafood to fulfill his verbal sales agreement with [REDACTED] and is making a claim of \$2,000,000 (\$40,000 per week x 50 Weeks). On 29 October 2010, the Claimant's attorney prepared a letter to the GCCF indicating the claimed amount was "inadvertently" stated and it should have been \$200,000, but failed to provide an explanation of how the figure was computed³.

APPLICABLE LAW

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a). Damages include the loss of profits or impairment of earning capacity due to the injury, destruction or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant. 33 U.S.C. § 2702(b)(2)(E).

The OSLTF, which is administered by the NPFC, 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. With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

Pursuant to the claims regulations, 33 C.F.R. § 136.233, a claimant must establish the following to prove loss of profits or impairment of earning capacity:

- (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.
- (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.

² See, Mississippi Department of Marine Resources trip tickets for oyster catches.

³ See, Letter from [REDACTED] on behalf of Claimant to GCCF dated 29 October 2010.

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.

DETERMINATION OF LOSS

Claimant's Submission

The Claimant presented the NPFC OSLTF Claim Form dated 08 July 2010. Claimant stated on his OSLTF Claim Form that he filed a claim with the RP (BP) on 08 May 2010 and received one payment in the amount of \$5,000 on 14 June 2010. Although the Claimant made a claim for lost profits totaling \$2,000,000, a letter provided by the Claimant's attorney dated 29 October 2010 indicated that "they inadvertently claimed the wrong amount" and the claimed amount was actually \$200,000. The primary basis for the Claimant's request for compensation is the verbal sales agreement with [REDACTED] in Flint, Michigan. The Claimant's attorney also represented that the Claimant sells seafood to customers located in Michigan, Tennessee, Pennsylvania, Mississippi and generally the Mid-West, although no documentation has been provided to support any of the customer sales.

The Claimant provided various documents to support his employment as a commercial fisherman such as licenses, vessel registration and Income Tax Return filings from prior years. To support his oyster catching activity, the Claimant provided trip tickets from January through March 2009 and from September 2009 through April 2010. The Claimant provided handwritten ledgers for 2009 to support sales of shrimp and crab as he stated the catch records were not available because they are not required for reporting purposes.

NPFC Determination

Under 33 CFR 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 CFR § 136.233, a claimant must establish loss of profits or impairment of earning capacity. The NPFC considered all the documentation submitted by the Claimant.

The claim is denied because the alleged loss in the amount of \$2,000,000 has not been supported by evidentiary documentation demonstrating how he arrived at his amount requested or how his loss is a result of the injury, destruction or loss of real or personal property or a natural resource as a result of a discharge or substantial threat of a discharge of oil. The Claimant has not provided evidence to support that he had the capability to catch, source, and deliver the claimed quantity of seafood alleged.

- Claimant provided a letter from [REDACTED] dated 22 June 2010 (after the Deepwater Horizon incident) that makes reference to the prior agreement to purchase seafood from Seafood One. The Claimant has not provided documentation dated prior to the Deepwater Horizon incident to support a history of future agreement to provide seafood as part of a wholesale brokering business;
- Evidence has not been provided to support that the Claimant's vessel, F/V [REDACTED] was ready to begin fishing operations in time to deliver seafood as early as 01 May 2010; The Claimant's other fishing vessel; the [REDACTED] was sold and traded for another vessel, the [REDACTED] on 05 May 2010;
- There is no evidence to support the Claimant's ability to source seafood product from other fishermen or dealers. The Claimant has not provided any references or identified where and how he would have sourced sufficient quantities of seafood products that he intended to deliver to Michigan. The Claimant has not provided evidence to show that he has ever purchased seafood for distribution prior to the Deepwater Horizon incident;
- The Claimant indicated that he had the necessary licensing to begin selling seafood as a dealer and meet the initial delivery dated of 1 May 2010. Upon receipt of the Claimant's licenses, the Claimant did not purchase a seafood dealer's license until 3 June 2010 which is in direct contradiction with his allegations.

Aside from his intent to begin a wholesale distribution business, the Claimant has not provided sufficient evidence to substantiate losses resulting from his own seafood catch. The Claimant provided historical trip tickets from oyster catches, which indicated that he has traditionally operated according to the regular season from September through April. The Claimant asserted that fishing waters were closed and subsequently re-opened but limited to "tonging" rather than dredging. The Claimant is not equipped for tonging and asserted that there are too many fishermen in the area causing significant competition limiting fishing activity. The Claimant did not identify the specific fishing areas in question that impacted his inability to catch oysters.

The Mississippi Commission on Marine Resources (CMR), as part of the Mississippi Department of Marine Resources, limited the oyster season at the direction of commercial fishermen. Commercial fishermen lobbied the commission to enact stronger limitations on the 2010 oyster season to protect the young spat growth in efforts to protect future oyster seasons. The Mississippi CMR's limitations on the oyster season were enacted to protect future oyster harvests and not closures due to the Deepwater Horizon incident.

Claimant also asserted that he catches shrimp and crab. The Claimant provided handwritten ledgers to support his sale of shrimp and crab to various customers within Michigan, Mississippi and Indiana. The Claimant's attorney also suggested that the Claimant sells seafood products to customers located throughout the Mid-West, Tennessee and Pennsylvania, although these sales have not been documented. Aside from the handwritten ledgers, the Claimant did not provide additional documentation to support these transactions. The Claimant stated that trip tickets and other forms of reporting are not required for shrimp and crab catches therefore he could not provide such documentation. The Claimant did not provide dealer transaction forms or any accounting documentation to support the actual sale of products.

Based on initial discussions, the Claimant suggested that he sold his seafood products to local dealers and processors or through "road-side" stands. Prior to providing the handwritten ledgers, the Claimant did not previously indicate selling and distributing seafood to out-of-state customers. The Claimant stated that he did not previously have a dealer's license during 2009, and did not obtain a dealer's license until 03 June 2010. The Claimant has not provided any independent 3rd party documents to support the sale of shrimp or crab therefore the Claimant's

documentation is insufficient to substantiate the validity of the handwritten sales ledgers provided.

Overall, this claim is denied because the Claimant has failed to meet his burden to (1) demonstrate a loss of profits due to the injury, destruction or loss of real or personal property or a natural resource as a result of a discharge or substantial threat of a discharge of oil or (2) demonstrate the loss of profits in that amount requested therefore he has failed to prove a loss of profits and earnings.

Claim Supervisor 

Date of Review: *3/17/11*

Supervisor's Comments: *Denial approved*

CLAIM SUMMARY / DETERMINATION FORM

Date : 9/21/2010
Claim Number : N10036-0007
Claimant : [REDACTED]
Type of Claimant : Corporate (US)
Type of Claim : Loss of Profits and Earning Capacity
Claim Manager : [REDACTED]
Amount Requested : \$24,100.00

I. FACTS:

Incident/Background: On 22 April 2010, while under contract to BP and drilling at the Macondo Prospect about 49 miles southwest of the Louisiana coastline, The Deepwater Horizon sank. Safety and containment devices at the wellhead did not close, leaving the well gushing at the sea floor. The release of oil from the wellhead continued until a replacement blow out preventer was mounted to the wellhead and slowly closed down, finally choking the release on 18 July 2010. The well was not permanently sealed until 19 September 2010.

On 2 May 2010, satellite imagery indicated the closest land fall for oil to be nine miles off of the Louisiana coast. First confirmed reports of oil reaching Louisiana were reported by NOAA on 5 May 2010.

A. Claimant:

[REDACTED]

Mailing Address:

[REDACTED]

- B. Claim Description: Loss of Profits/Earnings in the amount of \$24,100.00. Pursuant to 33 U.S.C. § 2713 (d), [REDACTED] requested by email¹ that interim, short-term damages representing less than the full amount of damages to which he ultimately may be entitled be paid for May and June of 2010.

As owner of [REDACTED], [REDACTED] presented an Optional OSLTF Claim Form to the NPFC that was received on 10 August 2010. The Claim Form indicates the claim to have been submitted to BP on 6 May 2010 and BP confirmed a date of receipt for this claim of 13 May 2010. The 90-day requirement has been met. [REDACTED] also submitted the [REDACTED] claim to the Gulf Coast Claim Facility.

¹ Email 9/20/2010 from [REDACTED] to [REDACTED] at NPFC.

██████████ rented water sports equipment in the areas surrounding New Orleans, Venice, and Grand Isle, Louisiana,² under the trade name of ██████████. On a lesser scale beginning in 2003, the company also engaged in telecom/computer consulting.

From March 2000 to May 2005, ██████████ operated a water sports recreation equipment rental company in Louisiana called ██████████ Recreation, incorporated under the laws of Louisiana. Following Hurricane Katrina on 28 August 2005, water sports rentals fell off precipitously and ██████████ relocated his business to Fort Lauderdale, Florida. He incorporated both the water sports rental business and the computer/telecom business in Florida under the name of ██████████⁴. He commuted to Louisiana whenever there were rentals, which continued at New Orleans, Venice and Grand Isle⁵.

██████████ requested that the NPFC consider interim loss payments for the months of May and June 2010 as part of the full amount to which he may ultimately be entitled.

II. APPLICABLE LAW:

The Oil Spill Liability Trust Fund (OSLTF), which is administered by the NPFC, is available, pursuant to 33 USC §§ 2712(a)(4) and 2713. Pursuant to the claims adjudication regulations at 33 CFR Part 136, the OSLTF is available to pay claims for uncompensated damages. One type of covered damages under OPA includes the loss of profits or earning capacity as a result of loss or destruction of real or personal property or natural resources. 33 U.S.C. §2702(b)(2)(E). Damages are further defined in OPA to include the costs of assessing the damages. 33 U.S.C. §2701(5). Under 33 U.S.C. § 2713(d), a claim may be paid from the OSLTF for interim, short-term damages representing less than the full amount of damages to which the claimant ultimately may be entitled.

Congress directed the President to promulgate regulations “for the presentation, filing, processing, settlement, and adjudication of claims...” 33 U.S.C. §2713(e). Those regulations are found at 33 CFR Part 136.

Under 33 CFR 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. Further, a claim presented to the Fund should include, as applicable:

“[T]he reasonable costs incurred by the claimant in assessing the damages claimed. This includes the reasonable costs of estimating the damages claimed, but not attorney’s fees or other administrative costs associated with preparation of the claim.” 33 CFR 136.105(e)(8).

With regard to claims for loss profits and impairment of earning capacity, the NPFC must independently determine that the proof criteria in OPA and the implementing regulations, at 33 CFR Part 136, are met, including the general provisions of 33 CFR 136.105, and the specific requirements for loss of profits and earning capacity claims in Subpart C, 33 CFR 136.231, et seq.

² Based on receipts provided by claimant showing ██████████ and ██████████ locations, as well as advertisements for pick up locations in the New Orleans area.

³ Indicated on 2008 Louisiana taxes as trade name for ██████████

⁴ ██████████ registration with State of Florida, ██████████ filed ██████████

⁵ Telephone interview between ██████████ and ██████████ on 8/17/2010

Pursuant to the provisions of 33 CFR 136.231, claims for loss of profits or impairment of earning capacity due to injury to, destruction of, or loss of real or personal property or natural resources may be presented to the Fund by the claimant sustaining the loss or impairment.

"In addition to the requirements of Subparts A and B of this part, 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 the 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.
- (d) Whether alternative employment or business was available and undertaken and, if so, the amount of income received. All income that a claimant receives 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." 33 CFR 136.233 (a) – (d).

If a third party claimant or an RP is able to establish an entitlement to lost profits, then compensation may be provided from the OSLTF. But the compensable amount is limited to the actual net reduction or loss of earnings and profits suffered. Calculations for net reductions or losses must clearly reflect adjustments for the following: all income resulting from the incident; all income from alternative employment or business undertaken; potential income from alternative employment or business not undertaken, but reasonably available; any saved overhead or normal business expenses not incurred as a result of the incident; and state, local, and Federal tax savings. 33 CFR 136. 235 (a) – (e).

III. DETERMINATION OF LOSS:

A. Causation:

Natural resources of the Gulf of Mexico were significantly affected by the Deepwater Horizon oil spill, as were businesses and industries that relied on those natural resources. As a result of the spill, [REDACTED] received cancellations. Attachment 1 is map showing the extent of oil coverage above and near the surface, taken by the NASA Terra satellite on 24 May 2010⁶. The extent of oiling includes waters of Louisiana, Mississippi, Alabama, and the Florida panhandle.

B. Claimant's Evidence:

In support of the [REDACTED] claim, [REDACTED] provided a large number of documents which are listed in Attachment 2.

⁶ NOAA satellite imagery retrieved 9/22/2010 and available from:
http://earthobservatory.nasa.gov/images/imagerecords/44000/44070/gulf_tmo_2010144_lrg.jpg

C. Analysis:

The waters and coastline of Louisiana were damaged by oil and [REDACTED] had regular business customers that used those waters. Because of that damage, [REDACTED] had cancellations due to the oil spill and continued to experience a decline in business as the oil spill continued to impact the waters and coastline around Louisiana.

[REDACTED] provided 2007 corporate tax returns (federal) for [REDACTED]. These tax returns show profits of \$39,214 for federal [REDACTED]. [REDACTED] also provided 2008 corporate tax returns (federal and state of Louisiana). No state return for Florida was provided.

The 2008 returns show profits of \$79,532 (federal) and \$67,602 (Louisiana). \$11,930 of the 2008 [REDACTED] is attributable to the Fort Lauderdale-based telecom/computer programming component of the [REDACTED] business.

For 2009, [REDACTED] has tax filing extensions, therefore, 2009 calculation of revenues for the months of May 2009 and June 2009 are based on copies of receipts provided to equipment renters. With two exceptions, the names and dates of the renters are confirmed with copies of release forms signed by the renters. There were no release forms for the two exceptions. The 2009 gross revenues for those two months (May and June 2009) is \$14,268.08.

An estimate of 2009 deductions is based on 2008 deductions reported in the federal and Louisiana state returns. [REDACTED] deductions for Louisiana taxes in 2008 were \$11,888 and the gross revenue for Louisiana that year was \$67,602. For the year, the deductions were 17.6 percent of the gross revenue.

To account for deductions in 2009, we have applied a 17.6 percent reduction to [REDACTED] revenues for May and June 2009. During the interview process with [REDACTED] we discussed business expenses that were saved. We discovered that he had additional saved expenses that were not deducted in previous years' taxes. [REDACTED] indicated that he paid \$250 per week in cash to a friend in New Orleans for a place to sleep when in town and for a site to store his equipment. This person was contacted and payments confirmed.

To mitigate the company's losses, [REDACTED] sold off company assets. This mitigation further diminished the company's ability to conduct future business.

Using the 17.6 percent deduction from gross revenue and additional saved expenses over the nine weeks in the May and June 2010, \$2,250 in saved expenses were deducted, resulting in \$9,508.91 in loss of profits for those two months. See Attachment 3.

IV. DETERMINATION:

NPFC has determined that [REDACTED] should be paid an interim amount of **\$9,508.91** for the lost profits it incurred as a result of loss of water sports equipment rentals in the months of May 2010 and June 2010. This figure is an interim payment for short-term damages representing less than the full amount of damages to which the claimant may ultimately be entitled.

V. RECOMMENDATION:

I recommend that the NPFC pay [REDACTED] \$9,508.91 as an interim payment for claim number N10036-0007.

Claim Supervisor:

Date of Supervisor's Review:

Supervisor Action:

Supervisor's Comments:

4/20/10
DENIAL APPROVED

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)

5890
13 October 2010

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]

Email: [REDACTED]

RE: Claim Number: N10036-0008

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on claim number N10036-0008 involving Deepwater Horizon. Compensation is denied because you were recently paid \$93,600.00 by the Gulf Coast Claims Facility. This payment exceeds the \$42,660.00 loss of profits and earning capacity claim submitted to the NPFC on 17 August 2010 using the optional OSLTF claim form. In view of the amount you have been paid in comparison to the amount you requested from the NPFC, we have determined that you have been fully compensated for any lost profits or earning capacity for the period of April 26 through July 12, 2010. This determination has no effect on any claims you may choose to submit in the future.

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 N10036-0008.

Mail reconsideration requests to:

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

Sincerely,

U.S. Coast Guard
Claims Manager

09/13/11

FOIA2011-3380-00000036

CLAIM SUMMARY / DETERMINATION FORM

Date : 10/13/2010
Claim Number : N10036-0008
Claimant : [REDACTED]
Type of Claimant : Private (US)
Type of Claim : Loss of Profits and Earning Capacity
Claim Manager : [REDACTED]
Amount Requested : \$42,660.00

FACTS:

Claimant [REDACTED] presented an optional OSLTF claim form to the NPFC on 17 August 2010. His form claimed a total of \$42,660.00 for Profits and Lost Earnings due to lost wages resulting from fisheries closures in the Gulf of Mexico resulting from the Deepwater Horizon oil spill. [REDACTED] is the owner of [REDACTED] a seafood restaurant located in Baton Rouge, LA. Loga claimed that he lost profits and earnings due to diminished availability of seafood and increased seafood costs to his restaurant as a result of fisheries closures in the Gulf. [REDACTED] reported submitting his BP claim on 27 April 2010.¹ [REDACTED] subsequently informed the NPFC that his claim with BP was denied. Follow up with BP confirmed [REDACTED] initial submission to them, that his claim had not been denied, but it had not been paid.² [REDACTED] also submitted a claim with the Gulf Coast Claims Facility (GCCF). On 1 October 2010, the Coast Guard became aware that [REDACTED] was paid by GCCF. The NPFC confirmed [REDACTED] receipt of \$93,600.00 payment with [REDACTED] who was satisfied with the payment he received from the GCCF on behalf of the Responsible Party.³

APPLICABLE LAW:

Under OPA 90, at 33 USC § 2702(a), responsible parties are liable for removal costs and damages resulting from the discharge of oil into navigable waters and adjoining shorelines, as described in Section 2702(b) of OPA 90.

The Oil Spill Liability Trust Fund (OSLTF), which is administered by the NPFC, is available, pursuant to 33 USC §§ 2712(a)(4) and 2713 and the OSLTF claims adjudication regulations at 33 CFR Part 136, to pay claims for uncompensated damages. One type of damages available pursuant to 33 CFR §136.231 is a claim for loss of profits or impairment of earning capacity due to injury to or destruction of natural resources.

Under 33 CFR 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 CFR 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;

¹ Letter from [REDACTED] attached to Optional OSLTF Claims Form signed 9 Aug 2010.

² Email from [REDACTED] to [REDACTED] NPFC dtd 17 Aug 2010.

³ Notes of phone conversation between [REDACTED] and [REDACTED] on 1 Oct 2010.

U.S. Department of
Homeland Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd. Suite 1000
Arlington, VA 20598-7100
Staff Symbol: (CA)
Phone: [REDACTED]
E-mail: [REDACTED]
Fax: 202-493-6937

5890
3/15/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]

[REDACTED]
Miami, FL 33157

RE: Claim Number: N10036-0009

Dear [REDACTED]:

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number N10036-0009 involving Deepwater Horizon. Please see the attached Claim Summary / Determination Form for an explanation regarding this denial.

Disposition of this reconsideration constitutes final agency action.

If you have any questions or would like to discuss the matter, you may contact me at the above address and phone number.

Sincerely,

[REDACTED]
[REDACTED] Claims Adjudication Division
U.S. Coast Guard

ENCL: Claim Summary / Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Date	: 3/15/2011
Claim Number	: N10036-0009
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$314,000.00

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

CLAIM AND CLAIMANT:

Claimant, [REDACTED], presented a claim in the amount of \$314,000.00 to the National Pollution Funds Center (NPFC) on 10 September 2010, claiming a loss of profits and impairment of earning capacity resulting from the Deepwater Horizon incident.

The NPFC's original denial determination was completed and issued to the Claimant on December 6, 2010. The NPFC denied the claim because the Claimant failed to meet his burden to demonstrate he had a loss of profits and earnings due to the injury to, destruction of or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil. On January 19, 2011, [REDACTED] requested reconsideration of the NPFC's December 06, 2010 denial based on the following information:

1. With respect to 33 CFR §136.233(a), Claimant provided (3) individual Certified Property Appraisals as evidence for the properties that are subject of this claim. Claimant contends that the appraisals accurately appraise the taxable value of the (3) subject properties before the incident, the value after the incident, and the loss of value as a result without any other economic factors contributing to that assessment;
2. With respect to 33 CFR §136.233(b), Claimant states he has proven factually that his real property was injured and damaged as a result of the oil-spill through certified appraisal, depreciating property value disclosures that are now required by law whereas they were not before the spill, and loss of interested buyers that would no longer pursue the subject properties owned by the Claimant. Claimant further states that the damage caused directly by the oil-spill and substantial threat of oil was overwhelming proof to cause market stigma, reduce the value of the properties, and eliminate an essential factor that is required to making profit on the sale of any property, interested buyers;
3. With respect to 33 CFR §136.233(c), Claimant states he submitted the original purchase contract between [REDACTED] and himself for the amount of \$100.00, the executed IRS Form 1099 for the amount of \$90,000.00 of taxable profit from real estate investing and sale of the most recent and relevant investment by the Claimant, along with four (4) pay stubs from his employer that indicated the year to date income from [REDACTED]

Construction to establish the rate of pay by proration of \$6,033.39 biweekly for Claimant's income from January 1, 2010 to August 13, 2010. Claimant earned \$48,267.00, a reduction of \$90,000.00 during the oil-spill. Also, the direct loss of value as a result of the injury to the subject properties (i.e., Claimant's assets as proven by certified appraisal in the same period is \$41,813.00) and Claimant has paid \$1,350.00 for the certified appraisals to prove his case which contends furthers his loss;

4. With respect to 33 CFR §136.233(d), Claimant maintains that he continues to have regular employment with the same construction company for the past 20 years. Claimant states that his income has not been supplemented by any other speculative real estate investment sales or any other sources of income in order to offset the loss of profit he alleges to have experienced as a result of the Deepwater Horizon incident. Claimant further alleges that there are other sources of income available although he continues to lose money due to the lost opportunities for him to invest without the working capital therefore there is no opportunity for him to offset his losses until he receives compensation.
5. In summary, the Claimant requests compensation for the alleged loss of marketability, diminished property value, and loss of interested buyers that occurred during the defined period, specifically from April 20, 2010 through July 15, 2010 or caused the loss thereafter in the total amount of \$442,292.00 for those fair and accurate incurred loss of profits and additional costs that resulted from his certified appraisals in the amount of \$1,350.00, property taxes, mortgage interest and maintenance costs in the amount of \$12,942.00 for 12 months, property diminution in the amount of \$41,813.00, loss of income and profit from the previously evidenced historical 100% rate of return on investments based on the loss of \$214,000.00 lost profit realized and projected rate of return to the total amount of \$428,000.00 just prior to the Deepwater Horizon incident based on the evidence and proofs submitted and where no other contrary evidence has been submitted or exists.

It is important to note that the information provided above (items 1-5) are the Claimant's assertions on reconsideration but are not proven by the documentation submitted by the Claimant. Additionally, the Claimant has misconstrued the claims regulation associated with lost profits and earnings located at 33 CFR §136.233(a-d). See NPFC Analysis and Determination on Reconsideration discussion below.

NPFC Analysis and Determination on Reconsideration

To receive compensation from the OSLTF for lost profits and earnings, the Claimant MUST establish that his loss of profits and earnings was due to the injury, destruction or loss of real property, personal property or natural resource in order to have an OPA compensable damage. In this particular claim, [REDACTED] states two bases for his request for reconsideration and they are: (1) loss of marketability and sale of his three investment properties and (2) diminution of property values.

With respect to the Claimant's first basis on reconsideration, the Claimant states he has a loss of marketability of his three investment properties based on what he refers to as "the full selling price" of the subject properties.

Based on the documentation presented by the Claimant in his original claim submission, the Claimant stated that he listed the selling price for each of the subject investment properties as (1) parcel one located in [REDACTED] Key, FL at \$149,000.00; (2) parcel two located in [REDACTED] Key, FL at \$95,000.00, and (3) parcel three located in [REDACTED] Key, FL at \$75,000.00 bringing his

original selling price for all three properties to \$319,000.00 based on a copy of his individual Craigslist property advertisements. The Claimant has not provided documentation for the sale price of each property via a signed purchase and sale agreement for which he alleges he had prospective buyers. Therefore it is impossible for the NPFC to verify definitively that the Claimant would have received his asserted \$214,000.00 for the sale of the subject properties.¹ Moreover, the Claimant has not actually sold the properties; therefore, his alleged loss remains prospective.

With respect to the second basis on reconsideration, the Claimant states he has property value diminution. In support of the Claimant's request for reconsideration, the Claimant hired an Appraiser to perform certified appraisals on the three investment properties which are the subject of this claim. The December 2010 certified appraisals provided by the Claimant include a pre-spill value, a post-spill value, and a property diminution value as determined by the appraiser. The Claimant stated that the resulting property diminution value does not include any other economic factors. However, upon review of the appraiser's considerations, under the "Introduction" section of each property appraisal, it is clear that the value concluded in the appraisal reports considered information that was used for the analysis from most recent sales occurring pre and post oil-spill which do contain other economic factors, since the sale(s) were based on market demand with environmental considerations built in.

Although Claimant asserts that the appraisals accurately measure the taxable value of the (3) subject properties due to the oil spill, this is not the "injury, destruction or loss of real property, personal property or natural resource" contemplated by the statute and regulations. In this case his property was not injured, destroyed or lost due to the oil spill nor was his property injured, destroyed or lost due to damage to the natural resource.

When considering property value diminution, the concept could constitute an economic loss only if the Claimant had realized an actual financial loss by selling the subject properties and that loss was due to the injury, destruction or loss of the real property or the natural resource. Additionally, when considering property value diminution, the value should equal only the reduction in market value as a direct result of the damage to the natural resource. Consideration should also be given to any increase in property prices since the end of the oil-spill. These would reduce the Claimant's asserted loss once the loss is actually realized.

It is important to note that the appraised value of the subject properties post incident is only an indication of their potential value. Furthermore, as noted above, the Claimant cannot claim a loss for the full price of the properties that he currently still owns. If in fact he sells the properties the Claimant still has the burden to demonstrate that any loss he were to realize is due to the damage to the natural resource.

With respect to the Claimant's arguments associated with property taxes, mortgage interest and maintenance fees requested over a twelve month period, the NPFC finds that the Claimant would have been responsible for servicing the mortgage and paying property-related expenses regardless of the oil-spill until the properties were sold; therefore, these costs are not OPA compensable. Moreover, some of the costs that the Claimant alleges are for a future time period

¹ While the Claimant submitted letters from two prospective buyers withdrawing their interest or commitment to the properties, these letters were generated in October 2010 and November 2010, respectively. Both of these dates are long after the time period where there was a threat of the discharge of oil reaching the Florida Keys. The offshore well was capped on July 15, 2010; therefore, Claimant has not established that the injury to the natural resource caused his alleged loss of profits.

which makes them speculative in nature and not an actual damage at the time the claim was presented.

With respect to the Claimant's argument that he incurred appraisal costs in order to document a decline in property values, the NPFC does not disagree that the Claimant incurred such costs. However, (1) the NPFC does not compensate for 'claim preparation costs'² which is what the appraisal fee is considered since the Claimant has yet to demonstrate a loss of profits and earnings and because (2) the Claimant has not realized any financial losses by way of the sale of the subject properties.

The NPFC again denies the claim because the Claimant has not established that his alleged losses are due to the injury, destruction or loss of property or natural resources.

Claim Supervisor:

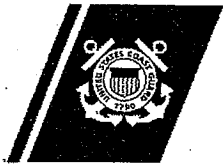
Date of Supervisor's review: **3/15/11**

Supervisor Action: ***Denial on reconsideration approved***

Supervisor's Comments:

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)

5890

06 December 2010

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]

Email: [REDACTED]

Claim Number: N10036-0009

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies your claim. The NPFC is unable to establish that the loss of profits you presented in your claim were a result of the Deepwater Horizon oil spill. Please see the attached claim summary 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 N10036-0009.

Mail reconsideration requests to:

Director (ca)

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

Sincerely,

[REDACTED]
U.S. Coast Guard
Claims Manager

CLAIM SUMMARY / DETERMINATION FORM

Date 03 December 2010
Claim Number N10036-0009
Claimant [REDACTED]
Type of Claimant Private (US)
Type of Claim Loss of Profits and Earning Capacity
Claim Manager [REDACTED]
Amount Requested \$314,000

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 was discharged from an offshore facility associated with the Deepwater Horizon and located on the [REDACTED] (the Deepwater Horizon oil spill). This area was leased by BP Exploration and Production, Inc. (BP). The Coast Guard designated the offshore facility as the source of the discharge and BP as the responsible party (RP) for the discharge. BP accepted the designation, advertised its OPA claims process, and compensated claimants. On 23 August 2010, the Gulf Coast Claims Facility (GCCF) began accepting and adjudicating claims on behalf of BP.

CLAIM AND CLAIMANT

On 10 September 2010, Claimant [REDACTED] submitted an Oil Spill Liability Trust Fund (OSLTF or the Fund) claim form to the NPFC claiming lost profits and earnings the amount of \$314,000.00. The reported basis for his claim is that he and his wife purchased "or were purchasing" seven investment properties in southern Florida and that they are unable to sell them as a result of the Deepwater Horizon oil spill. In his documentation, [REDACTED] only provides information relating to the claimed financial losses for three properties. [REDACTED] primary occupation is that of Construction Supervisor.¹ [REDACTED] primary occupation is that of a realtor.²

According to [REDACTED] OSLTF claim form, he filed his claim with BP between 27 May and 06 June 2010, Claim # [REDACTED]. [REDACTED] wrote a letter to the RP (BP) on 14 June 2010, stating that he and his wife "own or are purchasing seven properties in South Florida."³ Three of the properties are located in the lower Florida Keys in Monroe County. Further, [REDACTED] letter indicates that the vacant parcels were already purchased or were being purchased with the intent to sell them at a profit.⁴ According to [REDACTED] the properties were constantly advertised and priced competitively but they have been unable to sell them.⁵ Based upon his submission to BP, [REDACTED] claimed \$214,000.00 due to the total loss of sales, which amount would increase to \$319,000.00 if the mortgages were in default.⁶ The letter

¹ See, 2009 IRS Form 2106 EZ.

² See, 2008 IRS Form 2106.

³ See, letter from [REDACTED] to BP Claims dated June 14, 2010.

⁴ See, letter from [REDACTED] to BP Claims dated June 14, 2010.

⁵ See, letter from [REDACTED] to BP Claims dated June 14, 2010 and electronic property advertisements included as part of [REDACTED] documentation.

⁶ See, Financial Summary of Actual Loss, pg 107 "Last Page" for BP Claim # [REDACTED]

that [REDACTED] wrote to BP is dated 14 June 2010. BP took no action on his claim. He filed with GCCF on 23 August 2010, Claim # [REDACTED] for \$45,000.00. [REDACTED] claim with the GCCF is has been denied.

[REDACTED] also stated in his letter to BP that two of the properties were purchased using owner financing in the form of a short term "balloon mortgage," with the expectation that the properties would be resold before the balloon mortgages came due.⁷ [REDACTED] states that there have been no buyers interested in the properties due to the Deepwater Horizon oil spill.⁸

In addition to his 14 June 2010 letter to BP explaining his loss, [REDACTED] also submitted a "Financial Summary of Actual Loss" as part of his original claim.⁹ This financial summary claimed a total loss due to lost sales of \$214,000.00 and a "potential loss of sales and resulting mortgage default of \$319,000.00."¹⁰ Further, this document reported a "ROI Rate" (i.e. a return on investment rate) of 100% per year.¹¹

In a phone conversation on 06 October 2010 with the NPFC, [REDACTED] described the impact of the oil spill as similar to interfering with a person's ability to play the lottery. He described owning a piece of property as akin to playing the lottery, inasmuch as the owner never knows when that property will sell. In [REDACTED] view, as described in that conversation, the Deepwater Horizon oil spill prevented him from playing that lottery for the period of time that buyers are avoiding Florida properties due to the threat of oiled beaches.¹²

On 02 November 2010, [REDACTED] clarified his position in a letter to the NPFC. In his letter, [REDACTED] states that the

"Nature of the referenced claim is not for diminished value although this surely is a 'by product' of a government agency such as NOAA indicating that oil had a 60-80% chance of reaching your shores. . . [but] a loss of interest (*emphasis in the original*) from prospective buyers as a result of the oil spill coming to the Florida Keys."

Further, [REDACTED] makes the following statements:

"Would I have sold 1, 2, or all of the subject properties in the segment of time from the oil spill occurred (*sic*) to present? Based on the previous interest before the spill, it is probable. What I do know is the oil spill took away the opportunity to sell the properties at profit for a period of time. That is fact."

"What is the value of that fact? The actual profit is the loss from the sales of the subject properties in the amount of \$214,000.00 at present. That is a fact."

⁷ See, letter from [REDACTED] to BP Claims dated June 14, 2010

⁸ See, letter from [REDACTED] to BP Claims dated June 14, 2010.

⁹ See, Financial Summary of Actual Loss, pg 107 "Last Page" for BP Claim # [REDACTED]

¹⁰ See, Financial Summary of Actual Loss, pg 107 "Last Page" for BP Claim # [REDACTED]

¹¹ See, Financial Summary of Actual Loss, pg 107 "Last Page" for BP Claim # [REDACTED]

¹² Phone conversation between [REDACTED] of the NPFC and [REDACTED] of 06 October 2010 as recorded in an email to file N10036-0009.

In his OSLTF claim form, [REDACTED] makes clear that the properties were "purchased/under contract" before the spill. Further, [REDACTED] indicates that he is still making the mortgage payments on the property and that the balloon mortgage maturity dates will soon be reached.

APPLICABLE LAW

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a). Damages include the loss of profits or impairment of earning capacity due to the injury, destruction or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant. 33 U.S.C. § 2702(b)(2)(E).

The OSLTF, which is administered by the NPFC, is available to pay claims for uncompensated damages pursuant to 33 USC §§ 2712(a)(4) and 2713 and the OSLTF claims adjudication regulations at 33 CFR Part 136. With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

Pursuant to the claims regulations, 33 CFR § 136.233, a claimant must establish the following to prove loss of profits or impairment of earning capacity:

- (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.
- (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 CFR 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 CFR 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.

DETERMINATION OF LOSS

A. Documentation Provided to the NPFC

_____ submitted the following list of documentation:

- Letter from _____ to BP dated June 14, 2010
- Photocopies of drivers license, social security card and passport
- Monroe County Florida newspapers articles
- Real estate transaction documents:
 - o 7 January 2010 Form 1099-S Gross Proceed Statement from Gulf Coast Title Insurance Co. to _____
 - o 8 January 2010 Mortgage Deed Transfer (Charlotte County, _____ by _____ to _____)
 - o 14 May 2010 General Warranty Deed Transfer (Charlotte County, _____ Parcel ID Number _____) from _____
 - o 21 May 2010 Counter Offer/Rejection Signature Page for unknown transaction
- Real Estate Appraiser searches
 - o Monroe County Property Appraiser _____ CFA Search Results for the period of 15 March 2010 to 15 April 2010 of lower Florida Keys indicating 29 total qualified transactions before the Spill.
 - o Monroe County Property Appraiser _____ CFA Search Results for the period of 15 April 2010 to 15 May 2010 of lower Florida Keys indicating 27 total qualified transactions before the Spill.
 - o Monroe County Property Appraiser _____ CFA Search Results for the period of 15 May 2010 to 15 June 2010.
 - o Monroe County Property Appraiser _____ CFA 9 June 2010 Property Record View for _____ Key Parcel ID: _____
 - o Monroe County Property Appraiser _____ CFA 9 June 2010 Property Record Views and Parcel Value History (1982 to 2009).
 - o Monroe County Property Appraiser _____ CFA 9 June 2010 Property Record Views for Little Torch Key; _____ Parcel ID: _____ and Alternate Key: _____ Parcel ID: _____ with parcel value & sales histories (1992-2009)
- 23 March 2010 Promissory Note to _____ as Trustee of the _____ of 25 March 2009 for \$23,750.00.
- 23 May 2010 Feasibility Study from _____ to _____ for Offer for Little Torch Parcel _____
- 12 June 2010 Craigslist.org posting for \$75,000 Buildable Canal Lot with Open Views (_____)
- 16 June 2010 Promissory Note to _____ from _____ for \$80,000.00.
- Advertisements for sale of the properties
 - o Craigs List Execute Contract Discussions on 11 Jan 2010.
 - o Craigs List for Canal Lot in Cudjoe Key of 6/9/2010

- Monroe County tax records
- Federal income tax returns for 2008 and 2009 (Note 1: On 2009 Schedule A ([REDACTED] Revocable Trust Interest Paid is shown)
- Financial Summary of Actual Loss by [REDACTED] for 3 parcels
- Letter from [REDACTED] to USCG OPA Fund dated November 2, 2010
- News articles relating to the impact of the Deepwater Horizon oil spill to Gulf Coast Real Estate markets. Articles include reports of analysis conducted by [REDACTED] entitled '[REDACTED] Data Shows the Potential Impact of the BP Deepwater Horizon Oil Spill on Coastal Real Estate.'

B. Claimant's Analysis of his Claim

1. [REDACTED] OSLTF claim form states a claim for Loss of Profits and Impairment of Earning Capacity in the amount of \$314,000.00. [REDACTED] claim to the GCCF was denied.
2. [REDACTED] states that his inability to sell his South Florida properties is the result of the Deepwater Horizon oil spill and he seeks to be compensated for the downturn in interest among potential buyers that. He asserts that such interest did exist before the Deepwater Horizon oil spill. While he believes that his property has also experienced a diminution in value resulting from the Deepwater Horizon oil spill, he does not assert this diminution as a basis for his claim but rather calculates the sum certain to be the loss of the sales and the costs he will incur or has incurred as a result of defaulting on the balloon mortgages. He views the decreased value as a byproduct of government agency action reporting on potential impacts of the spill.

C. NPFC Analysis of the Claim

1. Claimant asserts that he suffered a loss of profits or impairment of earning capacity in the amount of \$314,000 for several parcels of land that he purchased/was purchasing at the time of the Deepwater Horizon oil spill. He purchased these properties as investment properties and he argues that he cannot now sell these properties because there is a lack of public interest in purchasing them. As a result of this lack of interest he has been unable to sell the properties.
2. It is somewhat unclear as to whether his basis for the loss of profits is the diminution in value of the properties or the inability to sell them and the subsequent costs associated if he defaults on the balloon payments. [REDACTED] cannot be compensated by the Fund under either theory. The Fund is available to pay claims for uncompensated removal costs or uncompensated damages. In this case [REDACTED] has not established that he suffered a loss of profits due to the diminution of value of the properties.
3. Even if his property value has diminished, he has not yet sold his property for less than he paid for it. As a result, any loss that he might experience remains prospective.
4. [REDACTED] asserts that he cannot sell the properties because there is a lack of public interest in purchasing properties in South Florida because of the oil spill. However, [REDACTED] has not provided convincing evidence that the housing

market in South Florida was impacted solely by the oil spill. Instead, a number of economic factors may be involved making it impossible to separate out and determine that his claimed losses are the result of the Deepwater Horizon oil spill. Further, the NPFC review of specific data and studies related to the Deepwater Horizon incident do not reveal any clear declines in real estate sales volume that can be specifically linked to the spill.¹³

D. Determination

Under 33 CFR 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 CFR § 136.233, a claimant must establish loss of profits or impairment of earning capacity. As described above, [REDACTED] has failed to meet his burden and his claim is denied.

DETERMINATION [REDACTED] claim for \$314,000 to the OSLTF is denied.

AMOUNT \$0.00 [REDACTED]

Claim Supervisor: [REDACTED]

Date: 12/7/10

Supervisor's Comments: DENIED APPROVED

¹³ Memorandum dated 09 November 2010 from [REDACTED] and [REDACTED] IEC to [REDACTED]
[REDACTED] Subj: Preliminary Property Value Assessment Results

CLAIM SUMMARY / DETERMINATION FORM

Date 22 November 2010
Claim Number N10036-0010
Claimant [REDACTED]
Type of Claimant Private (US)
Type of Claim Loss of Profits and Impairment of Earning Capacity
Claim Manager [REDACTED]
Amount Requested \$53,574.00

FACTS

On or about 20 April 2010, the Mobile Offshore Drilling Unit (MODU) Deepwater Horizon exploded and sank in the Gulf of Mexico. As a result of the explosion and sinking, oil was discharged from an offshore facility associated with the MODU and located on the Mississippi Canyon, Block 252 (the Deepwater Horizon Oil Spill). This area was leased by BP Exploration and Production, Inc (BP). The Coast Guard designated the offshore facility as the source of the discharge and BP as the responsible party (RP) for the discharge. BP accepted the designation, advertised its OPA claims process, and compensated claimants. On 23 August 2010, the Gulf Coast Claims Facility (GCCF) began accepting and adjudicating claims on behalf of BP.

CLAIM AND CLAIMANT

On 13 September 2010 the NPFC received an Oil Spill Liability Trust Fund (OSLTF) optional claim form from [REDACTED] owns and operates [REDACTED] in Dunedin, Florida, as a sole proprietor. He claims his business was significantly reduced due to the downturn in tourism in the Dunedin area due to the Deepwater Horizon oil spill. [REDACTED] took over the business from the previous owners, [REDACTED] in May 2009. The store was a "model store" for [REDACTED]. In exchange for servicing existing customer contracts, [REDACTED] received a fee and free products from [REDACTED]. After the Deepwater oil spill, [REDACTED] released an employee and employed a friend who works without pay. The NPFC spoke to [REDACTED] in a conference telephone call on 29 September 2010. On 07 October 2010, the NPFC forwarded [REDACTED] a request for additional information to which [REDACTED] has not responded. [REDACTED] filed a claim with the responsible party (RP) BP on 09 July 2010, Claim # [REDACTED], and BP paid him \$2,305.00. He filed his claim with the Gulf Coast Claims Facility on 26 August 2010, Claim # [REDACTED]. Mr. [REDACTED] claim is currently under review by the GCCF. [REDACTED] filed a claim with the NPFC because he was dissatisfied with the amount of compensation that he received from BP and because the GCCF would take no further action on his claim.

APPLICABLE LAW

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a). Damages include the loss of profits or impairment of earning capacity due to the injury,

destruction or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant. 33 U.S.C. § 2702(b)(2)(E).

The OSLTF, which is administered by the NPFC, is available to pay claims for uncompensated damages pursuant to 33 USC §§ 2712(a)(4) and 2713 and the OSLTF claims adjudication regulations at 33 CFR Part 136. With certain exceptions, a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is not settled by any person by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

Pursuant to the claims regulations, 33 CFR § 136.233, a claimant must establish the following to prove loss of profits or impairment of earning capacity:

- (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.
- (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 CFR 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 CFR 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.

DETERMINATION OF LOSS

A. Documentation Provided

██████████ submitted the following documentation:

- [REDACTED] Model Shop sales ledgers for 2007, 2008 and Jan thru Mar 2009
- Customer sales invoices from 1 August through 24 September 2009.
- Schedule C Profit or Loss from Business (sole proprietorship).
- Monthly listing of income and expenses for May 2009, July 2009, May 2010, June 2010 and July 2010.
- Week-Ending deposit summaries from 6 August through 3 September 2009.
- Three-Day Notice to Pay Rent
- Newspaper articles on the Deepwater Horizon oil spill.

B. Documentation Not Provided

Following a review of the documentation provided by [REDACTED] and the 28 September 2010 phone conference between the NPFC, our forensic accountants, and [REDACTED], the NPFC requested the following documentation on 07 October 2010:

- Monthly sales and expenses from May 2009 through December 2009 that support the claimant's 2009 Federal 1040, Schedule C for [REDACTED]
- Monthly sales and expenses for 2010.
- Monthly 2009 and 2010 bank statements supporting the monthly 2009 and 2010 sales in Items #1 and #2 above.
- Copies of credit card sales receipts for 2009 and 2010.
- Copies of the credit card bank processing reports for 2009 and 2010.
- Copies of the QuickBooks sales invoices and manual "Week-Ending" sales summaries for 2009 and 2010. Currently, we already have these documents from August 6, 2009 through September 3, 2009.
- Work papers, schedules, documents or notes showing how the "estimated" [REDACTED] sales for 2009 were derived to prepare his 2009 Federal 1040, Schedule C return
- A copy of the store premises lease for [REDACTED]
- A copy of any agreement between [REDACTED] and [REDACTED] to purchase [REDACTED] that describes the free products and servicing of [REDACTED] customers.
- A copy of the "Revised" agreement between [REDACTED] and [REDACTED] in 2010 that provided [REDACTED] with free [REDACTED] product in exchange for marketing and training services at [REDACTED] for [REDACTED] franchise/Licensee promotions.
- Copies of employee/contractor 1099's for 2009 along with a written description of the compensation agreements to them (base salary, manager fees, commissions, hourly rates, per service rates).
- A schedule showing the detailed cost (product, labor, supplies, etc) of providing a body wrap service.
- A schedule showing the number of body wraps in 2009 and 2010 for the [REDACTED] customers.
- Copies of the 2009 and 2010 Sales and Use Tax Returns (I believe the claimant said quarterly).
- A copy of the facility lease eviction notice.

CLAIM SUMMARY / DETERMINATION FORM

Date : 10/19/2010
Claim Number : N10036-0011
Claimant : [REDACTED]
Type of Claimant : Private (US)
Type of Claim : Loss of Profits and Earning Capacity
Claim Manager : [REDACTED]
Amount Requested : \$18,571.37

FACTS:

Claimant [REDACTED] presented an optional OSLTF Claim Form to the NPFC on 22 September 2010. In the optional OSLTF Claim Form, [REDACTED] claimed a total of \$18,571.37 for Profits and Lost Earnings due to lost revenues to their commercial/residential cleaning business resulting from diminished tourism in the Gulf of Mexico resulting from the Deepwater Horizon oil spill for the period 20 April to 31 August 2010. [REDACTED] is the Managing Manager of [REDACTED].

[REDACTED] reported submitting her initial claim to BP on 14 May 2010 in the amount of \$56,834.72. [REDACTED] received \$38,317.35 from BP for the period 14 May 2010 to 9 August 2010. [REDACTED] requested assistance in seeking the \$18,517.37 balance.¹ On 18 October 2010, the Coast Guard became aware that [REDACTED] was paid by GCCF.

The NPFC confirmed [REDACTED] receipt of \$18,571.37 payment with [REDACTED] who was satisfied with the payment she received from the GCCF on behalf of the Responsible Party.²

APPLICABLE LAW:

Under OPA 90, at 33 USC § 2702(a), responsible parties are liable for removal costs and damages resulting from the discharge of oil into navigable waters and adjoining shorelines, as described in Section 2702(b) of OPA 90.

The Oil Spill Liability Trust Fund (OSLTF), which is administered by the NPFC, is available, pursuant to 33 USC §§ 2712(a)(4) and 2713 and the OSLTF claims adjudication regulations at 33 CFR Part 136, to pay claims for uncompensated damages. One type of damages available pursuant to 33 CFR §136.231 is a claim for loss of profits or impairment of earning capacity due to injury to or destruction of natural resources.

Under 33 CFR 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 CFR 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;

¹ Optional OSLTF Claim Form submitted on 22 September 2010

² Notes of phone conversation between [REDACTED] USCG Contractor, and [REDACTED] on 20 Oct 2010.

- (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.

DETERMINATION OF LOSS:

██████████ presented a claim in the amount of \$56,834.72 for the period of April 20 through August 31, 2010. ██████████ was paid \$38,317.58 by the Responsible Party on or about 9 August 2010 and \$18,517.37 on 11 October 2010 by GCCF for a total of \$56,834.72. ██████████ confirmed that she has been compensated for what she requested for the period of April 20 through August 31, 2010.

AMOUNT: \$0.00

DETERMINATION: ██████████ claim for \$18,517.37 to the OSLTF will be denied in whole as a result of receiving full compensation from the Responsible Party.

Claim Supervisor: ██████████

Date of Supervisor's review: 20 Oct 10

Supervisor Action: Denial approved

Supervisor's Comments:

U.S. Department
of Homeland
Security

United States
Coast Guard



Director
National Pollution Funds Center
United States Coast Guard

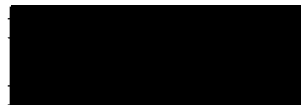
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd., Suite 1000
Arlington, VA 20598-7100
Staff Symbol: (CA)

5890

19 October 2010

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]



Email: [REDACTED]

RE: Claim Number: N10036-0012

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on claim number N10036-0012 involving Deepwater Horizon. Compensation is denied because you were recently paid \$52,000.00 (Fifty-two thousand dollars) by the Gulf Coast Claims Facility. This payment exceeds the \$51,566.00 loss of profits and earning capacity claim submitted to the NPFC on 24 September 2010 via email. In view of the amount you have been paid in comparison to the amount you requested from the NPFC, we have determined that you have been fully compensated for any lost profits or earning capacity for the period of April 20 through September 30, 2010. This determination has no effect on any claims you may choose to submit for damages after September 30, 2010.

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 N10036-0012.

Mail reconsideration requests to:

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

Sincerely,



Lieutenant Commander
U.S. Coast Guard
Claims Manager

CLAIM SUMMARY / DETERMINATION FORM

Date : 10/19/2010
Claim Number : N10036-0012
Claimant : [REDACTED]
Type of Claimant : Private (US)
Type of Claim : Loss of Profits and Earning Capacity
Claim Manager : [REDACTED]
Amount Requested : \$51,566.00

FACTS:

[REDACTED] presented an email claim to the NPFC on 24 September 2010. [REDACTED] claimed a total of \$51,566.00 for Profits and Lost Earnings due to lost revenues resulting from diminished tourism in the Gulf of Mexico resulting from the Deepwater Horizon oil spill for the period 20 April to 30 September 2010. [REDACTED] is the General Manager of the [REDACTED] an [REDACTED] located in Marco Island, Florida. [REDACTED] reported submitting her initial claim to BP and was provided claim # [REDACTED] on 31 May 2010. [REDACTED] submitted a subsequent claim with the Gulf Coast Claims Facility (GCCF) on 24 August 2010 (Claim # [REDACTED]).¹ On 18 October 2010, the Coast Guard became aware that [REDACTED] was paid by GCCF. The NPFC confirmed [REDACTED] receipt of \$52,000.00 payment with [REDACTED] who was satisfied with the payment she received from the GCCF on behalf of the Responsible Party.²

APPLICABLE LAW:

Under OPA 90, at 33 USC § 2702(a), responsible parties are liable for removal costs and damages resulting from the discharge of oil into navigable waters and adjoining shorelines, as described in Section 2702(b) of OPA 90.

The Oil Spill Liability Trust Fund (OSLTF), which is administered by the NPFC, is available, pursuant to 33 USC §§ 2712(a)(4) and 2713 and the OSLTF claims adjudication regulations at 33 CFR Part 136, to pay claims for uncompensated damages. One type of damages available pursuant to 33 CFR §136.231 is a claim for loss of profits or impairment of earning capacity due to injury to or destruction of natural resources.

Under 33 CFR 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 CFR 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 undertake, but reasonably available;
- (d) Any saved overhead or normal expenses not incurred as a result of the incident; and

¹ Email from [REDACTED] of 24 September 2010

² Notes of phone conversation between [REDACTED] and [REDACTED] on 1 Oct 2010.

(e) State, local, and Federal taxes.

DETERMINATION OF LOSS:

██████████ presented an email claim in the amount of \$51,566.00 for the period of April 20 through September 30, 2010. ██████████ was paid a total of \$52,000.00 by the Responsible Party. ██████████ confirmed that she has been compensated for what she requested for the period of April 20 through September 30, 2010.

AMOUNT: \$0.00

DETERMINATION: ██████████ claim for \$51,566.00 to the OSLTF will be denied in whole as a result of receiving full compensation from the Responsible Party.

Claim Supervisor: ██████████

Date of Supervisor's review: 10/19/10

Supervisor Action: DENIED

Supervisor's Comments:

CLAIM SUMMARY / DETERMINATION FORM

Date 11/09/2010
Claim Number N10036-0014
Claimant [REDACTED]
Type of Claimant Private (US)
Type of Claim Loss of Profits and Earning Capacity
Claim Manager [REDACTED]
Amount Requested \$17,000.00

FACTS

On or about April 21, 2010, the Mobile Offshore Drilling Unit (MODU) Deepwater Horizon exploded and sank in the Gulf of Mexico. As a result of the explosion and sinking oil was discharged from an offshore facility associated with the MODU and located on the Mississippi Canyon, Block 252. This area was leased by BP Exploration and Production, Inc. (BP). The Coast Guard designated the offshore facility as the source of the discharge and BP as a responsible party for the discharge. BP accepted the designation, advertised its OPA claims process and adjudicated claims.

CLAIM AND CLAIMANT

Claimant, [REDACTED], a representative for [REDACTED] submitted a claim to the Oil Spill Liability Trust Fund (OSLTF) on July 22, 2010. [REDACTED] is claiming lost profits and earnings associated with a semi-permanent shaved ice and soft-serve ice cream stand (the stand). [REDACTED] resides in Flint, Michigan; however, [REDACTED] was a new business venture that he was planning to start in the Portofino Beach area of Pensacola, Florida, with the financial assistance of a "silent" partner who resides in Florida. Operations were expected to commence sometime during the month of May extending through September or October, weather permitting.

Claimant asserts that he and his partner incurred certain expenses in anticipation of establishing [REDACTED]; however, he notes that the company has not been organized under the laws of Florida, had not determined a specific location for the stand nor applied for or received necessary permits.

[REDACTED] decided not to open the business believing that tourist activity, in the vicinity where he planned to operate the stand, had declined as a consequence of the Deepwater Horizon oil spill (the oil spill). He believed that the business venture would not have been profitable.

Claimant presented the claim to BP on or about June 16, 2010. BP issued him claim number [REDACTED]. It has been over ninety days since [REDACTED] submitted his claim to BP and no action has been taken by the RP. On 07 October 10, [REDACTED] authorized the NPFC to request documentation associated with his claim from the Gulf Coast Claims Facility (GCCF). The GCCF provided the NPFC with information that was the same or similar to what we received from [REDACTED]. He submitted a claim to the GCCF on October 12, 2010

and was issued claimant ID number [REDACTED] His claim with the GCCF has not been resolved.

APPLICABLE LAW

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a). Damages include the loss of profits or impairment of earning capacity due to the injury, destruction or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant. 33 U.S.C. § 2702(b)(2)(E).

The OSLTF, which is administered by the NPFC, is available to pay claims for uncompensated damages pursuant to 33 USC §§ 2712(a)(4) and 2713 and the OSLTF claims adjudication regulations at 33 CFR Part 136. With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

Pursuant to the claims regulations, 33 CFR § 136.233, a claimant must establish the following to prove loss of profits or impairment of earning capacity:

- (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.
- (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 CFR 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 CFR 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.

DETERMINATION OF LOSS

A. Overview

██████████ submitted the following documentation:

- 1. Invoices and receipts for purchases of food inventory and equipment.
- 2. Balance Sheet for ██████████ prepared by ██████████ reflecting costs already incurred as well as expected costs of the business.
- 3. Link to Florida Department of Revenue's website stating requirement for registration
- 4. Consumer spending statistics from the Pensacola area.
- 5. Website printouts from ice cream supply company (1 company based in UK)
- 6. One paragraph statement from ██████████ describing the basis for his claim.
- 7. Copy of Business Operating Plan for ██████████ by email dtd 18OCT10.
- 8. Article dtd 23 August 2010 by ██████████ source unknown, via email.

Pursuant to a release from ██████████ via email, the NPFC requested all documentation relating to his claim before the GCCF. The GCCF forwarded the following documentation:

- 1. Various non substantive emails between ██████████ and GCCF representatives relating to his claim.
- 2. Copies of the invoices and receipts for purchases of food inventory and equipment.

The NPFC forwarded ██████████ a request for additional documentation on 19 October 2010. ██████████ responded with the documentation that he had available but was unable to produce the following:

- 1. Documentary evidence supporting that ██████████ or his business partner initiated or begun the process to file for licenses, permits, registration and securing a physical operating location.
- 2. Current photos of the food cart, equipment and food inventory in its current location of storage.
- 3. Documentation to support the actual payment for the equipment and food inventory.
- 4. Documentation to support a land rental agreement with associated source of electricity, water and sewer hook-ups.
- 5. Documentation supporting the shelf life of the actual product purchased. This includes a copy of the product labeling stating the expiration date.
- 7. Documentation supporting the financing of the business operations.
- 8. Lease agreements with plans for utility hook ups to operate the food cart.

B. NPFC Review of the Documentation Provided:

The NPFC reviewed the documentation submitted by [REDACTED]. Additionally, all documentation was reviewed by forensic accountants and [REDACTED] was interviewed by telephone. The NPFC is unable to calculate any loss to [REDACTED] based on the information provided. The limited documentation relating to the start-up of this business, supports neither that [REDACTED] would have begun operating during the summer of 2010 or that it could have been a profitable business. Listed are the key points leading us to this conclusion:

1. [REDACTED] has not presented any evidence to support that he or his business partner had begun to apply to various city, county and state agencies for approval and appropriate licenses and permits to operate a business. The NPFC has been told that his silent business partner was responsible for all required filings. We have not had any discussions or direct correspondence with the silent business partner. [REDACTED] confirmed that no filings had taken place at the time of the oil spill.
2. [REDACTED] has not identified a specific location where [REDACTED] would have been operating. Moreover, he has not provided documentation to support a physical location such as a lease or any documents supporting the necessary utility hook-ups for the food cart. [REDACTED] has stated that his silent business partner was responsible for securing the location and lease agreement.
3. [REDACTED] has not provided documentation to support the actual payment of the equipment and food supplies as claimed. The Claimant provided various invoices and receipts to support the purchases but the NPFC has made the following observations of those receipts.
 - a. The receipts however, were provided in electronic format (via email) and were created through a word processing program.
 - b. The invoices state the transaction was done over the internet, but [REDACTED] stated his business partner paid for the merchandise in person with cash. There are two invoices suggesting cash payments of \$10,000 and \$7,900.
 - c. [REDACTED] has indicated that no documents are available to support the payment or source of cash such as bank withdrawals.
 - d. [REDACTED] stated that his source for equipment and food supplies is no longer in business and additional information regarding the product is not available from the vendor.
4. [REDACTED] stated he cannot obtain pictures of the food cart, equipment or food inventory because they are stored at his business partner's property. Due to the personal circumstances of the business partner, [REDACTED] or his partner cannot provide photographic evidence of these items.

5. The claim includes the cost of food supplies. [REDACTED] is claiming that the food supplies have a shelf life of less than one year. As there are no plans for [REDACTED] to start operating until next year, he believes that the food supplies will not be usable. [REDACTED] has not provided the actual manufacturer's expiration date or the product label from the merchandise. In addition, the food supplies including syrups and powdered soft serve mixes were stored in a shed belonging to [REDACTED] business partner. The supplies were stored in a shed that was not temperature regulated through the summer, potentially rendering the product unusable.

LEGAL ANALYSIS

Pursuant to 33 CFR Part 136, the claimant bears the burden of proving his loss. In this claim, [REDACTED] has not met his burden. He has not provided evidence to establish that that [REDACTED] would have been operating during the summer of 2010. For example, the stand itself was purchased but required repair. [REDACTED] expected to affect repairs to the stand during April and early May of 2010, but no movement was made towards improving the stand before the occurrence of the spill. Further, no permits were pulled before the occurrence of the oil spill and the exact location of where the stand was to operate remains unknown. He cannot corroborate the receipts for inventory that was purchased for the business and he is unable to provide any photographic evidence of either the cart itself or the inventory. Moreover, even if we were able to establish that the business would have been operating, he has not provided enough evidence to enable the NPFC to either calculate a loss of profits or to compensate [REDACTED] for the products that his business partner purchased using cash and subsequently stored in his shed. Thus, due to [REDACTED] inability to support his claim, the NPFC does not find it more likely than not that [REDACTED] has incurred a loss.

Since [REDACTED] has not met his burden with regards to proving that [REDACTED] has lost income or profits, this analysis does not reach a conclusion with regards to causation.

AMOUNT \$0.00

DETERMINATION [REDACTED] claim for \$17,000.00 to the OSLTF is denied.

Claim Supervisor: [REDACTED]

Date: 11/9/10

Supervisor's Comments: DENIAL APPROVED

Attachment

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)

[REDACTED]
Fax: 202-493-6937
5890
12/16/2010

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]

RE: Claim Number: N10036-0015

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number N10036-0015 involving Deepwater Horizon. Please see the enclosed Claim Summary / Determination 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 N10036-0015.

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 Manager

Enclosure: Claim Summary/Determination Form

09/13/11

Page 1 of 3

FOIA2011-3380-0000065

CLAIM SUMMARY / DETERMINATION FORM

Date	: 12/16/2010
Claim Number	: N10036-0015
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Real or Personal Property
Claim Manager	: [REDACTED]
Amount Requested	: \$276,000.00

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 was discharged from an offshore facility associated with the Deepwater Horizon and located on the Mississippi Canyon, Block 252 (the Deepwater Horizon incident). This area was leased by BP Exploration and Production, Inc. (BP). The Coast Guard designated the offshore facility as the source of the discharge and BP as the responsible party (RP) for the discharge. BP accepted the designation, advertised its OPA claims process, and compensated claimants. On 23 August 2010, the Gulf Coast Claims Facility (GCCF) began accepting and adjudicating claims on behalf of BP.

CLAIM AND CLAIMANT

On 24 July 2010 the NPFC received an Oil Spill Liability Trust Fund (OSLTF) claim form presented by the [REDACTED] (Trust or Claimant) claiming \$276,000.00 for lost public services and damage to real or personnel property. The claim form was originally submitted by attorney [REDACTED] (Attorney) who represented the Trust. Responsibility for handling the matter was transferred to [REDACTED] (Representative) pursuant to a fax received by the NPFC on 30 November 2010.

APPLICABLE LAW

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a).

Damages include real or personal property damages for injury to, or economic losses resulting from destruction of, real or personal property, which shall be recoverable by a claimant who owns or leases that property. 33 U.S.C. § 2702(b)(2)(B). Additionally, the statute authorizes damages equal to the loss of profits or impairment of earning capacity due to the injury, destruction or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant. 33 U.S.C. § 2702(b)(2)(E). Damages relating to the increased cost of public services are also authorized, but recovery is limited to the Government of the United States, a State, or a political subdivision thereof. 33 U.S.C. § 2702(b)(2)(F).

The OSLTF, which is administered by the NPFC, 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. With certain exceptions, a claim must first be presented to the

responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

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.

DETERMINATION OF LOSS

Claimant's Submission

To support the Trust's claim, Attorney originally presented an OSLTF claim form dated 18 June 2010, an Appraisal of Real Estate Located at [REDACTED] and a picture of a vessel presumably engaged in Deepwater Horizon incident clean-up operations. On 30 June 2010 Attorney presented a claim to BP and was issued claim number [REDACTED]. BP took no action on the claim, which was subsequently transferred to the GCCF and issued Claimant ID [REDACTED]. As of 12 December 2010, the GCCF has no record of further presentation by either Attorney or Representative.

The Trust's claim form states a claim for Public Services in the amount of \$50,000.00 and damage to Real and Personal Property in the amount of \$226,000.00 for a total amount claimed of \$276,000.00. In block 10 of the OSLTF, Attorney describes the damage as being the result of being unable to rent or sell the described condominium unit that is part of the Trust.

On 17 November 2010, the NPFC issued a request for additional information to Representative, who replaced Attorney as the Trust's representative. No information relating to this claim has been received.

NPFC Determination

The claim is denied. Under 33 U.S.C. § 2702(b)(2)(F), recovery of increased Public Services is limited to government entities and the Trust's cannot claim or recover such damages. Further, pursuant to 33 C.F.R. §§ 136.105(a) and 136.105(e), 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. In this claim, the Trust's representatives have not submitted evidence that the real property that is the subject of the claim has been damaged as a result of the Deepwater Horizon incident.

Claim Supervisor: [REDACTED]

Date of Supervisor's review: 16 December 2010

Supervisor Action: DENIED APPROVED

Supervisor's Comments:

CLAIM SUMMARY / DETERMINATION FORM

Date : 10/25/2010
Claim Number : N10036-0017
Claimant : [REDACTED]
Type of Claimant : Private (US)
Type of Claim : Loss of Profits and Earning Capacity
Claim Manager : [REDACTED]
Amount Requested : \$30,640.00

FACTS:

Claimant [REDACTED] doing business as [REDACTED] submitted an optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the NPFC on 26 September 2010. She claimed a total of \$30,640.00 for Profits and Lost Earnings due to lost revenues resulting from diminished business in the Gulf of Mexico (specifically, Orlando, Florida) resulting from the Deepwater Horizon oil spill for the period 20 April to 30 September 2010.¹ [REDACTED] is the owner of [REDACTED] a firm located in [REDACTED]. [REDACTED] reported submitting her initial claim to BP on 17 June 2010 which was converted to Gulf Coast Claim Facility (GCCF) claim # [REDACTED] on 23 August 2010.²

APPLICABLE LAW:

Under OPA 90, at 33 USC § 2702(a), responsible parties are liable for removal costs and damages resulting from the discharge of oil into navigable waters and adjoining shorelines, as described in Section 2702(b) of OPA 90.

The Oil Spill Liability Trust Fund (OSLTF), which is administered by the NPFC, is available, pursuant to 33 USC §§ 2712(a)(4) and 2713 and the OSLTF claims adjudication regulations at 33 CFR Part 136, to pay claims for uncompensated damages. One type of damages available pursuant to 33 CFR §136.231 is a claim for loss of profits or impairment of earning capacity due to injury to or destruction of natural resources.

Under 33 CFR 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 CFR 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 undertake, 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.

¹ Optional OSLTF Claim Form 9/26/2010 Submission

² GCCF Weekly Report

DETERMINATION OF LOSS:

We have reviewed the claim as presented by [REDACTED] for [REDACTED]

[REDACTED], based in Calhoun, Georgia sells uniforms and linens to the hotel industry. We received documentation provided by [REDACTED] for her claimed losses. We received the following documents relevant to [REDACTED]

- "Monthly Profit and Loss Statement" (Personal Expenses) for January through May 2010 provided for Chapter 13 Bankruptcy filing.
- Merchant Statements/ Sales Processing for January through August 2010
- Individual Tax Return filing from 2007 (without Schedule C)
- Invoice Registers from 2007 through August 2010

We confirmed that her firm was listed on the [REDACTED] Preferred Vendor List doing business in the past at their [REDACTED]. Based on our review of the documents above, we made several observations regarding the business trends of [REDACTED]:

1. [REDACTED] *had* sales orders in 2007 and 2008 from two customers in the [REDACTED] area. The customers in the Orlando area were the [REDACTED] World Center and the [REDACTED]. [REDACTED] did not have any sales to these locations during 2009 or January through April 2010. The Claimant notes the death of her mother in late 2008/ early 2009 as having a negative impact to the business.
2. Other than the two customers listed above, [REDACTED] did not have any sales orders from customers in the Gulf region or Florida coast before and after the oil spill.
3. Since the spill [REDACTED] has not received any new orders from customers in the Gulf region.

We confirmed with the [REDACTED] had used her services in the past, but had not planned to use her firm's services in 2010. [REDACTED] contact [REDACTED] confirmed that the [REDACTED] had placed regular orders for linens, towels, and uniforms with other vendors throughout the 2009-2010 time period. [REDACTED] could not indicate with any degree of certainty whether he would order from [REDACTED] in the future.

Despite the performance of a forensic accounting review and phone conversations with [REDACTED] and her expected client, [REDACTED] the NPFC cannot establish based upon the evidence presented that any economic losses to [REDACTED] where the consequence of the Deepwater Horizon oil spill.

AMOUNT: \$0.00

DETERMINATION: [REDACTED] claim for \$30,640.00 to the OSLTF will be denied in whole.

Claim Supervisor: [REDACTED]

Date of Supervisor's review: 25 OCT 10

Supervisor Action:

Supervisor's Comments:

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd. Suite 1000
Arlington, VA 20598-7100
Staff Symbol: (CA)

Phone: [REDACTED]

E-mail: [REDACTED]

Fax: 202-493-6937

5890

3/16/2011

VIA EMAIL: [REDACTED]@yahoo.com

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]



Ft Lauderdale, FL 33335

RE: Claim Number: N10036-0019

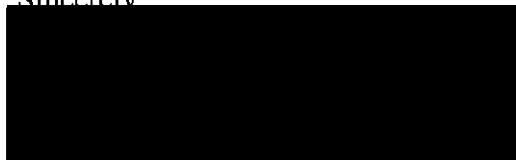
Dear [REDACTED]:

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 claim number N10036-0019 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination Form for further explanation.

Disposition of this reconsideration constitutes final agency action.

If you have any questions or would like to discuss the matter, you may contact me at the above address and phone number.

Sincerely,



[REDACTED] Claims Adjudication Division
U.S. Coast Guard

Encl: Claim Summary / Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Date	: 3/13/2011
Claim Number	: N10036-0019
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$25,500.00

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

CLAIM AND CLAIMANT:

On 06 October 2010 and 05 November 2010, [REDACTED] dba [REDACTED] Services LLC (Claimant) submitted two Oil Spill Liability Trust Fund (OSLTF or the Fund) claim forms to the NPFC claiming lost profits and earnings in the amounts of (1) \$11,700 and (2) \$13,800.00, respectively. On 19 November 2010, the two claims were combined into one claim under NPFC Claim Number N10036-0019. The total claimed amount is \$25,500.00.¹

On 04 November 2010, GCCF denied Claimant (Claimant ID # [REDACTED]). In their email, GCCF stated that they had "paid your claim Emergency Advance Payments for losses for the period May-October 2010. You are not eligible for any additional emergency advance payments. You may submit a claim for Final Payment to the GCCF at any time."²

In his email of 04 November 2010 to the NPFC, the Claimant disputed that the GCCF denial included September and October 2010 and asked NPFC to accept the GCCF email of 04 November 2010 as "a denial LETTER from the GCCF for the months of September and October 2010."

The reported basis for this claim is lost income from 01 September 2010 to 30 October 2010 resulting from (1) beach closures which prevented him from engaging in his water sports rental business in the Louisiana region and (2) lost rents resulting from the need to move back to Fort Lauderdale, Florida (Fort Lauderdale) subsequent to the beach closures in Louisiana. The Claimant asserted that he typically rented his Fort Lauderdale home while operating the water sports business in the Louisiana region. The Claimant considers this to be income above that which he receives through the business activities in which he engages as [REDACTED]

¹ See, [REDACTED] Optional OSLTF Claim Forms dated 06 October 2010 and 05 November 2010.

² See, [REDACTED] email of 04 November 2010 to [REDACTED] NPFC Claims Adjuster.

LLC.³ Therefore the breakdown of the claim is \$13,800.00 lost income from water sports rental in Louisiana and \$11,700.00 for lost rental income for his home in Fort Lauderdale, FL.

REQUEST FOR RECONSIDERATION:

On or about December 21, 2010, the NPFC denied the claim on the grounds that Claimant had been compensated by GCCF in the amount of \$19,300 for its alleged loss of profits for the time period May 2010 – October 2010; therefore, it was fully compensated for that time period. NPFC, in that denial, stated that Claimant could request reconsideration for the months of September and October 2010. On January 9, 2011, the Claimant sent an email request for reconsideration to [REDACTED] and [REDACTED] stating he would like the NPFC to reconsider his claim for July, August and September 2010 and provided his July, August, and September 2009 bank statements and monthly expense reports for his water sport rental business component and 22 additional sales receipts for water sports equipment that he rented through his business from June 2009 through September 2009, which the NPFC did not possess when performing the initial adjudication of the claim. Based on the new information provided, the Claimant is requesting that the NPFC compensate him for his lost profits for July, August, and September 2010 based on the 2009 monthly expense reports which total \$22,918.00 in Net Profits since his business was not in operation during 2010 due to the oil spill. The NPFC denied the water sports business lost profits component stating that the NPFC had calculated the lost profits for July through September 2010 as being \$17,542.00 but the Claimant received compensation from the GCCF in the amount of \$19,300.00 therefore the NPFC considered the Claimant fully compensated, and still considers Claimant to be fully compensated, for the requested lost profits.

The Claimant also requested that the NPFC reconsider his vacation rental component whereby he originally requested \$11,700.00 for loss of rental income for September 7, 2010 through October 30, 2010. On reconsideration, the Claimant is asking for the NPFC to reimburse him for the four weeks the vacation rental was not rented from September 6, 2010 through October 1, 2010. The Claimant is requesting compensation for the first two weeks at a rate of \$900.00 per week and the last two weeks at a rate of \$1,400.00 per week for a total amount requested of \$3,600.00. The NPFC denied the vacation rental component in its original determination stating that the Claimant provided no evidence that the vacation rental was rented during September and October 2009 as a basis for any potential loss of profit in September and October of 2010 therefore there was no estimated loss of rental income for September and October 2010.

RECONSIDERATION CLAIM ANALYSIS:

The claimant requested reconsideration via email on January 9, 2011. As noted above to support his claim on reconsideration, the Claimant provided his July, August, and September 2010 bank statements and monthly expense reports for his water sports rental business component and 22 additional sales receipts for water sports equipment that he rented through his business from June 2009 through September 2009, which the NPFC did not possess when performing the initial adjudication of the claim.

NPFC Determination on Reconsideration

³ Phone conversation between [REDACTED] (NPFC Claims Adjuster) and Claimant of 07 December 2010.

Under 33 CFR 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 CFR § 136.233, a claimant must establish loss of profits or impairment of earning capacity. The NPFC considered all the documentation submitted by the Claimant.

The NPFC performed a *de novo* review of the entire claim submission upon reconsideration. The NPFC will first discuss the lost profits associated with the Claimant's inability to operate his water sports equipment business in Louisiana. Since the Claimant was unable to produce any revenues in 2010 for this business, the NPFC reviewed the Claimant's business income for this business during the same time period during 2009. In its original denial, the NPFC advised the Claimant that it reviewed the income for both May and June 2009 and calculated lost profits as \$9,509.00. This did not consider any other income earned by the Claimant in that time period that could have mitigated the lost profits.

When now considering the mitigation income (rental income) earned during this period, the NPFC calculated the Claimant's total sales as \$14,268.08 less saved expenses of \$4,759.17 and less vacation rental income during this period in the amount of \$7,419.00. Thus, the Claimant's revised lost profits for May and June 2010 are \$2,089.91 vice the original calculation. With respect to lost profits for the time period of July through September 2010, the NPFC calculated the lost profits based on income provided by the Claimant for July through September of 2009. Based on the original documentation provided for this period, the NPFC calculated lost profits as \$8,033.00, which also did not consider any other income earned by the Claimant in that time period that could have mitigated the lost profits. .

When considering the mitigation income (rental income) earned during this period, the NPFC calculated the Claimant's total sales as \$30,010.00 which includes the additional sales receipts provided on reconsideration, less saved expenses of \$5,657.52 and less vacation rental income during this period in the amount of \$6,116.50. The Claimant's revised lost profits for July through September 2010 are \$15,365.98 vice the original calculation which brings the Claimant's total lost profits from May through September 2010 to \$17,455.89. Since the Claimant received compensation from the GCCF in the amount of \$19,300.00, the NPFC again denies the lost profit component associated with the water sports rental business because the Claimant has been fully compensated by the GCCF for these lost profits.

Finally, with respect to the Claimant's request for \$3,600.00 in lost rental for his vacation home in Fort Lauderdale, FL for September 6, 2010 through October 1, 2010, the NPFC again denies this lost profits component. The Claimant purchased the vacation property in November 2009; therefore, the Claimant was unable to provide historical rental information for the months of September and October. Additionally, the Claimant has not provided evidence on his mitigation efforts with respect to the property being vacant. The Claimant did not provide any details on exactly what he did to advertise the rental of the property or identify whether he lowered the rental price during the time it was advertised (if it had been). Additionally, the Claimant did not provide a detailed explanation on whether he returned to his vacation home in September 2010 following the expiration of the last rental lease since he was not operating his water sports business in Louisiana during the 2010 season; therefore, it is also not clear to the NPFC whether that property was in fact available for rent and advertised to the public. The Claimant provided no information to support that the property would be easy to rent following Labor Day weekend when tourists are typically returning from vacation plans, etc. The NPFC has determined that the Claimant has failed to meet his burden to demonstrate that the property did not rent due to the

injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil and not some other factors.

This claim is denied upon reconsideration.

Claim Supervisor:

Date of Supervisor's review: 3/14/11

Supervisor Action: *Denial on reconsideration approved*

U.S. Department
of Homeland
Security

United States
Coast Guard



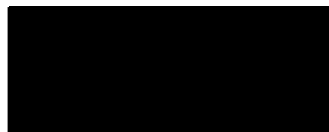
Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd., Suite 1000
Arlington, VA 20598-7100
Staff Symbol: (CA)

5890
December 21, 2010

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]



RE: Claim Number: N10036-0019

Dear [REDACTED]

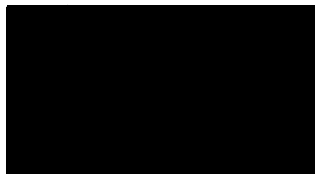
The National Pollution Funds Center (NPFC), in accordance with 33 C.F.R. Part 136, denies payment on your claim number N10036-0019 for loss of profits or impairment of earning capacity involving the Deepwater Horizon incident. Please see the enclosed Claim Summary / Determination for further explanation.

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 N10036-0019.

Mail reconsideration requests to:

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



Claims Manager

Enclosure: Claim Summary / Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Date 21 December 2010
Claim Number N10036-0019
Claimant [REDACTED]
Type of Claimant Private (US)
Type of Claim Loss of Profits and Earning Capacity
Claim Manager [REDACTED]
Amount Requested \$13,800.00 + \$11,700.00 = \$25,000.00

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 was discharged from an offshore facility associated with the Deepwater Horizon and located on the [REDACTED] (the Deepwater Horizon incident). This area was leased by BP Exploration and Production, Inc. (BP). The Coast Guard designated the offshore facility as the source of the discharge and BP as the responsible party (RP) for the discharge. BP accepted the designation, advertised its OPA claims process, and compensated claimants. On 23 August 2010, the Gulf Coast Claims Facility (GCCF) began accepting and adjudicating claims on behalf of BP.

CLAIM AND CLAIMANT

On 06 October 2010 and 05 November 2010, [REDACTED] dba [REDACTED] (Claimant) submitted two Oil Spill Liability Trust Fund (OSLTF or the Fund) claim forms to the NPFC claiming lost profits and earnings in the amounts of (1) \$11,700 and (2) \$13,800.00, respectively. On 19 November 2010, the two claims were combined into one claim under NPFC Claim Number N10036-0019. The total claimed amount is \$25,500.00.¹

On 04 November 2010, GCCF denied Claimant (Claimant ID # [REDACTED]). In their email, GCCF states that they had "paid your claim Emergency Advance Payments for losses for the period May-October 2010. You are not eligible for any additional emergency advance payments. You may submit a claim for Final Payment to the GCCF at any time."²

In his email of 04 November 2010 to NPFC, Claimant asked NPFC to accept the GCCF email of 04 November 2010 as "a denial LETTER from the GCCF for the months of September and October 2010."

The reported basis for Claim Number N10036-0019 is lost income from 01 September 2010 to 30 October 2010 resulting from (1) beach closures which prevented him from engaging in his water sports rental business in the Louisiana region and (2) lost rents resulting from the need to move back to Fort Lauderdale, Florida (Fort Lauderdale) subsequent to the beach closures in Louisiana. Claimant claims that he typically rented his Fort Lauderdale home while operating the water sports business in the Louisiana region. Claimant considers this to be income above that which he receives through the business activities in which he engages as [REDACTED]
[REDACTED]³

¹ See, [REDACTED] Optional OSLTF Claim Forms dated 06 October 2010 and 05 November 2010.

² See, [REDACTED] email of 04 November 2010 to [REDACTED] NPFC Claims Adjuster.

³ Phone conversation between [REDACTED] (NPFC Claims Adjuster) and Claimant of 07 December 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 waters or adjoining shorelines or the exclusive economic zone, as described in § 2702(b) of OPA.

The OSLTF which is administered by the NPFC, is available, pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136, to pay claims for uncompensated damages. 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.

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.
- (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 undertake, 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.

DETERMINATION OF LOSS

A. Documentation Provided to the NPFC

To support his claim, Claimant presented two OSLTF claim forms dated 06 October and 05 November 2010 which were consolidated under NPFC Claim Number N10036-0019. Additionally, the Claimant submitted the following documentation:

1. Beach closure Lease contracts for property located at [REDACTED]:
 - a. Between [REDACTED] (tenant) and [REDACTED] (Landlord), [REDACTED] from 23 March 2010 to 29 March 2010 in the amount of \$900.00 per week + tax and cleaning = \$1043.00.
 - b. Between [REDACTED] (tenant) and [REDACTED] (Landlord), PO Box 22722, Fort Lauderdale, FL from 29 March 2010 to 11 May 2010 in the amount of \$720.00 per week.
 - c. Between [REDACTED] (tenant) and [REDACTED] (Landlord), [REDACTED] from 12 May 2010 to 18 May 2010 (\$900.00 + 7% tax) in the amount of \$963.00.
 - d. Between [REDACTED] (tenant) and [REDACTED] (Landlord), [REDACTED] from 27 May 2010 to 01 June 2010 (including 2-day boat rental at \$749.00) in the amount of \$1184.00 including tax.
 - e. Between [REDACTED] (tenant) and [REDACTED] (Landlord), [REDACTED] from 10 June 2010 to 14 June 2010 in the amount of \$855.00.
 - f. Between [REDACTED] (tenant) and [REDACTED] (Landlord), [REDACTED] PO [REDACTED] from 14 June 2010 to 28 June 2010 (\$800.00 + 7% tax per week) in the amount of \$1712.00 including tax.
 - g. Between [REDACTED] (tenant) and [REDACTED] (Landlord), [REDACTED] from 28 June 2010 to 03 July 2010 (\$700.00 + 7% tax) in the amount of \$749.00.
 - h. Between [REDACTED] (tenant) and [REDACTED] (Landlord), [REDACTED] from 03 July 2010 to 06 July 2010 in the amount of \$749.00 (\$700.00 + \$49.00 (tax)).
 - i. Between [REDACTED] (tenant) and [REDACTED] (Landlord), [REDACTED] from 07 July 2010 to 06 September 2010 in the amount of \$2475.00.
 - j. Between [REDACTED] (tenant) and [REDACTED] (Landlord), [REDACTED] from 15 August 2010 in the amount of \$150 per day.
 - k. Between [REDACTED] (tenant) and [REDACTED] (Landlord), [REDACTED] from 30 July 2010 to 01 August 2010 in the amount of \$267.50
2. [REDACTED] Bank Statement Account Numbers [REDACTED] and [REDACTED] for the period 01 September 2009 to 30 September 2009.
3. Lease rates stipulated in an email from [REDACTED] to [REDACTED] of 08 October 2010:

"High Season rate \$1395 per week; \$200 per day + Tax September 15 to April 15
Low Season rate \$800 to 900 per week \$125 per day + Tax April 1st to September 15"

4. Lease rates stipulated in an email from [REDACTED], NPFC Claims Adjuster, of 01 December 2010 states:

"Rental reservations varies (sig) in the summer or slow season, I would typically get at least a one month advance notice and could generally be more flexible on pricing, rates were usual from \$800 to \$1100 per week plus tax and \$100 cleaning fee paid separate!! depending on holidays or demand for property reservation, High season September 15 to April less flexible reservations would be made 2 to 3 months in advance with higher demand and less flexible on pricing, \$1400 per week or 5k for the month plus tax and \$100 cleaning fee paid separate!!"

The following documents were carried over from [REDACTED] denied Claim No. N10036-0007:

5. Corporate Tax returns for [REDACTED] 2007 showing profits of \$39,214.
6. Corporate Tax returns for [REDACTED] 2008 showing profits of \$79,532.
7. Bank Statements for [REDACTED]
8. Sales tickets from customers providing dates and description of equipment rented during the period May 2009 through February 2010.

B. Claimant's Analysis of his Claim

1. [REDACTED] OSLTF claim forms document a total claim for loss of profits and impairment of earning capacity in the amount of \$25,500.00 for the period 01 September to 31 October 2010.
2. The claim is based on the Claimant allegedly having to close down his water sports equipment rental business early in Louisiana because of beach closures related to the Deepwater Horizon incident and having to return to his residence in Fort Lauderdale. During the 01 September 2010 to 31 October 2010 period, he claims to normally rent out his Fort Lauderdale property. The result is a loss of rental income from his Fort Lauderdale property that he would have typically expected if he had remained working in Louisiana.

C. NPFC Analysis of the Claim

1. Claim number N10036-0019 is considered distinct from previously submitted [REDACTED] Claim Number N10036-007 submitted on 05 August 2010 for \$24,100.00 and issued on 10 August 2010. Claim Number N10036-007 focused on loss of income related to water sports equipment rental business which was allegedly reduced by Louisiana beach closures resulting from the Deepwater Horizon incident.
2. It is important to note that GCCF compensated [REDACTED] in the amount of \$19,300.00 for lost profits for May, June, July, and August 2010. As a

result, for claim N10036-0007, NPFC determined that [REDACTED] was fully compensated and issued a denial for the period ending 31 August 2010. In that denial letter, the NPFC advised Claimant that he "may submit a new claim for September 2010 or later time period."⁴

3. According to Claimant's OSLTF claim form, Claimant filed claims with the Gulf Coast Claims Facility (GCCF) between 27 May and 06 June 2010, [REDACTED] received a GCCF email on 04 November 2010 stating that GCCF had "paid [their] claimed emergency Advance Payments for losses for the period May – October 2010. [Claimant] was not eligible for any additional emergency advance payments. [Claimant] may submit a claim for Final Payment to the GCCF at any time." In an email to the USCG NPFC dated 04 November 2010, Claimant asked the NPFC to consider this notification as a denial for the months of September and October and requested interim payment from NPFC. The NPFC agreed to review his claim.
4. Claimant provides rental agreements from 23 March to 06 September 2010. After 06 September 2010, no additional rental agreements were provided.
5. Per previous claim evaluations, [REDACTED] was shown to have expected to work in Louisiana along the beaches in September but not in October. Sales invoices provided by Claimant show that no sales were recorded during October and November 2009 and only minor sales transactions in December 2009.
6. The Claimant asserts that while he operates his business along the coast of Louisiana, he rents out a property that he owns in Fort Lauderdale to earn rental income. Claimant returns to the property when he is not operating his sporting equipment rental business. Based on the 2009 operating profile, Claimant did not operate his business during the month of October and November 2009. Therefore, if the 2010 operating profile resembles that of 2009, Claimant would not have been operating his business during October and November 2010 and would have returned to his Fort Lauderdale property making it unavailable as a rental property during October and November 2010.
7. If we assume the same level of activity in renting water sports equipment and Fort Lauderdale house rental from 2009 to 2010, the sales expected from the 01 September to 30 October 2010 frame is \$5,465.00 for equipment rental in Louisiana less saved expenses of \$1,961.00, or potential Lost Net Profits of \$3,504.00. Claimant did not earn any income from the water sports equipment rental business during October 2009. The Claimant also did not provide evidence that the Fort Lauderdale property was rented during September or October 2009 as the basis for any potential loss in September and October of 2010. As Claimant has confirmed that the Fort Lauderdale property was rented through to 06 September 2010 and no rental income was generated during September and October of 2009, there is no estimated loss in rental income for September and October 2010.
8. We also evaluated the TOTAL potential Lost Net Profits for the sports rental business from May 2010 through October 2010 to determine if the claimant was already fully

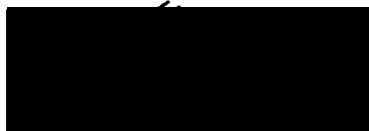
⁴ See, NPFC letter to [REDACTED] dated 30 September 2010.

compensated by the GCCF. The NPFC previously determined the potential Lost Net Profits for May and June 2010 to be \$9,509.00. Following on to our previous calculations, the NPFC calculates the potential Lost Net Profits for July through October 2010 as \$8,033.00 using the same methodology. Therefore, the total potential Lost Net Profits from May through October 2010 are \$17,542.00, compared to the GCCF compensation of \$19,300. Thus, in the NPFC's view, the claimant has already been fully compensated by the GCCF through October 2010.

D. Determination

The Claim is denied. 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. § 136.233, a claimant must establish a loss of profits or impairment of earning capacity. As described above, Claimant has not established a loss in profits and impairment of earning capacity from 01 September to 31 October 2010 beyond that for which he has already been compensated by the GCCF.

Claim Supervisor:



Date:

12/22/10

Supervisor's Actions:

Denial Approved

Supervisor's Comments:

U.S. Department of
Homeland Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

NPFC CA, MS 7100
US COAST GUARD
4200 Wilson Blvd. Suite 1000
Arlington, VA 20598-7100
Staff Symbol: (CA)

Phone: [REDACTED]

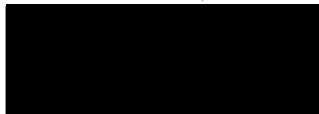
E-mail: [REDACTED]

Fax: 202-493-6937

5890

12/13/2010

VIA EMAIL: [REDACTED]@comcast.net



RE: Claim Number: N10036-0020

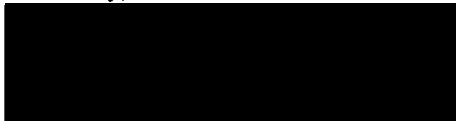
Dear [REDACTED]:

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number N10036-0020 involving Deepwater Horizon. Compensation is denied because under 33 USC § 2702(b) and 33 CFR § 136, the Claimant bears the burden of proving their loss which has not been established by the Claimants in this case. The NPFC upholds its original denial dated November 12, 2010 and the NPFC has also determined that the Claimants have failed to provide any new information on reconsideration that would prove their loss. Please see the attached Determination Summary as well as the original Determination Summary for the details associated with this denial.

Disposition of this reconsideration constitutes final agency action.

If you have any questions or would like to discuss the matter, you may contact me at the above address.

Sincerely,



Chief, Claims Adjudication Division
U.S. Coast Guard

ENCL: Claim Summary / Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Date	: 12/6/2010
Claim Number	: N10036-0020
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$59,077.04

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 was discharged from an offshore facility associated with the Deepwater Horizon and located on the Mississippi Canyon, Block 252 (Deepwater Horizon oil-spill). This area is leased by BP Exploration and Production, Inc. (BP). The Coast Guard designated the offshore facility as the source of the discharge and BP as the responsible party (RP) for the discharge. BP accepted the designation, advertised its OPA claims process, and compensated claimants. On 23 August 2010, the Gulf Coast Claims Facility (GCCF) began accepting claims on behalf of BP.

Responsible Party:

BP Exploration & Production, Inc., (BP), as operator of the rig, has been named a responsible party under the Oil Pollution Act (OPA). BP has accepted designation and accordingly is the lead for the advertisement and acceptance of claims.

The Claimants and the Claim:

On October 04, 2010, [REDACTED] on behalf of herself and her husband [REDACTED] have submitted a claim to the National Pollution Funds Center (NPFC) for a loss of profits or impairment of earning capacity in the amount of \$59,077.04 which they allege resulted from the DEEPWATER HORIZON oil spill.¹ The Claimants report that they have not earned any sales commissions since May 2010 and assert the reason as a down real estate market in the Fort Lauderdale area resulting from the oil spill.

In their October 4, 2010 claim the Claimant explained that [REDACTED] are real estate agents employed by [REDACTED] in Fort Lauderdale, FL. The Claimants previously worked for another real estate brokerage firm in Fort Lauderdale known as [REDACTED] Realty. Both [REDACTED] agent agreements with [REDACTED] were effective June 2010. The [REDACTED] employment compensation is strictly based on sales commissions from real estate sales on behalf of sellers and buyers along with some commissions from leases. The Claimants' property listings have included both condominiums and homes ranging from \$400,000.00 to properties in excess of a million dollars. The Claimants have stated that their main clientele are property investors from Europe and "snowbirds" from the United States seeking vacation properties.

¹ See, Claim Form signed by [REDACTED] dated October 3, 2010.

The last transaction dated for commissions earned provided by the Claimants was May 27, 2010. The Claimants stated that this particular transaction was initiated a few months prior to the actual closing. The Claimants have not earned any sales commissions since that transaction which was subsequent to the spill. The Claimant do have active listings but are uncertain of any pending sales. The Claimants have also submitted a claim to the Florida Realtor's Compensation Fund and have received a total amount of \$4,000.00. It is unclear to the NPFC what the payment actually covered.

The NPFC denied the claim on November 12, 2010 on the grounds that under 33 USC § 2702(b) and 33 CFR Part 136, the claimants bear the burden of proving their loss. The [REDACTED] failure to make any commissions during the period following the oil-spill could be the result of several intervening factors outside the scope of the oil-spill. The list of intervening factors that may have impacted the claimant's earnings include:

1. The [REDACTED] change from [REDACTED] Realty to [REDACTED] during June 2010;
2. Expiration of the first time home buyer's tax credit which expired March 1, 2010;
3. European sovereign debt crisis;
4. Claimant's historical annual earnings showing little or no commissions paid after April or May of each year;
5. Fort Lauderdale's real estate market has historically shown seasonal fluctuations that coincide with their failure to sell any properties.

These factors are further exacerbated by the fact that the high-end real estate market in South Florida appears to have remained stable or even improved over the previous year. The Claimants have not provided enough substantive evidence to establish that their losses were more likely than not the result of the oil-spill and are therefore denied.

Request for Reconsideration:

On November 26, 2010, the Claimants requested reconsideration of their claim based on no new information but rather a desire for the NPFC to look again at three emails submitted in their original claim package which they feel the NPFC may have overlooked the significance of those emails when making the initial denial determination. The Claimants also reiterate the commissions history with a specific focus on the commissions earned in 2009 vice the history they provided for 2007 and 2008.

DETERMINATION OF LOSS:

Analysis and Reconsideration:

The NPFC reviewed the initial documentation provided by [REDACTED] as well as all documentation provided pursuant to the NPFC's request for additional information dated October 15, 2010. Further, the NPFC reviewed all supplemental documentation provided following a phone interview held on October 20, 2010. However, the information initially provided by the Claimant, the phone interview provided by the Claimant, and the argument presented on reconsideration does not establish that the claimant's loss of income was a result of the discharge of oil-spill.

In accordance with 33 CFR § 136.115(d), the Director, NPFC, upon written request of the claimant or of a person duly authorized to act on the claimant's behalf, reconsiders any claim

denied. The request for reconsideration must be in writing and include the factual or legal grounds for the relief requested, providing any additional support for the claim. The request must be received by the Director, NPFC, within 60 days after the date the denial was mailed to the claimant or within 30 days after the receipt of the denial by the claimant, whichever date is earlier. Reconsideration may only be requested once for each claim denied. The Director, NPFC, will provide the claimant seeking reconsideration with written notification of the decision within 90 days after the receipt of the request for reconsideration. The written decision is final.

During the NPFC's adjudication on reconsideration, the NPFC contacted two of the three individuals [REDACTED] referenced in her request for reconsideration in order to obtain amplifying information. It is important to note that the one individual the NPFC chose not to contact, [REDACTED] stated in his email to [REDACTED] dated July 21, 2010 that he was putting his property search on hold for two reasons: (1) the oil spill and (2) the hurricane season. Based on his email, there is no evidence that [REDACTED] stopped his search solely because of the oil-spill as evidenced by the last sentence in his email which states..."You can keep sending me information, but I probably won't be ready to buy until both of the above have passed" therefore the NPFC has determined that the claimant has failed to establish they lost business from this client solely because of the oil-spill.

Additionally, the NPFC contacted [REDACTED] and [REDACTED]. While the NPFC has not yet received a reply from [REDACTED], the NPFC did receive an email reply from [REDACTED] dated November 30, 2010. In [REDACTED] reply to the NPFC, [REDACTED] was able to confirm that his client was looking at 15 properties of which only some of them were associated with the [REDACTED] listings. He also stated that his client was looking at properties in other locations around the state of Florida therefore [REDACTED] stated he could not confirm, on behalf of his client, that the oil-spill was the definitive reason why his client chose not to buy a unit in Aquazul that was being handled by the [REDACTED].² Based on the information received and contained within the three emails [REDACTED] requested we reconsider, the NPFC finds that the claimant has failed to establish that they suffered a loss of income as a result of the oil-spill.

On that basis, the NPFC has determined that the Claimants have failed to provide new information in support of their request for reconsideration and therefore the Claimants continue to fail to establish that their claimed losses were the result of the oil-spill and are therefore denied. In accordance with 33 USC § 2702(b) and 33 CFR § 136, the Claimant bears the burden of proving their loss which has not been established by the Claimants in this case. The NPFC's original denial and rationale still stands.

Claim Supervisor: [REDACTED]

Date of Supervisor's review: 12/13/10

Supervisor Action: DENIAL ON RECONSIDERATION APPROVED

Supervisor's Comments:

² See, email from [REDACTED] to the NPFC dated November 30, 2010.
09/13/11

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)

Fax: 202-493-6937

5890

November 12, 2010

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]

Claim Number: N10036-0020

Email: [REDACTED]

Dear Mr. and Mrs. [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies your claim without further action. Please see the attached claim summary/ determination 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 N10036-0020.

Mail reconsideration requests to:

Director (ca)

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

Sincerely,

[REDACTED]

U.S. Coast Guard
Claims Manager

Attachment: (1) Claim Summary/Determination Form
(2) Summary of Market Property Sales – Broward County
(3) Summary of Commission Checks Received

09/13/11

FOIA2011-3380-00000086

CLAIM SUMMARY / DETERMINATION FORM

Date 11/12/2010
Claim Number N10036-0020
Claimant Mr. and Mrs. [REDACTED] Ft Lauderdale, FL
Type of Claimant Private (US)
Type of Claim Loss of Profits and Earning Capacity
Claim Manager [REDACTED]
Amount Requested \$59,077.04

FACTS

On October 04, 2010, the NPFC received an Oil Spill Liability Trust Fund (OSLTF) claim form from [REDACTED] on behalf of herself and her husband [REDACTED]. The [REDACTED] are claiming a loss of profits or impairment of earning capacity in the amount of \$59,077.04 due to the Deepwater Horizon oil spill (the oil spill). The [REDACTED] have not earned any sales commissions since May 2010 and assert the reason as a down real estate market in the Fort Lauderdale area resulting from the oil spill.

[REDACTED] are real estate agents working for the realty company [REDACTED] in Fort Lauderdale, Florida. The claimants formerly worked for another real estate brokerage company in Fort Lauderdale, Galleria International Realty, before working for [REDACTED]. Both [REDACTED] agent agreements with One [REDACTED] were effective as of June 2010. The [REDACTED] compensation is strictly based on sales commissions from real estate sales on behalf of sellers and buyers as well as some commissions on leases. The Claimants' property listings have included condominiums and homes ranging from \$400,000 to properties in excess of \$1,000,000. The Claimants stated that their main clientele are property investors from Europe and "snowbirds" from the United States seeking vacation properties.

The last transaction date for commissions earned was May 27, 2010. The Claimants stated that this particular transaction was initiated a few months prior to the actual closing. The [REDACTED] have not earned any sales commissions since that transaction and subsequent to the oil spill. The Claimants do have active listings but are uncertain of any pending sales. The [REDACTED] have also submitted a claim to the Florida Realtor's Compensation Fund and have received a total of \$4000.00.

APPLICABLE LAW

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or economic zone is liable for removal costs and damages. 33 USC. § 2702(a). Damages include the loss of profits or impairment of earning capacity due to the injury, destruction or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant. 33 USC § 2702(b)(2)(E).

The OSLTF, which is administered by the NPFC, is available to pay claims for uncompensated damages pursuant to 33 USC §§ 2712(a)(4) and 2713 and the OSLTF claims adjudication regulations at 33 CFR Part 136. With certain exceptions a claim must first be presented to the responsible party. 33 USC § 2713(a). If the claim is either denied or not settled by any person by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 USC § 2713(c).

Pursuant to the claims regulations, 33 CFR § 136.233, a claimant must establish the following to prove loss of profits or impairment of earning capacity:

- (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.
- (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 CFR 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 CFR 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.

DETERMINATION OF LOSS

A. Documentation Provided

The Schrandts submitted the following list of documentation:

1. OSLTF Claim Form dated October 03, 2010 signed by Mr. and Mrs. [REDACTED]
2. "National Pollution Fund Center Gulf Oil Spill Hardship Letter" from Mrs. [REDACTED] to the NPFC (via email) dated October 04, 2010.
3. Picture of Mrs [REDACTED]
4. IRS Forms 4868 and 7004 relating to tax extension filed in 2009
5. Commission checks for [REDACTED] from 2007 through 2009.
6. Corporate and Individual Tax Return filings from 2008 and 2009 with form 1099's.
7. Three emails from prospective clients relating to their decision to hold off on purchasing a property in Florida.
8. Highlighted news articles relating to the impact of the oil spill on Florida's economy.
9. "Request for Reconsideration Letter" dated October 01, 2010 from [REDACTED] to the Gulf Coast Claims Facility.
10. "Projected Income Letter" from [REDACTED] to the BP Claims Division dated June 18, 2010.
11. Agent agreements and associated documentation between [REDACTED]
12. Commission statements from Galleria International Realty for 2009 and 2010.
13. Current property listings for [REDACTED]
14. Market sales statistics for Broward County from September 2008 through September 2010.
15. Denial Letters from both the GCCF and the Florida Realtor's Compensation Fund.

B. NPFC Review of the Information Provided and Market Analysis

The NPFC reviewed the initial documentation provided by [REDACTED] as well as the documentation provided pursuant to the NPFC's request for additional information dated October 15, 2010. Further, the NPFC reviewed all supplemental documentation provided by [REDACTED] following a phone interview held on October 20, 2010. Based on our review of all materials submitted by the [REDACTED] as well as a review of the claim and associated documentation by forensic accountants and economic consultants, we are unable to establish that their loss of income is a consequence of the oil spill.

The NPFC cannot establish that the loss of income is oil spill related for the following reasons:

1. Despite Broward County market statistics showing a downwards trend following July 2010, sales in the area do not reach zero as experienced by the [REDACTED]. In Broward County (East Coast Florida) housing sales for approximately the 6 months prior to the spill averaged a 45% increase over the prior year. Although the market showed positive trends prior to the oil spill, overall sales for condominiums and homes declined from July through September 2010 compared to 2009 by 16%, 10% and 15% for each month respectively. Based on the Broward County statistics provided by [REDACTED] it appeared that the market showed a decline in property sales subsequent to the oil spill. This decline, however, does not indicate that the [REDACTED] would make no sales whatsoever during the time frame following the spill.
2. Even if the [REDACTED] failure to sell any properties was related to a down market, available data on real estate values and transactions do not reveal clear trends that can be linked to the oil spill. Alternatively, market sales from Broward County may have declined from July through September 2010 due to the expiration of the first time home buyer's tax credit expiring March 1, 2010. The American Recovery and Reinvestment Act of 2009 provided a temporary tax credit to encourage home purchases. The tax credit expired March 1, 2010 for purchases and a July 1, 2010 deadline passed for closing of purchases. The [REDACTED] report that their commissions should not have been affected by a decline in the first time home buyer market because their client base purchases are at the higher end of the market. As explained in paragraph four below, the [REDACTED] have presented no evidence that the higher end of the market in which they operate has been affected by either the oil spill or an economic downtown.
3. The NPFC compared the data offered by the [REDACTED] with that provided by the Florida Realtors Media Center (FRMC) for the Fort Lauderdale Metropolitan Statistical Area (MSA) and for the State of Florida as a whole.² Analysis of the FRMC data for the Fort Lauderdale MSA indicates that neither existing home sales nor home median prices dropped in the months immediately following the oil spill. Such a drop only began in July of 2010, consistent with seasonal trends in Florida's housing market that cause most home sales to occur in the winter and drop off in the summer months. This trend is consistent with commissions data presented by the [REDACTED] for 2007 and 2008.³
4. In addition, according to an October 4, 2010 article at [REDACTED] both the sub \$350,000 housing market and the "high-end niche" market in South Florida have performed consistently well despite the overall doldrums in the housing market. The article notes that a lot of activity persists in the high-end condo market, and that foreign buyers have been finding the sub \$350,000 market

¹ See Attachment (2), attached schedule for Broward County market statistics.

² See <http://media.living.net/statistics/statisticsfull.htm>. The data provides monthly sales prices for existing single-family homes and condominiums.

³ See, Attachment (3) Summary of [REDACTED] commissions by [REDACTED]

“especially attractive.”⁴ The information in this article has been corroborated by the NPFC’s economic advisors using available open source real estate data.⁵ Mrs. [REDACTED] has indicated that her real estate sales are focused on the market’s high end but has provided no evidence of a downward trend in either sales or home prices of high-end properties in her area of operations.⁶

5. The Claimants provided three emails from prospective clients indicating that they were going to wait before purchasing property out of concerns for both the oil spill and, in one instance, hurricane season. None of the clients had entered into an agreement of sale nor has any documentation been provided to indicate that their clients were far enough along in negotiations that an agreement of sale was likely. Based upon the information provided, the NPFC cannot ascertain that any commissions were lost as a result of the oil spill.

C. Commissions Analysis:

1. Based on the date of commission checks received by the [REDACTED] during 2009, transactions occurred throughout the entire year. However, during 2008 no commissions were earned after April. All of the commissions earned during 2008 were earned during the months of February, March and April. During 2007, there was only one transaction occurring after the month of May, with the remaining transactions occurring during February, March and May. Based on the past history, there are indications that the [REDACTED] might not earn any commission income or that such earnings were very limited after April or May of each year.⁷ Thus, the current pattern of “no commissions” after May is not necessarily unusual.
2. [REDACTED] both started working for [REDACTED] during June 2010. Their relocation to [REDACTED] was unrelated to the oil spill. They have not earned any sales commissions since joining One [REDACTED]. The [REDACTED] earned some sales commissions during Q1 2010 with Galleria International. The transition to a new company may have caused some disruption to the [REDACTED] business activities.
3. The Claimants stated that their client base included vacationers and investors from Europe. At or near the time of the oil spill, there was a sovereign debt crisis

[REDACTED] “Residential Market: Activity is High and Low for South Florida Real Estate,” The Real Deal Online, October 4, 2010, <http://therealdeal.com/miami/articles/activity-is-high-and-low-for-south-florida-real-estate>

⁵ For example, the statistical data in the article appears to be corroborated by Zillow’s Home Value Index that indicates that housing prices for this “top tier” in Fort Lauderdale has actually increased throughout 2010.

⁶ Per phone conversation dated 20 October 2010 between the [REDACTED] and [REDACTED] Claims Adjuster [REDACTED] and [REDACTED]. But see, email dated 17 October 2005 from Mrs. [REDACTED] to [REDACTED] indicating that the types of properties represented include “mostly condos and single family homes, sometimes residential income.”

⁷ See, Attachment (3) Summary of [REDACTED] commissions by [REDACTED]

occurring in Europe. As a result of the debt crisis, banks reduced their lending to consumers. Therefore, the debt crisis in Europe may also have contributed to limiting prospective buyers from Europe from purchasing property in the United States at or about the time of the oil spill. However, as noted above, even under these circumstances, the availability of reasonably priced properties in South Florida, combined with the strong Euro, has resulted in a continued strong interest by Europeans in the Florida market.

LEGAL ANALYSIS

Under 33 USC § 2702(b) and 33 CFR Part 136, the claimant bears the burden of proving their loss. The Schrand's failure to make any commissions during the period following the oil spill could be the result of several intervening factors outside the scope of the oil spill. The list of intervening factors that may have impacted the claimant's earnings include:

1. The [REDACTED] change from Galleria International Realty to [REDACTED] during June 2010.
2. Expiration of the first time home buyer's tax credit expiring March 1, 2010.
3. European sovereign debt crisis.
4. Claimant's historical annual earnings showing little or no commissions paid after April or May of each year.
5. Fort Lauderdale's real estate market has historically shown seasonal fluctuations that coincide with their failure to sell any properties.

These factors are further exacerbated by the fact that the high-end real estate market in South Florida appears to have remained stable or even improved over the previous year. Mr. and Mrs. [REDACTED] have not provided enough substantive evidence to establish that their losses were more likely than not the result of the oil spill and are therefore denied.

AMOUNT \$0.00

DETERMINATION [REDACTED] claim for \$59,077.04 to the OSLTF is denied.

Claim Supervisor: [REDACTED]

Date of Review: 11/12/10

Supervisor's Comments: Denial approved

Month	Number of Properties			Number of Properties			Percent to Prior Year
	2008/2009			2009/2010			
	Condos	Homes	Total	Condos	Homes	Total	

September	494	559	1,053	829	776	1,605	52.42%
October	510	564	1,074	868	788	1,656	54.19%
November	403	467	870	863	672	1,535	76.44%
December	549	612	1,161	896	771	1,667	43.58%
January	505	446	951	773	480	1,253	31.76%
February	543	456	999	805	537	1,342	34.33%
March	723	636	1,359	1,113	722	1,835	35.03%
April	775	633	1,408	1,060	748	1,808	28.41%
May	737	717	1,454	945	724	1,669	14.79%
June	855	803	1,658	956	812	1,768	6.63%
July	853	858	1,711	770	670	1,440	-15.84%
August	820	771	1,591	767	662	1,429	-10.18%

TOTAL	7,767	7,522	15,289	10,645	8,362	19,007	24.32%
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September 2010				752	617	1,369	-14.70%
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Median Price			
2008/2009		2009/2010	
Condos	Homes	Condos	Homes

\$124,450	\$264,000	\$75,000	\$195,000
\$110,000	\$257,000	\$80,900	\$211,750
\$105,000	\$225,000	\$83,500	\$185,000
\$92,000	\$224,800	\$76,750	\$211,440
\$80,900	\$196,000	\$67,500	\$175,000
\$80,000	\$214,450	\$67,000	\$188,000
\$77,500	\$225,000	\$71,000	\$219,500
\$78,000	\$194,900	\$76,500	\$203,950
\$76,000	\$190,000	\$74,800	\$215,000
\$80,000	\$210,900	\$75,000	\$215,064
\$79,900	\$220,000	\$71,750	\$215,000
\$82,000	\$215,000	\$69,900	\$209,950

SUMMARY OF COMMISSION CHECKS RECEIVED

Check Date	Payee	Commission Amount
2/16/07		\$2,653.00
2/16/07		\$21,565.00
3/1/07		\$4,271.00
5/23/07		\$5,850.85
5/23/07		\$17,795.00
12/6/07		\$17,207.00
Total - 2007		\$69,341.85
2/1/08		\$6,553.00
2/5/08		\$10,616.00
2/14/08		\$14,173.00
3/4/08		\$10,031.60
3/24/08		\$26,337.40
4/11/08		\$10,037.50
4/16/08		\$21,763.75
Total - 2008		\$99,512.25
3/26/09		\$2,125.00
5/1/09		\$12,337.50
5/11/09		\$1,147.50
7/24/09		\$573.75
8/17/09		\$8,252.50
9/17/09		\$2,000.00
11/25/09		\$14,540.00
12/10/09		\$6,831.25
12/17/09		\$13,990.00
12/23/09		\$612.00
Total - 2009		\$62,409.50
1/6/10		\$1,048.00
1/18/10		\$701.25
5/27/10		\$1,530.00
5/27/10		\$22,915.00
Total Through May 2010		\$26,194.25

ATTACHMENT (3)

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)

5890

7 October 2010

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]

Email: [REDACTED]

RE: Claim Number: N10036-0021

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on claim number N10036-0021 involving Deepwater Horizon. Compensation is denied because you were recently paid \$13,700 by the Gulf Coast Claims Facility. This payments exceeds the \$5,212.20 loss of profits and earning capacity claim submitted to the NPFC on 28 July 2010 using the optional OSLTF claim form. In view of the amount you have been paid in comparison to the amount you requested from the NPFC, we have determined that you have been fully compensated for any lost profits or earning capacity for June, July and August 2010. This determination has no effect on any claims you may choose to submit in the future.

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 N10036-0021.

Mail reconsideration requests to:

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

Signature

Claims Manager

09/13/11

FOIA2011-3380-00000095

CLAIM SUMMARY / DETERMINATION FORM

Date : 10/7/2010
Claim Number : N10036-0021
Claimant : [REDACTED]
Type of Claimant : Private (US)
Type of Claim : Loss of Profits and Earning Capacity
Claim Manager : [REDACTED]
Amount Requested : \$5,212.20

FACTS:

[REDACTED] presented an optional OSLTF claim form to the NPFC on 28 July 2010. His form claimed a total of \$5,212.20 for Profits and Lost Earnings due to lost wages resulting from fisheries closures in the Gulf of Mexico resulting from the Deepwater Horizon oil spill. [REDACTED] is a waiter who is regularly employed by The [REDACTED] in New Orleans, LA.¹ [REDACTED] claimed that he lost assigned work shifts at the restaurant due to cancelled reservations and the lack of available seafood as a result of fisheries closures in the Gulf. [REDACTED] reported submitting his BP claim on 1 July 2010. Follow up with BP confirmed [REDACTED] initial submission to them.² [REDACTED] also submitted a claim with the Gulf Coast Claims Facility (GCCF). On 29 September 2010, the GCCF notified the Coast Guard that [REDACTED] was paid \$13,700.³ The NPFC confirmed [REDACTED] receipt of this payment with [REDACTED] who was satisfied with the payment he received from the GCCF on behalf of the Responsible Party.⁴

APPLICABLE LAW:

Under OPA 90, at 33 USC § 2702(a), responsible parties are liable for removal costs and damages resulting from the discharge of oil into navigable waters and adjoining shorelines, as described in Section 2702(b) of OPA 90.

The Oil Spill Liability Trust Fund (OSLTF), which is administered by the NPFC, is available, pursuant to 33 USC §§ 2712(a)(4) and 2713 and the OSLTF claims adjudication regulations at 33 CFR Part 136, to pay claims for uncompensated damages. One type of damages available pursuant to 33 CFR §136.231 is a claim for loss of profits or impairment of earning capacity due to injury to or destruction of natural resources.

Under 33 CFR 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 CFR 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;

¹ Letter from [REDACTED] to Claims Adjudication, National Pollution Funds Center, dtd 30 June 2010.

² Email from [REDACTED] Worley Catastrophe Response, to [REDACTED] NPFC dtd 4 Aug 2010.

³ Weekly status report from GCCF to Coast Guard via Email from [REDACTED] (Garden City Group) to [REDACTED] dtd 29 SEP 2010.

⁴ Notes of phone conversation between CTR [REDACTED] and [REDACTED] on 7 Oct 2010.

- (c) Potential income from alternative employment or business not undertake, 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.

DETERMINATION OF LOSS:

██████ presented an OSLTF claim form in the amount of \$5,212.20 for June, July and August 2010. ██████ was paid a total of \$13,700 by the Responsible Party. ██████ confirmed that he has been compensated more than what he requested of the NPFC for June, July and August 2010.

AMOUNT: \$0.00

DETERMINATION: ██████ claim for \$5,212.20 to the OSLTF will be denied in whole as a result of receiving full compensation from the Responsible Party for 2010.

Claim Supervisor: ██████

Date of Supervisor's review: //

17 OCT 10

Supervisor Action:

Denial Allowed

Supervisor's Comments:

U.S. Department of
Homeland Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd. Suite 1000
Arlington, VA 20598-7100
Staff Symbol: (CA)
Phone: [REDACTED]
E-mail: [REDACTED]
Fax: 202-493-6937

5890
2/16/2011

VIA MAIL AND EMAIL: [REDACTED]@comcast.net

[REDACTED]
Portland, OR 97223

RE: Claim Number: N10036-0023

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number N10036-0023 involving Deepwater Horizon. Please see the attached Claim Summary / Determination Form for an explanation regarding this denial.

Disposition of this reconsideration constitutes final agency action.

If you have any questions or would like to discuss the matter, you may contact me at the above address and phone number.

Sincerely,

[REDACTED]
Claims Adjudication Division
U.S. Coast Guard

ENCL: Claim Summary / Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Date	: 2/14/2011
Claim Number	: N10036-0023
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$114,749.00

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 was discharged from an offshore facility associated with the Deepwater Horizon and located on the Mississippi Canyon, Block 252 (Deepwater Horizon incident). This area was leased by BP Exploration and Production, Inc. (BP). The Coast Guard designated the offshore facility as the source of the discharge and BP as the responsible party (RP) for the discharge. BP accepted the designation, advertised its OPA claims process, and compensated claimants. On 23 August 2010, the Gulf Coast Claims Facility (GCCF) began accepting and adjudicating claims on behalf of BP.

CLAIM AND CLAIMANT:

Claimant, [REDACTED] presented a claim in the amount of \$79,205.00 to the National Pollution Funds Center (NPFC) on 28 September 2010, claiming a loss of profits and impairment of earning capacity resulting from the Deepwater Horizon incident. [REDACTED] amended his sum certain for this claim twice. On 05 October 2010 he amended the amount to \$ 95,635 and on 10 November 2010 he amended the amount to \$114,749.

[REDACTED] a Certified Public Accountant, entered into an Independent Contractors Agreement (ICA) with [REDACTED] Inc., of Houston, Texas, on 03 May 2010 to provide consulting work on a proposed acquisition project that was scheduled to be completed by early June 2010.¹ The initial term of [REDACTED] ICA was six months; this term was not a guarantee of work but an estimate. The ICA provided that the term could be extended for a one-month period; however, [REDACTED] asserts that it was "not unreasonable to expect an extension of the contract thru the end of the year, and perhaps beyond."² Under the terms of the ICA either party could terminate the contract with written notice.³ The acquisition project was halted and [REDACTED] contract was terminated on June 3, 2010.

On or about December 13, 2010, the NPFC denied [REDACTED] claim on the grounds that his alleged loss of profits was due to [REDACTED]'s decision to terminate the contract for business

¹ Exhibit A, Description of Services, attached to Independent Contractor Services Agreement with [REDACTED] Inc., effective 3 May 2010.

² See, Independent Contractor Services Agreement with [REDACTED] Inc., effective 3 May 2010. See paragraph 1. Terms; See, E-mail from [REDACTED] to [REDACTED] SUBJ: Claim Number N10036-0023, dated 27 October 2010.

³ See, Independent Contractor Services Agreement with [REDACTED] Inc., effective 3 May 2010. See paragraph 1. Term and Section 5, Compensation.

reasons. Under the terms of the contract either party could cancel the contract in writing and the initial term of the contract was no guarantee of work or payment but only an estimate of the amount of time that would be required to complete the Services. Further, the NPFC noted that [REDACTED] stock prices were decreasing prior to the Deepwater Horizon incident.

[REDACTED] presented his claim for advance payment in the amount of \$79,205.00 with the RP/GCCF on 06 July 2010, and was assigned Claim Number [REDACTED]. He subsequently presented additional claims for advance payments to the GCCF in the amounts of \$95,635 and \$114,749. On 14 September 2010, the GCCF issued [REDACTED] a letter referring him to the Gulf Coast Restoration and Protection Foundation, stating that the GCCF does not handle claims seeking damages as a result of the moratorium on off-shore drilling. [REDACTED] submitted a request for reconsideration to the GCCF where his claim is currently under review.⁴

[REDACTED] mitigated the amount of his lost earnings with fees from other clients and Oregon unemployment compensation in the amount totaling \$20,551.00.⁵

On February 9, 2011, [REDACTED] requested reconsideration of the NPFC's December 13, 2010 denial based on the following information:

1. A statement dated January 13, 2011, by [REDACTED] that attested to the activity of the company's stock price on various dates during 2010, including time before and after the Deepwater Horizon incident;
2. A written analysis by [REDACTED] of [REDACTED] Consulting Group (undated), as an expert energy industry stock and investment analyst. The document provided [REDACTED]'s expert analysis on the volatility of [REDACTED] stock price before and after the incident. His analysis refers to disclosures made by [REDACTED] in the company's quarterly SEC 10-Q Filing for the period ending June 30, 2010 (copy of page 29 attached);
3. A [REDACTED] news article dated January 20, 2011, where [REDACTED] Chief Executive Officer (CEO) [REDACTED] mentions that two years ago, [REDACTED] was plotting to expand its fleet of rigs worldwide and now after the Deepwater Horizon incident, the article stated that the Houston-based company may sell itself after BP's well explosion in the Gulf of Mexico thrust the industry into regulatory limbo;
4. A [REDACTED] Financial news article dated November 30, 2010, discussed how the decline in Gulf of Mexico drilling is a daunting obstacle to profitability for [REDACTED]

Reconsideration Claim Analysis

The Claimant requested reconsideration via email on February 9, 2011⁶. To support his request for reconsideration, the Claimant provided the above referenced information to support his claim.

NPFC Determination on Reconsideration

⁴ See, E-mail from [REDACTED] to [REDACTED], SUBJ: FW: [REDACTED] ACK letter dated 01 October 2010.

⁵ OSLTF Claim Form received at NPFC 10 NOV 10.

⁶ See, E-mail from [REDACTED] to [REDACTED], SUBJ: REQUEST FOR RECONSIDERATION FOR REIMBURSEMENT OF NPFC CLAIM N10036-0023 (GCCF CLAIM NUMBER [REDACTED] - LOST EARNINGS, dated 09 February 2011.

In his request for reconsideration the Claimant continues to argue that his contract was terminated predominantly because of the Deepwater Horizon oil spill. He provided an analysis by [REDACTED] Consulting Group, an expert energy industry stock and investment analyst. The report included historical stock prices for [REDACTED] from 8 February 2010 (closing price \$21.82) through 01 June 2010 (closing price \$10.90). This reflects that [REDACTED] stock prices were in steady decline for more than two months before the Deepwater Horizon incident. There is no information in the submittals as to the cause of the decline prior to the incident. Thus, it is unclear what other influences were at play when the contract was terminated.

Other information in [REDACTED] enclosures reflects that other influences were at play after the incident. For instance, on page 29 of [REDACTED] quarterly SEC 10-Q Filing for the period ending June 30, 2010, it states in part in paragraph two..."As a result of this event, the government instituted additional regulatory oversight and control provisions with respect to offshore drilling. The effects of this well blowout, and the governmental and industry response to this event, have had and likely will continue to have a significant impact on the offshore drilling industry and our results of operations."

[REDACTED] also submitted a January 13, 2011, letter from [REDACTED], General Counsel, Chief Compliance Officer and Secretary of [REDACTED]. This letter states that [REDACTED] Inc. provides shallow water drilling services in the Gulf of Mexico. Mr. [REDACTED] states that [REDACTED] contract was terminated because his "services were no longer necessary and the contract was terminated in advance of the contract expiration date of October 31, 2010." While [REDACTED] letter cites the decline in the stock price from the date of [REDACTED] first contract with [REDACTED] (March 16, 2010, closing price at \$ 20.37) to his release on June 3, 2010 (closing price at \$11.36), he does not specifically state that the termination was the result of the Deepwater incident.

The NPFC again denies the claim because the Claimant has not established that his alleged loss is due to injury, destruction or loss of property or natural resources and the resulting discharge or substantial threat of discharge of oil.

Claim Supervisor: [REDACTED]

Date of Supervisor's review: 2/16/11

Supervisor Action: *Denial on reconsideration approved*

Supervisor's Comments:

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)

5890
12/13/2010

VIA MAIL and EMAIL: [REDACTED]



RE: Claim Number: N10036-0023

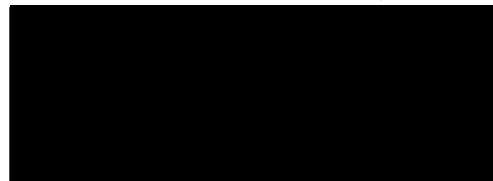
Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number N10036-0023 involving Deepwater Horizon. Please see the attached Claim Summary / Determination Form for the rationale regarding this denial.

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 N10036-0023.

Mail reconsideration requests to:

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



U.S. Coast Guard

Encl: Claim Summary / Determination Form

09/13/11

FOIA2011-3380-00000102

CLAIM SUMMARY / DETERMINATION FORM

Date	13 December 2010
Claim Number	N10036-0023
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
Claim Manager	[REDACTED]
Amount Requested:	\$114,749.00

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 was discharged from an offshore facility associated with the Deepwater Horizon and located on the Mississippi Canyon, Block 252 (Deepwater Horizon incident). This area was leased by BP Exploration and Production, Inc. (BP). The Coast Guard designated the offshore facility as the source of the discharge and BP as the responsible party (RP) for the discharge. BP accepted the designation, advertised its OPA claims process, and compensated claimants. On 23 August 2010, the Gulf Coast Claims Facility (GCCF) began accepting adjudicating claims on behalf of BP.

CLAIM AND CLAIMANT

Claimant, [REDACTED] presented a claim in the amount of \$79,205.00 to the National Pollution Funds Center (NPFC) on 28 September 2010, claiming a loss of profits and impairment of earning capacity resulting from the Deepwater Horizon incident. [REDACTED] amended his sum certain for this claim twice. On 05 October 2010 he amended the amount to \$ 95,635 and on 10 November 2010 he amended the amount to \$114,749.

[REDACTED], a Certified Public Accountant, entered into an Independent Contractors Agreement (ICA) with [REDACTED], Inc., of Houston, Texas, on 03 May 2010 to provide consulting work on a proposed acquisition project that was scheduled to be completed by early June 2010.¹ The initial term of [REDACTED] ICA was six months; this term was not a guarantee of work but an estimate. The ICA provided that the term could be extended for a one-month period; however, [REDACTED] asserts that it was "not unreasonable to expect an extension of the contract thru the end of the year, and perhaps beyond."² Under the terms of the ICA either party could terminate the contract with written notice.³ The acquisition project was halted and [REDACTED] contract was terminated on June 3, 2010.

[REDACTED] presented his claim for advance payment in the amount of \$79,205.00 with the RP/GCCF on 06 July 2010, and was assigned Claim Number [REDACTED]. He subsequently presented additional claims for advance payments to the GCCF in the amounts of \$95,635 and \$114,749. On 14 September 2010, the GCCF issued [REDACTED] a letter referring him to the Gulf

¹ Exhibit A, Description of Services, attached to Independent Contractor Services Agreement with [REDACTED] Inc., effective 3 May 2010.

² See, Independent Contractor Services Agreement with [REDACTED] Inc., effective 3 May 2010. See paragraph 1. Terms; See, E-mail from [REDACTED] to [REDACTED], SUBJ: Claim Number N10036-0023, dated 27 October 2010.

³ See, Independent Contractor Services Agreement with [REDACTED], effective 3 May 2010. See paragraph 1. Term and Section 5, Compensation.

Coast Restoration and Protection Foundation, stating that the GCCF does not handle claims seeking damages as a result of the moratorium on off-shore drilling. [REDACTED] submitted a request for reconsideration to the GCCF where his claim is currently under review.⁴

[REDACTED] mitigated the amount of his lost earnings with fees from other clients and Oregon unemployment compensation in the amount totaling \$20, 551.00.⁵

APPLICABLE LAW

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages resulting from that incident. 33 U.S.C. § 2702(a). Damages include the loss of profits or impairment of earning capacity due to the injury, destruction or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant. 33 U.S.C. § 2702(b)(2)(E).

The OSLTF, which is administered by the NPFC, is available to pay claims for uncompensated damages pursuant to 33 USC §§ 2712(a)(4) and 2713 and the OSLTF claims adjudication regulations at 33 CFR Part 136. With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

Pursuant to the claims regulations, 33 CFR § 136.233, a claimant must establish the following to prove loss of profits or impairment of earning capacity:

- (a) That real or personal property or natural resources have been injured, destroyed, or lost as a result of the incident.
- (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.
- (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 CFR 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 CFR 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;

⁴ See, E-mail from [REDACTED] to [REDACTED] SUBJ: FW: [REDACTED] ACK letter, dated 01OCT10, dated 01 October 2010.

- (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.

Claimant's Submission

██████████ argues that the decline of ██████████ stock value was the result of the Deepwater Horizon incident. Further, he argues that his contract with ██████████ was terminated because the decline in the stock value of ██████████ caused it to lose the equity it needed to finance the proposed acquisition. To support his claim, ██████████ submitted a chart outlining website ██████████ NASDAQ information on ██████████ stock values on January 4, 2010 (\$23.46), March 16, 2010 (\$20.37), April 20, 2010 (\$18.76), May 20, 2010 (\$11.26), June 3, 2010 (\$11.76), and October 27, 2010 (\$10.38). ██████████ argues that because of the drop in the stock value, the proposed acquisition was canceled and he was terminated from his employment and lost earnings.⁶ The NPFC also reviewed all information submitted by ██████████ ██████████

NPFC Determination

The claim is denied because the alleged loss of profits is not due to the injury, destruction or loss of real or person property or natural resources as a result of a discharge or substantial threat of discharge of oil. The alleged loss is due to ██████████ decision to terminate the independent contract agreement for business reasons that may or may not have been in part due to the Deepwater Horizon incident. Under the terms of the independent contractor's agreement either party could cancel the agreement in writing. Further, evidence in the administrative record reflects that ██████████ stock prices were decreasing prior to the Deepwater Horizon oil spill and were probably related to other market or economic conditions.

Claim Supervisor: ██████████

Date of Supervisor's review: 12/3/10

Supervisor Action: DENIAL APPROVED

Supervisor's Comments:

U.S. Department of
Homeland Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

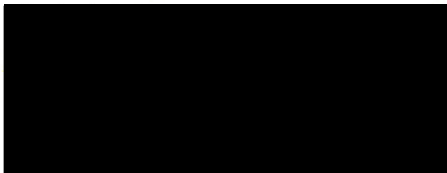
NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937

5890
3/29/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]



RE: Claim Number: N10036-0024

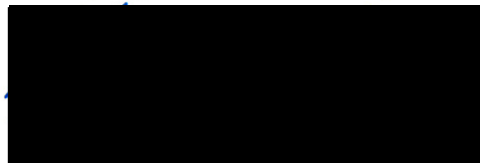
Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et. seq. (OPA 90) and the associated regulations, 33 C.F.R. Part 136, denies payment on the claim number N10036-0024. Please see the attached Claim Summary / Determination Form for the detailed description of this denial.

Disposition of this reconsideration constitutes final agency action.

If you have any questions or would like to discuss the matter, you may contact me at the above address and phone number.

Sincerely,



U.S. Coast Guard

ENCL: Claim Summary / Determination Form

09/13/11

FOIA2011-3380-00000106

CLAIM SUMMARY / DETERMINATION FORM

Date	: 3/28/2011
Claim Number	: N10036-0024
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$565,000.00

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

CLAIM AND CLAIMANT:

Claimant, [REDACTED], presented a claim to the National Pollution Funds Center (NPFC) on 18 June 2010, claiming a loss of profits and impairment of earning capacity resulting from the Deepwater Horizon incident. The NPFC originally entered the claim with a sum certain amount of \$18,000,000.00 as that was the only dollar amount referenced in the Claimant's original submission.

The NPFC's original denial determination was completed and issued to the Claimant on January 10, 2011. The NPFC denied the claim because the Claimant failed to meet his burden to demonstrate he had a loss of profits and earnings and that the loss was due to the injury to, destruction of or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil. On March 9, 2011, [REDACTED] requested reconsideration of the NPFC's January 10, 2011 denial based on the following information:

Contracts for the Sale & Purchase of Real Estate Lots and Land:

- Contract dated 6/17/09 which shows [REDACTED] buying from [REDACTED] Inc., lots 15, 16, 17 and 18 in Walnut Park for a total sum of \$90,000.00;
- Contract dated 5/25/10 which shows [REDACTED] buying from [REDACTED] Inc., lot 16 Walnut Park for a total sum of \$22,500.00;
- Settlement Statement dated 10/18/09 where [REDACTED] bought lot 15 in Walnut Park from [REDACTED] for a total sum of \$22,500.00;
- Settlement Statement dated 5/25/10 which shows where [REDACTED] bought lot 16 in Walnut Park from [REDACTED] for a total sum of \$22,500.00;
- Settlement Statement dated 7/01/03 where [REDACTED] bought lots 81, 82 and 89 in Walnut Park for a total sum of \$60,000.00;
- Settlement Statement dated 11/04/02 where [REDACTED] bought lots 41, 42, 43, 44, 45, 46, and 49 from [REDACTED] for a total sum of \$105,000.00;

- Settlement Statement dated 4/09/08 where [REDACTED] bought 87 acres from [REDACTED] for a total sum of \$454,925.00.

The first issue raised by the Claimant is that the NPFC's original determination mischaracterized the Claimant's sum certain which the NPFC identified as \$18,000,000.00. On reconsideration, the Claimant has identified his loss of profits and earnings as \$565,000.00 and the NPFC has changed the sum certain accordingly.

1. In support of this new sum certain, the Claimant asserted on reconsideration that he has provided sufficient evidence to support his claims. The Claimant further asserted that with respect to the Claimant's [REDACTED] and [REDACTED] properties owned by [REDACTED] which he is the President and Director, that the Claimant has made extensive efforts to sell the properties in order to mitigate their damages but unfortunately (as alleged by the Claimant) the properties have lost all value therefore taking into account the cost in assessing these damages, [REDACTED] has suffered losses in excess of \$130,000.00.
2. The Claimant also asserted that [REDACTED] which the Claimant is the President and Director, invested \$300,000.00 for land purchase, rezoning, engineering, plat approval, and site development work at the 87 acre property which it owns. The Claimant goes on to say that because of the Deepwater Horizon incident, he has suffered extensive lost profits in addition to the expenses just mentioned above. In closing, the Claimant stated that excluding the potential earnings associated with the final development and sale of the properties owned by [REDACTED] and limiting its assessment to the current expenses incurred in the acquisition and development of the 87 acre property, [REDACTED] has suffered losses in excess of \$435,000.00 as a direct and proximate result of the spill.

NPFC Analysis and Determination on Reconsideration

To receive compensation from the OSLTF for lost profits and earnings, the Claimant MUST establish that his loss of profits and earnings was due to the injury, destruction or loss of real property, personal property or natural resource in order to have an OPA compensable damage. The NPFC January 10, 2011, determination stated that the Claimant had not established that his asserted loss profits and earnings were due to the injury to, destruction of or loss of real or personal property or natural resources.

The Claimant timely requested reconsideration on March 9, 2011. The Director, NPFC, upon written request reconsiders any claim denied. The request for reconsideration must be in writing and include the factual or legal grounds for the relief requested, providing any additional support for the claim. 33 CFR 136.115(d).

[REDACTED] states two bases for his request for reconsideration: (1) his properties losing all value with respect to [REDACTED] and [REDACTED] (the [REDACTED] properties) and (2) he has lost profits due to expenses incurred in the acquisition and development of the 87 acre property owned by [REDACTED] that he asserts he cannot sell. He states that the [REDACTED] and [REDACTED] properties have lost all value, and taking into account the cost in assessing these damages, Claimant asserts that [REDACTED] has suffered losses in excess of \$130,000.00. Claimant has not provided an itemized breakdown of the \$130,000.00 in lost profits associated with unsold lots in [REDACTED] and [REDACTED]. Based on the evidence provided, it is impossible for the NPFC to determine what costs are associated with the Claimant's alleged loss of \$130,000.00 and if any of the lots were under contract at the

time of the incident and the proposed buyer did not purchase the property. The Claimant has not provided documentation demonstrating the pre-spill or post-spill value of said properties in [REDACTED] or [REDACTED]. Additionally, the Claimant has provided no evidence of where he listed said properties for sale, how much each property was listed for, how long each property was listed, whether the sale price was reduced over time, any details whatsoever, or how many of the properties were sold. Even establishing the pre-spill and post-spill values, the Claimant has not actually sold the properties; he still owns them. Therefore, his alleged loss remains prospective and is not an OPA compensable damage.

Lastly, when reviewing the new documents provided on reconsideration for lots sold in [REDACTED] pre-spill, it appears the average lot sale amounted to \$22,500.00 both prior to the incident and subsequent to the incident.¹

He states that excluding the potential earnings associated with the final development and sale of the properties owned by [REDACTED] and limiting its assessment to the current expenses incurred in the acquisition and development of the 87 acre property bought on 4/9/08, [REDACTED] has suffered losses in excess of \$435,000.00. On reconsideration, the Claimant has only provided a copy of the Settlement Statement dated 4/9/08 whereby [REDACTED] bought the 87 acre property from [REDACTED] for \$454,925.00. The Claimant has not itemized the breakdown for the alleged loss of \$435,000.00; therefore, the NPFC is not able to make a loss of profits and earnings calculation. Additionally, the Claimant stated that part of the \$435,000.00 alleged loss of profits includes expenses in the acquisition and development of the 87 acre property. The Claimant would have been responsible for acquisition and development costs regardless of the oil-spill; therefore these costs are not OPA compensable.

Additionally, the Claimant acknowledges that land sales were affected by Hurricane Katrina in 2005, the economic downturn and the mortgage foreclosure problems impacting the area. Thus, he cannot successfully argue that his lost profits are due solely to the incident and he has not provided sufficient evidence to distinguish, if any, the effects of the oil spill on his profits.

In summary, Claimant has not established that the asserted lost profits were due to any injury to the [REDACTED] or [REDACTED] real property, or injury to the natural resource. The Claimant still owns the property and has not established that he lost a sale or that any sales were less than the sales value prior to the incident. Further, Claimant still owns the properties and the alleged lost profits are speculative and not OPA compensable. Also, Claimant is responsible for costs to acquire and develop properties with or without the incident and such costs are not OPA compensable. Finally, the Claimant has failed to prove his alleged loss of profits and earnings as required in accordance with 33 CFR §136.233(a-d).

Claim Supervisor [REDACTED]

Date of Supervisor's review: *3/29/11*

Supervisor Action: *Denial on reconsideration approved*

¹ See, Settlement Statements dated 6/11/10; 7/1/03; and 11/4/02, respectively.
09/13/11

CLAIM SUMMARY / DETERMINATION FORM

Date	10 January 2011
Claim Number	N10036-0024
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
Claim Manager	[REDACTED]
Amount Requested	\$18,000,000.00

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 was discharged from an offshore facility associated with the Deepwater Horizon and located on the Mississippi Canyon, Block 252 (the Deepwater Horizon incident). This area was leased by BP Exploration and Production, Inc. (BP). The Coast Guard designated the offshore facility as the source of the discharge and BP as the responsible party (RP) for the discharge. BP accepted the designation, advertised its OPA claims process, and compensated claimants. On 23 August 2010, the Gulf Coast Claims Facility (GCCF) began accepting and adjudicating claims on behalf of BP.

CLAIM AND CLAIMANT

On 18 June 2010, [REDACTED] (Claimant) submitted a written demand for reimbursement to the National Pollution Funds Center (NPFC) in the amount of \$18,000,000.00. On 25 October 2010, the NPFC advised Claimant that 90 days or more had elapsed since the presentation of his claim to the responsible party and that his demand would be adjudicated as a claim against the Oil Spill Liability Trust Fund.

Claimant is a builder and land developer. He is President of [REDACTED] and Vice President of [REDACTED], both located in Hollywood, FL, which are involved in a 56-unit housing development in [REDACTED]. Claimant asserts that there was a 20% or more loss to businesses in the Gulf Coast area and that both value and sale of lots and housing had greatly diminished. As a result of the Deepwater Horizon oil spill incident, Claimant is filing for loss of profits and earnings.

APPLICABLE LAW

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a). Damages include the loss of profits or impairment of earning capacity due to the injury, destruction or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant. 33 U.S.C. § 2702(b)(2)(E).

The OSLTF, which is administered by the NPFC, 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. With certain exceptions, a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person by

09/11/11 **ENCLOSURE**

FOIA2011-3380-00000110

payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

Pursuant to the claims regulations, 33 C.F.R. § 136.233, a claimant must establish the following to prove loss of profits or impairment of earning capacity:

- (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.
- (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.

DETERMINATION OF LOSS

Claimant's Submission

On 18 June 2010, [REDACTED] (Claimant) presented a written demand for reimbursement to the National Pollution Funds Center (NPFC) in the amount of \$18,000,000.00. The GCCF confirmed that Claimant first submitted a claim to BP on 02 June 2010. On 25 October, the NPFC advised Claimant that 90 days or more had elapsed since the presentation of his claim to the responsible party and that his demand would be adjudicated as a claim against the Oil Spill Liability Trust Fund.

Claimant's original submittal included an article printed in the Miami Herald reporting that the BP rig disaster may drive property values down by 10% for at least three years. Claimant asserts that there was a 20% or more loss to businesses in the Gulf Coast area and that both value and sale of lots and housing had greatly diminished. More specific to this claim, Claimant asserts that a 56-unit housing development in [REDACTED], could have produced \$18,000,000.00 in single family housing a lot sooner without the oil spill. Claimant also provided personal income tax filing for 2005, corporate taxes filing for [REDACTED] for 2005, personal income tax filing for 2009, corporate taxes filing

for [REDACTED] for 2009, corporate taxes filing for [REDACTED] for 2009, and three letters. The [REDACTED] Advocates letter involves other properties not germane to this claim, part of a [REDACTED] letter to Claimant, and a letter from Claimant to [REDACTED]. Claimant indicates these letters to parties concerned explain certain facts and give names of attorneys and building firms that were buying lots and who cancelled their pending purchases because of the BP oil spill. Claimant is filing for loss of profits and earnings as a result of the Deepwater Horizon oil spill incident.

NPFC Determination

This claim is denied. Under 33 C.F.R. 136.105(a) and 136.105(e)(6), 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. § 136.233, a claimant must establish loss of profits or impairment of earning capacity. The NPFC considered all the documentation submitted by the Claimant.

The claim is denied because Claimant has not provided evidence that he has incurred lost profits or earnings nor has Claimant provided evidence showing a causal link between the Deepwater Horizon incident and his alleged damages. For example, while letters provided by Claimant gave names and phone numbers, they did not provide evidence of loss or of a relationship to the Deepwater Horizon incident. Further, even if his property value has diminished, he has not yet sold the property for less than he paid for it. As a result, his claim is also denied because any loss that he might experience remains prospective and not compensable by the OSLTF.

Claim Supervisor:

[REDACTED]

Date of Review:

11/11/11

Supervisor's Actions: DENIAL APPROVED

Supervisor's Comments:

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: 1-800-280-7118

Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number [REDACTED]

5890/DWHZ
Claim # N10036-0024
10 January 2011

Re: Claim Number: N10036-0024

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with 33 C.F.R. Part 136, denies your claim. Please see the enclosed claim summary for further explanation.

This claim corresponds to your BP claim number [REDACTED]. Please refer to our correspondence to you of 22 October 2010 concerning your other two submissions.

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 N10036-0024.

Mail reconsideration requests to:

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

Sincerely,

[REDACTED]
U. S. Coast Guard
Claims Manager

Enclosure: Claim Summary / Determination Form

U.S. Department of
Homeland Security

**United States
Coast Guard**



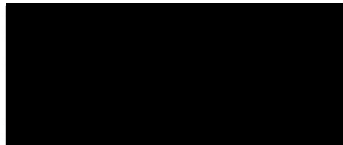
Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd. Suite 1000
Arlington, VA 20598-7100
Staff Symbol: (CA)

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]

Claim # N10036-0027
18 January 2011



RE: Claim Number: N10036-0027

Dear Mr. Gutierrez:

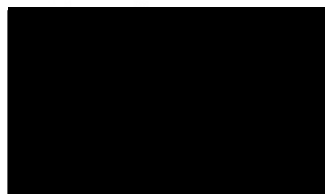
The National Pollution Funds Center (NPFC), in accordance with 33 C.F.R. Part 136, denies payment on the claim number N10036-0027 involving the Deepwater Horizon incident. Please see the attached Claim Summary / Determination Form for further explanation.

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 N10036-0027.

Mail reconsideration requests to:

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



Claims Manager

Encl: Claim Summary / Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Date	18 January 2011
Claim Number	N10036-0027
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
Claim Manager	[REDACTED]
Amount Requested	\$65,000.00

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 was discharged from an offshore facility associated with the Deepwater Horizon and located on the Mississippi Canyon, Block 252 (the Deepwater Horizon incident). This area was leased by BP Exploration and Production, Inc. (BP). The Coast Guard designated the offshore facility as the source of the discharge and BP as the responsible party (RP) for the discharge. BP accepted the designation, advertised its OPA claims process, and compensated claimants. On 23 August 2010, the Gulf Coast Claims Facility (GCCF) began accepting and adjudicating claims on behalf of BP.

CLAIM AND CLAIMANT

On 28 September 2010, [REDACTED] (Claimant) presented an Oil Spill Liability Trust Fund (OSLTF or the Fund) Claim Form to the NPFC claiming lost profits and earnings in the amount of \$65,000.00. Claimant's reported basis for this claim is that two real estate investment properties in the Florida Keys were unable to be sold as a result of the Deepwater Horizon incident. In the documentation, Claimant only provides information relating to the claimed financial losses for three properties. Claimant's primary occupation is that of a real estate investor.¹

The subject properties are located in the lower Florida Keys in Monroe County, Florida. Claimant asserts that he had "two leads on eBay and someone interested in my Cudjoe Lot".² Claimant describes his commission practice as "buy low and sell high....It's called profit" and indicates that his claimed losses were calculated by utilizing property assessments minus the lost sales.³

APPLICABLE LAW

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a). Damages include the loss of profits or impairment of earning capacity due to the injury, destruction or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant. 33 U.S.C. § 2702(b)(2)(E).

¹ See, 2009 Form 1040 Schedule C

² See, Answer Sheet for Coast Guard Documentation and Question Sheet, number 14

³ See, Answer Sheet for Coast Guard Documentation and Question Sheet, numbers 12 and 15 respectively

The OSLTF, which is administered by the NPFC, is available to pay claims for uncompensated damages pursuant to 33 USC § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136. With certain exceptions, a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

Pursuant to the claims regulations, 33 C.F.R. § 136.233, a claimant must establish the following to prove loss of profits or impairment of earning capacity:

- (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.
- (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.

DETERMINATION OF LOSS

Claimant's Submission

To support his claim, Claimant submitted the following list of documentation:

- NPFC Optional OSLTF Claim form, submitted 16 September 2010.
- Copy of printed eBay messaging correspondence, dated 21 June 2010.
- Copy of the typed correspondence from a potential buyer, dated 02 June 2010.
- Tax return forms for 2007-2009
- Florida Department of State Division of Corporations Limited Liability Entity form

- List of property inventory in Florida
- Property appraiser's sheet
- Property Record View for Parcel ID: [REDACTED]
- Property Record View for Parcel ID: [REDACTED]
- Correspondence from Florida Keys Ecosystem, Monroe County, Florida
- Exclusive Right of Sale Listing Agreement for Lot 1, 2 and 3 Sunset Point Addition [REDACTED]
- Exclusive Right of Sale Listing Agreement for [REDACTED]
- United States Department of Housing and Urban Development Settlement Statement for [REDACTED]
- United States Department of Housing and Urban Development Settlement Statement for [REDACTED]

Claimant's Optional OSLTF claim form states a claim for Loss of Profits and Impairment of Earning Capacity in the amount of \$65,000.00. Claimant states that his inability to sell his South Florida properties is the result of the Deepwater Horizon incident and he seeks to be compensated for the downturn in interest among potential buyers. He does not assert that such interest existed before the Deepwater Horizon incident.

Claimant submitted a claim to BP. Claimant reports that he was issued BP Claim #'s [REDACTED]. Claimant never submitted a claim to the GCCF. The NPFC sought confirmation of presentment from the GCCF as they assumed responsibility for all BP claims on 23 August 2010. The GCCF confirmed that Claimant did submit a claim to BP, but confirmed a new BP Claim # [REDACTED]. He was issued GCCF Claimant ID # [REDACTED]. The Claimant's business name and address were corroborated. Claimant has not reported submitting for an Emergency Advance Payment to the GCCF and his claim is before the NPFC since more than ninety days elapsed since the date he submitted his claim to the Responsible Party without any action taken on his claim.

NPFC Determination

This claim is denied. The OSLTF, which is administered by the NPFC, is available to pay claims for uncompensated damages pursuant to 33 USC § 2712(a)(4). 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. § 136.233, a claimant must establish loss of profits or impairment of earning capacity.

Claimant asserts that he suffered a loss of profits or impairment of earning capacity in the amount of \$65,000.00 for two parcels of land that he purchased at the time of the Deepwater Horizon incident. He purchased these properties as investment properties and argues that he cannot sell these properties because there is a lack of public interest in purchasing them, further asserting that certain parties that have demonstrated some interest in the properties decided not to purchase as a result of the incident.

Claimant proffers a letter and eBay email communication to document the potential interest, though neither reflect extensive or prolonged inquiries or correspondence indicative of interest prior to the Deepwater Horizon incident, or for that matter prior to the dates listed on the provided evidentiary communiqué.⁴⁵

⁴ See, eBay email correspondence dated 20-21 June 2010.

Claimant asserts that he cannot sell the properties because there is a lack of interest in purchasing properties in South Florida because of the incident. NPFC review of specific data and studies related to the Deepwater Horizon incident do not reveal any clear declines in real estate sales volume that can be specifically linked to the Deepwater Horizon incident as separate from a myriad of other economic factors currently affecting the Florida market.⁶ Further, since the Claimant has not yet sold the property for less than he paid for it, any loss that he might experience remains prospective.

The claim is denied because Claimant has failed to meet his burden of proving that he has suffered an economic loss as a result of the Deepwater Horizon incident.

Claim Supervisor:



Date of Supervisor's Review: 1/19/11

Supervisor's Actions: Denial Allowed

Supervisor's Comments:

⁵ See, typed letter to Claimant from and signed by [REDACTED] date 02 June 2010

⁶ Memorandum dated 09 November 2010 from [REDACTED] and [REDACTED] IEC to [REDACTED],
USCGR, NPFC, Subj: Preliminary Property Value Assessment Results

CLAIM SUMMARY / DETERMINATION FORM

Date 09 November 2010
Claim Number N10036-0028
Claimant [REDACTED]
Type of Claimant Private (US)
Type of Claim Loss of Profits and Earning Capacity
Claim Manager [REDACTED]
Amount Requested \$33,000.00

FACTS

On or about April 20, 2010, the Mobile Offshore Drilling Unit (MODU) Deepwater Horizon exploded and sank in the Gulf of Mexico. As a result of the explosion and sinking, oil was discharged from an offshore facility associated with the MODU and located on Mississippi Canyon, Block 252. This area was leased by BP Exploration and Production, Inc. (BP). The Coast Guard designated the offshore facility as the source of the discharge and BP as the responsible party for the discharge. BP accepted the designation, advertised its OPA claims process and adjudicated and paid claims. In August 2010 the Gulf Coast Claims Facility (GCCF) began accepting and adjudicating claims on behalf of BP.

CLAIM AND CLAIMANT

[REDACTED], the claimants, submitted an optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the NPFC on September 28, 2010. The [REDACTED] own the [REDACTED] in Clearwater, Florida. The [REDACTED] report that they have experienced a large reduction in the number of reservations at the [REDACTED] for the months of June, July, and August 2010. Further, they report that the bookings guests made in February and March were not confirmed and that they received an unspecified number of cancellations from their regular customer base.¹

On or about June 23, 2010 the claimants submitted a claim to BP, Claim [REDACTED]. BP made three payments to the [REDACTED] \$4,062 on July 21, 2010 and two for \$2,047 on August 07, 2010. These payments total \$8,156. One payment was described as an "advance on loss of income," but no time period was specified on the BP payments and no releases were signed. Their claim was later transferred to the Gulf Cost Claims Facility (GCCF) where the [REDACTED] were given three Claimant ID numbers: [REDACTED], [REDACTED], and [REDACTED]. Upon their refilling with the GCCF on August 24, 2010, the [REDACTED] were issued GCCF Claim # [REDACTED]. The GCCF has not taken action on the [REDACTED] claim.

The [REDACTED] assert that the oil spill resulted in lost profits for their motel and that the \$8,156 that BP paid them does not compensate them for their total lost profit. In the [REDACTED] letter

¹ The [REDACTED] provided prior email and letter correspondence between themselves and both BP and the GCCF as part of their documentation to the NPFC. While the documentation contains numerous quotations attributable to their "regular" customers, they have provided no documentation relating to actual cancellations.

to NPFC dated October 04, 2010, they state that the original funds request for lost Profits and Earning Capacity was \$33,000. They say an agent for GCCF made the calculation but do not dispute the calculation. It represents an average of the prior two years income for the [REDACTED]

Based upon the information provided in the [REDACTED] OSLTF claim form and the date of submission, the NPFC views the time period for this claim as being 01 May through 19 September 2010. The forensic accountants for NPFC calculated the lost Profits and Earning Capacity for this period. The accountants based their calculations on documentation that the claimants provided. The forensic accountants calculated the following: \$6,355 for Lost Revenue, \$1,236 for Non-Continuing Expenses and \$5,119 for Lost Profits.

APPLICABLE LAW

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or economic zone is liable for removal costs and damages. Pursuant to 33 U.S.C. § 2702(a), damages include the loss of profits or impairment of earning capacity due to the injury, destruction or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant under 33 U.S.C. § 2702(b)(2)(E).

The OSLTF, which is administered by the NPFC, is available to pay claims for uncompensated damages pursuant to 33 USC §§ 2712(a)(4) and 2713 and the OSLTF claims adjudication regulations at 33 CFR Part 136. With certain exceptions, a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

Pursuant to the claims regulations 33 CFR § 136.233, a claimant must establish the following to prove loss of profits or impairment of earning capacity:

- (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.
- (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 CFR 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 CFR 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.

DETERMINATION OF LOSS

A. Documentation Provided

On October 26, 2010 and again on October 27, 2010, the NPFC requested any information that the [REDACTED]s had relating to specific cancellations. This information has not been provided. The claimants have submitted the following documents to the NPFC:

1. GCCF Supplemental Request Form for Emergency Advance Payments 21 September 2010 with attached letter from [REDACTED] to the GCCF.
2. Copies of the checks received from BP.
3. September 2009 and 2010 Income Sheets (room rentals) for the [REDACTED].
4. Florida Revenue Sales and Use Tax Return.
5. August 2009 and 2010 Income Sheets (room rentals) for the [REDACTED].
6. July 2009 and 2010 Income Sheets (room rentals) for the [REDACTED].
7. E-mail from the [REDACTED] to the GCCF dated 15 September 10.
8. Letter from the [REDACTED] to BP dated 23 June 2010.
9. 24 August 2010 GCCF Claim Form completed for Clearwater, FL office.
10. Copies of newspaper articles about the spill.
11. 2 Letters from BP about payments, dated 05 and 06 August 2010.
12. Income Tax Returns for 2008, 2009 and 2010.
13. 2008, 2009 and 2010 Income and Expense Sheets.

B. NPFC Review of the Information Provided

The NPFC reviewed the documentation submitted by the Claimants, which included a forensic accounting for the period 01 May through 19 September 2010. The NPFC calculated the loss of profits for this period to be \$5,119. As noted above, BP reimbursed Claimants a total of \$8,156.00 in July and August 2010 for this time period.

LEGAL ANALYSIS

Pursuant to 33 U.S.C. § 2713(d) and 33 CFR § 136.1, the OSLTF is available to pay uncompensated removal costs determined to be consistent with the National Contingency Plan or uncompensated damages. In this claim, the [REDACTED] have received \$8,156 from the responsible party for this claim. The NPFC calculated the [REDACTED] potential loss of income at \$5, 119 for the time period between 01 May and 19 September 2010. Therefore, the claim is not uncompensated and cannot be paid from the OSLTF.

Since the [REDACTED] claim is being denied as a result of being compensated, there is no need for the NPFC to reach a conclusion regarding causation.

AMOUNT \$0.00

DETERMINATION [REDACTED] and [REDACTED] claim is denied.

Claim Supervisor:

[REDACTED]

Date of Review:

Supervisors Comments:

U.S. Department of
Homeland Security

United States
Coast Guard



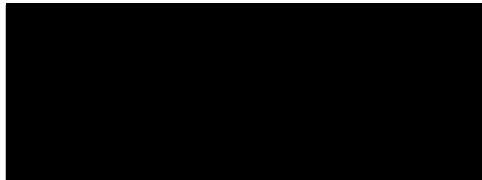
Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd. Suite 1000
Arlington, VA 20598-7100
Staff Symbol: (CA)



CERTIFIED MAIL - RETURN RECEIPT REQUESTED
Number: [REDACTED]

5890/DWHZ
Claim# N10036-0029
01 April 2011



Re: Claim Number: N10036-0029

Dear [REDACTED]

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 claim number N10036-0029 involving the Deepwater Horizon oil spill. Please see the enclosed 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 N10036-0486.

Mail reconsideration requests to:

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

Sincerely,



U. S. Coast Guard
Claims Manager

Enclosure: (1) Claim Summary/Determination Form
(2) Evidence Provided by Claimant in Support of Claim N10036-0029

09/13/11

FOIA2011-3380-00000123

CLAIM SUMMARY / DETERMINATION FORM

Date 01 April 2011
Claim Number N10036-0029
Claimant [REDACTED]
Type of Claimant Corporate (US)
Type of Claim Loss of Profits or Earnings
Claim Manager [REDACTED]
Amount Requested \$29,100.00

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 was 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.

CLAIM AND CLAIMANT

On 08 October 2010 [REDACTED] (Claimant), of Gulf Shores, Alabama, through its owner, [REDACTED] (Owner) presented a claim to the National Pollution Funds Center (NPFC) in the amount of \$29,100 alleging lost profits and impairment of earning capacity as a result of the Deepwater Horizon oil spill. Claimant is a mortgage broker business servicing primarily the coastal housing and condominium market in South Baldwin County, Alabama. Both Claimant and Owner are licensed under the laws of the State of Alabama.

Claimant and Owner have been in the mortgage broker business in Gulf Shores, AL, since 1999. Owner had been in the mortgage broker business for 10 years prior to establishing the company.

Properties for which Claimant normally provides mortgages are in [REDACTED] including Gulf Shores, Orange Beach, Foley, Magnolia Springs, Mobile, Perdido Key (AL), Fort Morgan, Elberta and Lilian. Claimant is licensed to conduct business throughout Alabama, but not in other states.

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 waters or adjoining shorelines or the exclusive economic zone, as described in § 2702(b) of OPA.

The OSLTF which is administered by the NPFC, is available, pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136, to pay claims for uncompensated damages. 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.

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.

ENCLOSURE (1)

FOIA2011-3380-00000124

- (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.
- (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 undertake, 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.

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support her claim, Claimant submitted all of the documentation listed in enclosure (2).

Claimant asserts a claim for \$29,100.00 seeking compensation for lost profits and earnings allegedly sustained as a result of the Deepwater Horizon oil spill during the months of April 2010 through October 2010. This amount is based on Claimant's average monthly income during calendar year 2009 (\$58,204.00 divided by 12 months) and multiplied by the 6 months of the claimed loss period.¹

On 23 August 2010 Claimant submitted an Emergency Advance Payment (EAP) claim to the GCCF and was issued GCCF Claimant ID [REDACTED] and GCCF EAP Claim [REDACTED]. The GCCF denied the EAP claim on 22 September 2010.

NPFC Determination

The claim is denied because the Claimant has not proven that her alleged loss in the amount of \$29,100.00 is due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil.

¹ Claimant has rounded this to the nearest \$100.

According to Owner, Gulf Shores previously had 8 local mortgage brokers, but all except two of these brokers had either left Gulf Shores or closed the business because 2008 and 2009 had been such bad years. Claimant and one other mortgage company continue to operate in Gulf Shores, Alabama.

Owner also indicated that 2008 and 2009 also had been bad years due to a poor economy (see Claimant's revenue summary below). From a late 2009 perspective, Owner believed that winter and spring of 2010 were going to be time of turnaround as 'bottom feeder' investors indicated they believed the market was near the bottom (lowest prices). According to Owner, the Deepwater Horizon oil spill depressed market values further, causing investors to delay their purchases until they felt the market bottom was reached. As of the end of 2010, those investors still had not returned. Owner provided the following summary of annual revenue by year, 2005 through 2009:

Annual Revenue 2005 to 2009

2005	\$289,007.00
2006	\$278,344.00
2007	\$154,347.00
2008	\$46,554.00
2009	\$58,204.00

The evidence provided by the Claimant does not establish that her loss is the result of the Deepwater Horizon oil spill as opposed to myriad of other factors that have affected the mortgage broker and real estate industry, i.e., the state of the economy and housing market, and the mortgage crisis. To the contrary, her evidence points to an industry and business that have been in continuing decline since 2005. For example, as shown above, Claimant's income experienced a severe decline between 2005 and 2008 with only a slight uptick in 2009. Owner asserts that she had weathered the storm affecting the mortgage broker industry as a whole and that she expected 2010 to be a more productive year. However, as shown below, Claimant did no business in the first quarter of 2010, which reflects that the mortgage industry was in a poor state prior to the oil spill, which did not occur until the second quarter of that year in April 2010.

Summary of Commissions -- 1st Quarter 2009 to 1st Quarter 2010

Month	2009 Amount	2010 Amount
January	\$1,405.70	0
February	\$7,907.75	0
March	\$3,868.96	0
April	\$4,954.44	0

Claimant's explanation regarding investors waiting does not serve to explain why she had no commissions during the first quarter of 2010, a year of projected growth, especially in light of the fact that her 2009 revenues reflected at least one or more commissions during every month of the previous year.

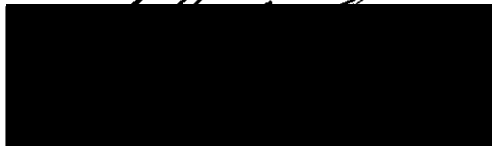
Claimant was unable to provide evidence of cancelled real estate transactions resulting from the Deepwater Horizon oil spill. She asserts that privacy requirements preclude mortgage brokers,

real estate agents and real estate brokers from retaining files on or disclosing the names of clients.² Claimant indicates that all of those clients terminated their mortgage applications due to the Deepwater Horizon oil spill. Although Claimant did not retain records on closed applications or applicants, Owner was able to locate phone numbers for some of those past clients. By phone, Owner provided contact phone numbers to the NPFC for those who had indicated to her they withdrew their applications and agreed to talk with the NPFC. Owner also provided either contact phone numbers for the real estate agents who had represented other loan applicants or requested that the real estate agents call the NPFC directly.

The NPFC contacted all of these individuals. In no instance, based upon the evidence provided, had any of the leads entered into an agreement of sale. Given the speculative nature of real estate investing and the fact that having one's credit checked (or even going through the mortgage qualification process) is just one of many steps towards the purchase of a property, the evidence presented does not show that any of the leads would have consummated in a sale leading to a commission.

For the foregoing reasons, the Claim is denied.

Claim Supervisor:



Date of Supervisor's Review: 4/1/11

Supervisor's Actions: Denial Allowed

Supervisor's Comments:

² Fax from Claimant on 20 January 2011 responding to Supplemental Information Request letter from NPFC the same date.

Enclosure (2)

Evidence Presented by Claimant in Support of Claim N10036-029

- Letter from [REDACTED] president ([REDACTED]) on requirements for 2011 license.
- [REDACTED] record for [REDACTED] compliance with [REDACTED] Continuing Education requirements for 2010
- The [REDACTED] article dated 10-26-2010, [REDACTED] rebound, Destin area real estate reels with threat of oil (Photos) on sales of condos along beach.
- Real Estate Information from [REDACTED] College of Business on real estate in [REDACTED]
- [REDACTED] excerpt with [REDACTED] article dated 12 August 2010, [REDACTED]
- Example Loan Commitment Notice for a loan with privacy information redacted that shows sales price of \$94,500. Article, [REDACTED], 27 October 2010, Press-Register (Mobile, AL) regarding lack of consistency in claim payments by Gulf Coast Claims Facility
- Article [REDACTED], 24 October 2010, Press-Register (Mobile, AL)
- Article [REDACTED], 24 October 2010, NuWire Investor.
- Example Loan Commitment Notice for loan on beach house presently owned outright and with loan-to-value ratio of 37.99 after closing.
- [REDACTED] Houston Real Estate Blog. Article by [REDACTED], source: [REDACTED] 26 October 2010.
- Credit report listing from [REDACTED] Client Summary Report for [REDACTED] (client names redacted) ordered 1/22/2010 through 4/26/2010.
- Credit report listing from [REDACTED] Client Summary Report for [REDACTED] (client names redacted) ordered 1/1/2009 through 12/31/2009.
- Explanation of credit report list, explaining the [REDACTED] does not pull a credit report unless directed by a lender. Explanation also states that some lenders pull their own credit reports; therefore, those reports aren't included in the Client Summary Report.
- Explanation that mortgage brokers are limited to make a total of 5% per loan.
- [REDACTED] business check registers from January 2009 through October 2010.
- Financial Statements of [REDACTED] for the Period Ending September 30, 2009.
- A 14 June 2010 [REDACTED] letter on the value of closing the 19 loans [REDACTED] was working on at the time of the spill with the names-redacted list of 19 loans Fidelity was working on.
- Letter from attorneys [REDACTED] dated 13 September 2010 (foreclosure notice).

- Letter of 14 October 2010 from [REDACTED] confirming that he has known [REDACTED] as a mortgage broker since 1989 and her place of business since 1999.
- 2009 Supporting Statements for 2009 Corporate Taxes
- 2009 Corporate Taxes
- 2008 Corporate Taxes with Federal Supporting Statements
- June 14, 2010 [REDACTED] letter, providing general background on [REDACTED], their outlook for 2010 & 2011 and loans in process before the Gulf oil spill.
- June 14, 2010 [REDACTED] letter, estimating the value of loan fees, not including yield spread.
- 27 September 2010 email from [REDACTED] to [REDACTED]
- 24 September 2010 email from Claimant to [REDACTED], providing monthly summaries of the company's income in the months of May, June, July, August and September of 2007, 2008 and 2009; summary income from immediate past 5 years' tax returns and repeated information provided on June 14, 2010.
- 15 December 2009 email from [REDACTED] on [REDACTED], Claimant's Projected Cash Flow for 2010 and 2011.
- [REDACTED] Bank Checking Statements 1 January 2008 through May 31 2010.
- 2010 [REDACTED] Business Account Statements June 2010 through August 2010.
- Fax Transmission Verification Report to [REDACTED]
- Claimant's business license for State of Alabama, issued 10-27-2009
- State of Alabama Mortgage Loan Originator License for Owner issued August 16, 2010
- State of Alabama Mortgage Broker License for Claimant, issued December 10, 2009
- Email from Claimant, providing BP claim number.
- GCCF letter 22 September 2010, denying the Claimant's claim # [REDACTED] having determined that the business is not eligible.
- Claimant letter to Gulf Coast Claims Center regarding claim # [REDACTED], providing office location 1.57 miles from Gulf of Mexico and map of Gulf Shores AL in rebuttal of GCCF denial of claim due to proximity to the Gulf.
- Document titled, 'My Oil Spill Journal'.
- Link to real estate information in Baldwin County, AL, and Mobile, AL, provided and maintained by the University of South Alabama's [REDACTED] Center for Real Estate Studies:
<http://www.southalabama.edu/mcob/realestate/baldwinmarketwatch.shtml>
- Fax [REDACTED] dated 4 November 2010 (5 pages) on Investor Purchases
- [REDACTED] article Gulf condo market boosted by sale of 89 condo units, by [REDACTED] of the Mobile Press-Register on 17 October 2010

- Sfgate.com article, Gulf disaster spills over into real estate values, dated 1 July 2010, by [REDACTED]
- Housingwatch.com article, Gulf Oil Spill Real Estate: BP's Payments to Victims May Not Be Enough, by [REDACTED], dated 23 June 2010.
- The New York Times article Real Estate [REDACTED] on Gulf Coast Beaches, by [REDACTED], dated 10 July 2010.
- [REDACTED] Blog article, Real Estate Agents, Brokers make Claims – Gulf Oil spill BP, dated 19 August 2010.
- The Gulf Oil spill and [REDACTED] AL Real Estate Values, by [REDACTED], dated 25 July 2010.
- Oil Impact on Alabama's Gulf Coast Real Estate, by [REDACTED], dated 29 June 2010.
- Alabama Gulf Coast Oil Spill Update, by [REDACTED], dated 2 June 2010.
- 'Gulf real estate prices continue slide as BP oil spill continues', published 23 June 2010 by The Associated Press, written by [REDACTED], [REDACTED] and [REDACTED]
- Reoi.com article 'New website offers estimates on property decreases due to Gulf oil spill', dated 17 August 2010, by [REDACTED]
- Bloomberg Businessweek (www.businessweek.com) article [REDACTED], dated 2 August 2010, by [REDACTED]
- Report on continued clean up at [REDACTED] – who reported it?
- [REDACTED] News 5 report of giant tar mat at Orange Beach, AL, on 29 December 2010.

U.S. Department of
Homeland Security

United States
Coast Guard



Director
National Pollution Funds Center
United States Coast Guard

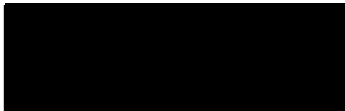
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd. Suite 1000

5890

December 17, 2010

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]



EMAIL: [REDACTED]

RE: Claim Number: N10036-0030

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on claim number N10036-0030 involving the Deepwater Horizon incident. Please see the enclosed Claim Summary / Determination 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 N10036-0030.

Mail reconsideration requests to:

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

Sincerely,



U.S. Coast Guard
Claims Manager

Enclosure: Claim Summary / Determination Form

09/13/11

FOIA2011-3380-00000131

CLAIM SUMMARY / DETERMINATION FORM

Date 17 December 2010
Claim Number N10036-0030
Claimant [REDACTED]
Type of Claimant Private (US)
Type of Claim Loss of Profits and Earning Capacity
Claim Manager [REDACTED]
Amount Requested \$9,600.00

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 was discharged from an offshore facility associated with the Deepwater Horizon and located on the Mississippi Canyon, Block 252 (the Deepwater Horizon incident). This area was leased by BP Exploration and Production, Inc. (BP). The Coast Guard designated the offshore facility as the source of the discharge and BP as the responsible party (RP) for the discharge. BP accepted the designation, advertised its OPA claims process, and compensated claimants. On 23 August 2010, the Gulf Coast Claims Facility (GCCF) began accepting and adjudicating claims on behalf of BP.

CLAIM AND CLAIMANT

On 13 October 2010 [REDACTED] (Claimant), presented an Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Fund Center (NPFC) seeking \$9,600.00 in lost profits and earning capacity resulting from the Deepwater Horizon incident. Claimant worked as a chef for various restaurants during 2009 and up to March 2010. The Claimant was unemployed during March and April 2010 prior to the Deepwater Horizon incident. Following the incident, Claimant states that he was unable to find work as a chef and earned income starting in May 2010 by collecting unemployment compensation and working for [REDACTED] cleaning and performing various services for boat owners.

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 waters or adjoining shorelines or the exclusive economic zone, as described in § 2702(b) of OPA.

The OSLTF which is administered by the NPFC, is available, pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136, to pay claims for uncompensated damages. 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.

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.

09/11/11 **ENCLOSURE**

FOIA2011-3380-00000132

- (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.
- (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 undertake, 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.

DETERMINATION OF LOSS

Claimant's Submission

Claimant presented his OSLTF claim form for lost profits and earnings in the amount of \$9,600 to the NPFC on 13 November 2010. Based on the Claimant's OSLTF Claim Form, he submitted an initial claim with the RP (BP) sometime during May 2010 and received a "true-up" payment of \$3,000. On 17 November, the GCCF confirmed Claimant's presentment to BP and BP Claim # [REDACTED]. Claimant was assigned GCCF Claimant ID [REDACTED]. There are no indications that the Claimant has submitted any follow on claims to the GCCF.

To support his claim, the Claimant provided W-2's from 2009, pay stubs for actual earnings during 2010 and copies of bank statements to indicate employment benefits received during 2010.

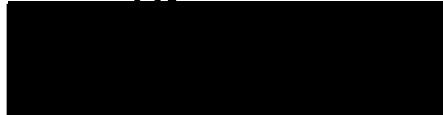
The Claimant alleges that although he found alternative employment and received unemployment compensation, he would have earned higher wages had the Deepwater Horizon incident not incurred. Thus, he is claiming lost earnings and wages due to his inability to find new employment comparable to his prior employment in a restaurant.

NPFC Determination

The claim is denied. Under 33 U.S.C. § 2702(b)(2)(E) and 33 C.F.R. Part 136, a Claimant must prove that his loss of income was due to injury or destruction or loss of real or personal property or a natural resource as a result of a discharge or substantial threat of a discharge of oil. Under 33 CFR § 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 CFR § 136.233, a claimant must establish his loss of profits or impairment of earning capacity.

In the instant case, the Claimant's prior work history indicates the he had sporadic employment during 2009 and the beginning of 2010. The Claimant was unemployed at the time of the Deepwater Horizon incident. The Claimant's most recent employment held prior to the Deepwater Horizon incident ended March 2010. The Claimant's prior employment period was from December 2009 through March 2010. Subsequent to the Deepwater Horizon incident, the Claimant was able to find alternative employment starting in May 2010. The claim is denied because the evidence he presented does not establish either the alleged loss of income nor that the alleged loss was the result of the Deepwater Horizon incident.

Claim Supervisor:



Date of Supervisor's Review:

12/17/10

Supervisor Action:

Denial Approved

Supervisor's Comments:

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

Fax: 202-493-6937

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Number: [REDACTED]

RE: Claim Number: N10036-0031

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with 33 C.F.R. Part 136, denies payment on claim number N10036-0031 involving the Deepwater Horizon incident. Please see the enclosed 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 N10036-0031.

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 Manager

Enclosure: Claim Summary/Determination Form

09/13/11

FOIA2011-3380-00000135

CLAIM SUMMARY / DETERMINATION FORM

Date	03 February 2011
Claim Number	N10036-0031
Claimant	[REDACTED]
Type of Claimant	Corporate (US)
Type of Claim	Loss of Profits and Earning Capacity
Claim Manager	[REDACTED]
Amount Requested	\$1,480,000.00

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 was discharged from an offshore facility associated with the Deepwater Horizon and located on the Mississippi Canyon, Block 252 (the Deepwater Horizon incident). This area was leased by BP Exploration and Production, Inc. (BP). The Coast Guard designated the offshore facility as the source of the discharge and BP as the responsible party (RP) for the discharge. BP accepted the designation, advertised its OPA claims process, and compensated claimants. On 23 August 2010, the Gulf Coast Claims Facility (GCCF) began accepting and adjudicating claims on behalf of BP.

CLAIM AND CLAIMANT

On 04 October 2010 [REDACTED] as corporate agent for [REDACTED] (Claimant), presented a signed but undated Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form. This claim was received 15 October 2010 and seeks in \$1,480,000 in lost profits and earning capacity to the National Pollution Fund Center (NPFC), alleging damages resulting from the Deepwater Horizon incident.

Claimant is a for-profit corporation organized under the state laws of Georgia on 20 July 2007. In early 2009, Claimant made preparations to begin a new operation under the name [REDACTED], to provide private, recreational tour-boat cruises in the vicinity of Panama City, Florida. Claimant subsequently entered into an agreement with [REDACTED] on 11 November 2009 to lease an 84-foot, 150-passenger yacht named [REDACTED], which claimant moored at the Panama City Marina and remodeled at an expense of several hundred thousand dollars. Claimant commenced touring operations on 31 December 2009. On 01 April 2010, Claimant "launched" an advertising campaign targeting Panama City's tourist clientele, however, in the wake of the Deepwater Horizon incident, Claimant asserts that tourism in the region began to slow and business began to decline due to "negative perception" by potential tourists and visitors to the area.¹

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 waters or adjoining shorelines or the exclusive economic zone, as described in § 2702(b) of OPA.

The OSLTF which is administered by the NPFC, is available, pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136, to pay claims for uncompensated damages. One type of damages available pursuant to 33 C.F.R. §136.231 is a

¹ Letter from Claimant dated 10 June 2010.

claim for loss of profits or impairment of earning capacity due to injury to or destruction of natural resources.

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.
- (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.

DETERMINATION OF LOSS

Claimant's Submission

To support his claim, Claimant presented the following documentation to the NPFC:

- Optional OSLTF Claim form dated 04 October 2010;
- Memo addressed to GCCF re Calculation of Loss as a Result of the Oil Spill dated 03 December 2010;
- [REDACTED] 2010 Business Plan by Month;
- USCG Certificate of Documentation for vessel [REDACTED] dated 28 December 2009;
- Letter from Claimant dated 10 June 2010 explaining economic loss;
- Passenger Boarding Reports for fourteen (14) cruises from 31 December 2009 through 06 November 2010;
- Yacht Rental Agreement between Claimant and Epsilon Fraternity of [REDACTED] dated 06 April 2010;
- Yacht Rental Agreement between Claimant and [REDACTED] dated 30 March 2010;
- USCG Temporary Certificate of Inspection for vessel [REDACTED] dated 28 December 2009, expiring 28 December 2010;

- USCG Certificate of Inspection for vessel [REDACTED] dated 28 December 2009, expiring 28 December 2014;
- Memo addressed to GCCF re Calculation of Loss as a Result of Oil Spill dated 5 December 2010;
- "Market Study for a Commercial Tour Boat Operation; Bay County Florida and the Surrounding Power Markets," by [REDACTED] with attached cover letter, dated 31 July 2009

Claimant is claiming lost profits and earnings in the amount of \$1,480,000 alleging reduced ridership and chartering of his vessel as a result of the Deepwater Horizon incident.

On 25 August 2010, Claimant submitted a claim with the GCCF for lost earnings and wages in the amount of \$650,000 and was assigned GCCF Claimant ID # [REDACTED] and Claim # [REDACTED]. GCCF issued payment on that claim in the amount of \$329,100. Claimant has since filed three additional supplemental claims with GCCF in the amount of \$452,900 each for a total of \$1,358,700. In his claim to NPFC, Claimant stated he was unsatisfied with payment received from GCCF to date, asserting that he had been compensated for less than 30% of his loss.²

NPFC Determination

This claim is denied. Under 33 U.S.C. § 2702(b)(2)(E) and 33 C.F.R. Part 136, a claimant must prove that their loss of income was due to the injury or destruction or loss of real or personal property or 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 to the NPFC, all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim. The NPFC considered all of the documentation presented by the Claimant.

Pursuant to 33 C.F.R. § 136.235, the NPFC will only compensate actual net reduction or loss of earnings or profits suffered at the time a claim is filed; projected future losses are not compensable under OPA.

In [REDACTED] Calculation of Loss memo dated 05 December 2010,³ Claimant asserted lost profits calculations in the amount of \$655,827.33 for the first eleven months of 2010 and projected lost profits of \$596,206.70 for the next ten months (December 2010 through September 2011). The sum is \$1,252,034.03. \$596,206.70 of Claimant's sum certain is for prospective loss, not one that Claimant has realized as of the date of filing, and is not compensable under OPA.

The difference between the sum certain claimed to the NPFC (\$1,480,000) and the sum identified in the loss memo of 05 December 2010 (\$1,252,034.03), a difference of \$227,965.97, has not been explained or documented and is denied.

As to the remainder of Claimant's damages, there is insufficient proof to show that Claimant suffered an uncompensated loss of profits through November 2010 resulting from the Deepwater Horizon incident. The NPFC is not convinced that the Claimant's methodology — based on sales margins for two start-up cruise vessel operations in Northern markets (Ohio and Wisconsin) during 2002 and with adjustment by comparison to two mature tour boat operations in Florida — is

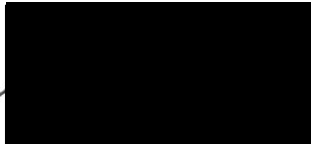
² Optional OSLTF Claim Form dated 04 October 2010.

³ Claimant submitted two Calculations of Loss Memos. One is dated 5 December 2010 and the other is dated 3 December 2010. We refer to the 5 December memo only.

valid. Additionally, Claimant's methodology includes losses for months prior to the Deepwater Horizon oil spill incident.

The NPFC calculated claimant's potential loss of profits from April 2010 through November 2010 to be \$263,086.00. According to Claimant's Supporting Schedule, it received \$375,484.00 from 'BP'.⁴ The NPFC confirmed this amount as \$329,100.00 from the GCCF and \$46,384.00 from BP.⁵ In that Claimant does not have an uncompensated loss from the date of the incident through November 2010, this part of the claim is also denied.

Claim Supervisor:



Date of Supervisor's Review: 2/4/11

Supervisor's Actions: Denial Allowed

Supervisor's Comments:

⁴ Supporting Schedule was provided by Claimant with Profit & Loss Statement and Balance Sheet in response to Coast Guard letter dated 01 November 2010

⁵ GCCF – United States Coast Guard Report (as of 12/21/2010), page 1

U.S. Department of
Homeland Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

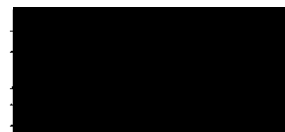
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd. Suite 1000
Arlington, VA 20598-7100
Staff Symbol: (CA)
Phone: [REDACTED]
E-mail: [REDACTED]
Fax: 202-493-6937

5890

3/16/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]



Mount Meigs, AL 36057

RE: Claim Number: N10036-0032

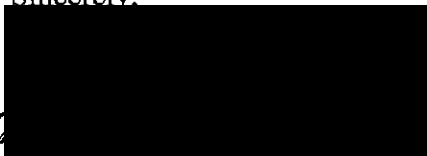
Dear [REDACTED]:

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 claim number N10036-0032 involving the Deepwater Horizon incident. Please see the enclosed Claim Summary/Determination Form for further explanation.

Disposition of this reconsideration constitutes final agency action.

If you have any questions or would like to discuss the matter, you may contact me at the above address and phone number.

Sincerely,



Chief, Claims Adjudication Division
U.S. Coast Guard

ENCL: Claim Summary / Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Date	: 3/14/2011
Claim Number	: N10036-0032
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$28,350.00

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

CLAIM AND CLAIMANT:

On 14 June 2010, [REDACTED] (Claimant) presented a handwritten letter on behalf of himself and his business, [REDACTED] seeking \$28,350.00 in lost profits and earning capacity resulting from the Deepwater Horizon incident. Claimant owns a grocery store where he retails meat, dairy produce and fishing supplies. Claimant asserted that his business is extremely dependent on seasonal tourism and that as a result of the Deepwater Horizon incident, tourism in and around Mobile, Alabama decreased 75% in 2010 from the previous year.¹ Claimant also stated that he would close his business until the oil spill was cleaned up and the local beaches near Claimant's location reopened for business. His claimed loss accounts for unsold produce stock in the amount of \$8,500; unsold meat and dairy stock in the amount of \$4,000; and unsold swim gear, fishing gear, etc. in the amount of \$15,850 due to loss of tourist business. Claimant did not initially specify whether he had already presented this claim for lost earnings to the RP.

Claimant also presented a claim for property damage in the amount of \$4,872.31, asserting that on 24 May 2010 while trolling on the Gulf of Mexico, oil from the Deepwater Horizon spill damaged the water pump on his boat causing the motor to overheat and crack.²

REQUEST FOR RECONSIDERATION:

On March 2, 2011, the Claimant sent a letter requesting reconsideration to the NPFC. In the Claimant's letter dated February 22, 2011, the Claimant advised the NPFC that due to the fact that he is presently incarcerated, he is unable to send documentation to support his claimed loss.

Claimant further requested that we only reconsider the real property damage component of his claim in the amount of \$4,872.31 for the damaged water pump on his boat which caused damage

¹ Claimant did not explain how this figure was calculated.

² Per phone conversation with Claimant on 09 December 2010, the damaged motor was eventually replaced by Claimant's insurance, effectively reducing his property damages to the \$500 deductible he paid.

to his boat motor. In his letter, the Claimant requested we contact the BP Claims Office where he filed his claim in order to obtain copies of his documentation associated with the boat motor.

RECONSIDERATION CLAIM ANALYSIS:

The claimant requested reconsideration via a letter dated February 22, 2011. To support his request for reconsideration, the claimant provided no new information.

NPFC Determination on Reconsideration

Under 33 U.S.C. § 2702(b)(2)(E) and 33 C.F.R. Part 136, a claimant must prove that his loss of income was due to the injury, destruction or loss of real or personal property or 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 to the NPFC all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim. The NPFC considered all of the documentation presented by the Claimant.

The NPFC contacted Mr. [REDACTED] who was one of BP's contractors in the claims field office during the time BP was handling all claims filed. Mr. [REDACTED] emailed the NPFC a copy of all documents contained within the Claimant's file although all of the documents were handwritten and there were no receipts associated with the boat motor or insurance claim and there were no surveys depicting the alleged damage to the boat motor. Although the Claimant stated in a phone conversation with the NPFC that his sister had a Power Of Attorney (POA) to act on his behalf with respect to the claim, she has never contacted the NPFC and her complete phone number was not provided by the Claimant.

The NPFC again denies the claim because the Claimant has failed to produce documentation to support his allegation of damage to his boat motor. Therefore this claim is denied on reconsideration.

Determination amount: \$0.00

Amount denied: \$28,350.00

Claim Supervisor: [REDACTED]

Date of Supervisor's review: 3/16/11

Supervisor Action: *Denial on reconsideration approved*

Supervisor's Comments:

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

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Number: [REDACTED]

RE: Claim Number: N10036-0032

Dear [REDACTED]

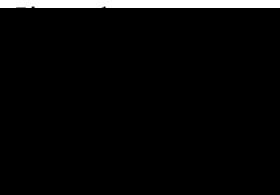
The National Pollution Funds Center (NPFC), in accordance with 33 C.F.R. Part 136, denies payment on claim number N10036-0032 involving the Deepwater Horizon incident. Please see the enclosed Claim Summary/Determination Form for further explanation.

You may make a written request for reconsideration of this claim. Normally, we must receive your written request within sixty days of the date of this letter. However, the NPFC understands that your current incarceration will impair your ability to gather supporting documentation and submit your request for reconsideration in a timely manner. Therefore, the NPFC is willing to allow you 120 days of the date of this letter to formally submit your written reconsideration request. If you require an extension beyond 120 days, please notify us.

Reconsideration of the denial will be based upon the information provided. It is extremely important that you submit ALL documentation available to you that supports your claimed loss along with your reconsideration request. 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 N10036-0032.

Mail reconsideration requests to:

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



Claims Manager

Enclosure: Claim Summary/Determination Form

09/13/11

FOIA2011-3380-00000143

CLAIM SUMMARY / DETERMINATION FORM

Date	: 02 February 2011
Claim Number	: N10036-0032
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity; Personal Property Damage
Claim Manager	: [REDACTED]
Amount Requested	: \$33,222.31

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 was discharged from an offshore facility associated with the Deepwater Horizon and located on the Mississippi Canyon, Block 252 (the Deepwater Horizon incident). This area was leased by BP Exploration and Production, Inc. (BP). The Coast Guard designated the offshore facility as the source of the discharge and BP as the responsible party (RP) for the discharge. BP accepted the designation, advertised its OPA claims process, and compensated claimants. On 23 August 2010, the Gulf Coast Claims Facility (GCCF) began accepting and adjudicating claims on behalf of BP.

CLAIM AND CLAIMANT

On 14 June 2010, [REDACTED] (Claimant) presented a handwritten letter on behalf of himself and his business, [REDACTED], seeking \$28,350.00 in lost profits and earning capacity resulting from the Deepwater Horizon incident. Claimant owns a grocery store where he retails meat, dairy produce and fishing supplies. Claimant asserted that his business is extremely dependent on seasonal tourism and that as a result of the Deepwater Horizon incident, tourism in and around Mobile, Alabama decreased 75% in 2010 from the previous year.¹ Claimant also stated that he would close his business until the oil spill was cleaned up and the local beaches near Claimant's location reopened for business. His claimed loss accounts for unsold produce stock in the amount of \$8,500; unsold meat and dairy stock in the amount of \$4,000; and unsold swim gear, fishing gear, etc. in the amount of \$15,850 due to loss of tourist business. Claimant did not initially specify whether he had already presented this claim for lost earnings to the RP.

Claimant also presented a claim for property damage in the amount of \$4,872.31, asserting that on 24 May 2010 while trolling on the Gulf of Mexico, oil from the Deepwater Horizon spill damaged the water pump on his boat causing the motor to overheat and crack.²

On 26 July 2010, NPFC acknowledged receipt of this claim by letter and noted that it had been forwarded onto BP for initial adjudication by the RP. On 20 September 2010, NPFC sent Claimant a letter inquiring as to the status of his claim with the RP. Claimant did not reply and NPFC subsequently learned that Claimant had been [REDACTED] NPFC dispatched another letter to Claimant dated 18 October 2010, again trying to make contact and gather more information about the status of his claim with the RP. Claimant responded by letter dated 11 November 2010, informing that his claim with BP remained unresolved. Claimant also advised that he is incarcerated and that his store had gone out of business. On 02 December 2010, NPFC received additional correspondence from Claimant asserting that he had presented his claim to BP and GCCF along with all of his supporting documentation, but had yet to receive a response.

¹ Claimant did not explain how this figure was calculated.

² Per phone conversation with Claimant on 09 December 2010, the damaged motor was eventually replaced by Claimant's insurance, effectively reducing his property damages to the \$500 deductible he paid.

NPFC contacted the warden's office at [REDACTED] on 08 December 2010 to arrange a conference call with Claimant. That following day at 1400, Claimant spoke with NPFC on the phone and stated that he had executed a power of attorney for his sister, who would pursue the claim on his behalf going forward. At the time, Claimant did not provide contact information for his sister, stating that she would contact NPFC. NPFC memorialized this conversation in a letter to Claimant dated 09 December 2010. As of the date of this determination, NPFC has had no further contact with Claimant or any individual authorized to act on his behalf.

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 waters or adjoining shorelines or the exclusive economic zone, as described in § 2702(b) of OPA. The OSLTF which is administered by the NPFC, is available, pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136, to pay claims for uncompensated damages.

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. 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.
- (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. § 136.235, 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 undertake, 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.

Another type of damages available pursuant to 33 C.F.R. § 136.213 is for injury to, or economic losses resulting from the destruction of real or personal property. To show these damages, the claimant must establish:

- (a) An ownership or leasehold interest in the property.

- (b) That the property was injured or destroyed.
- (c) The cost of repair or replacement.
- (d) The value of the property both before and after the injury occurred.

Pursuant to 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.

DETERMINATION OF LOSS

Claimant's Submission

In support of his claim, Claimant presented the aforementioned letters explaining the nature of his lost earnings and property damage.

NPFC Determination

This claim is denied. Under 33 U.S.C. § 2702(b)(2)(E) and 33 C.F.R. Part 136, a claimant must prove that his loss of income was due to the injury, destruction or loss of real or personal property or 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 to the NPFC all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim. The NPFC considered all of the documentation presented by the Claimant.

The claim is denied because Claimant has not provided NPFC with any documentation to prove that his claimed loss resulted from a discharge or substantial discharge of oil. NPFC has repeatedly requested that Claimant provide documentation that substantiates his economic and property losses in order to conduct a thorough and fair review of his claim.³ As of the date of this writing, more than 60 days have elapsed since NPFC originally requested this additional information without response. Claimant (or an authorized representative) have not provided evidence to indicate that his alleged losses are the result of the Deepwater Horizon incident.

NPFC is mindful of Claimant's unique circumstances and the inherent difficulty of gathering information and communicating with NPFC while incarcerated. Claimant has been authorized an extended timeline in which to provide the necessary documentary evidence to substantiate his claim.

Claim Supervisor:



Date of Supervisor's Review: 2/3/11

Supervisor's Actions: Denise A. [unclear]

Supervisor's Comments:

³ See letters from NPFC to Claimant dated 18 October 2010 and 09 December 2010.

U.S. Department
of Homeland
Security

United States
Coast Guard

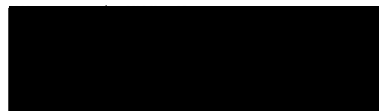


Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd., Suite 1000

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]



Email: [REDACTED]

Re: Claim Number: N10036-0034

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with 33 C.F.R. Part 136, denies your claim. The NPFC is unable to establish that the loss of profits and earnings real or personal property damages you presented in your claim were a result of the Deepwater Horizon oil spill. Please see the enclosed claim summary 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 N10036-0034.

Mail reconsideration requests to:

Director (ca)

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

Sincerely,



Claims Manager

Enclosure: Claim Summary / Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Date	17 December 2010
Claim Number	N10036-0034
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
Claim Manager	[REDACTED]
Amount Requested	\$60,000.00

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 was discharged from an offshore facility associated with the Deepwater Horizon and located on the Mississippi Canyon, Block 252 (the Deepwater Horizon incident). This area was leased by BP Exploration and Production, Inc. (BP). The Coast Guard designated the offshore facility as the source of the discharge and BP as the responsible party (RP) for the discharge. BP accepted the designation, advertised its OPA claims process, and compensated claimants. On 23 August 2010, the Gulf Coast Claims Facility (GCCF) began accepting and adjudicating claims on behalf of BP.

CLAIM AND CLAIMANT

On 18 October 2010, [REDACTED] (Claimant) submitted a lost profits & earnings claim in the amount of \$60,000.00 to the National Pollution Funds Center (NPFC) for reimbursement. Claimant is a commercial boat captain on a fishing vessel and is claiming lost earnings as a result of the Deepwater Horizon incident.

Claimant is a credentialed Merchant Mariner and was the captain aboard the fishing vessel [REDACTED] during 2009 and 2010. The home port for the [REDACTED] is [REDACTED]. Claimant indicated to the NPFC that his main fishing grounds were located approximately 25 miles northwest of the Deepwater Horizon. The vessel was licensed to catch various types of fish and a federal fisheries permit was provided to support the catch of Gulf of Mexico reef fish. Claimant indicates that he has not earned any income from his fishing activity since 29 May 2010 through the date of his claim submission to the NPFC. As a result of the Deepwater Horizon incident, Claimant is filing a claim for lost wages and earnings.

APPLICABLE LAW

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a). Damages include the loss of profits or impairment of earning capacity due to the injury, destruction or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant. 33 U.S.C. § 2702(b)(2)(E).

The OSLTF, which is administered by the NPFC, 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. With certain exceptions, a claim must first be presented to the

09/13/11 **ENCLOSURE**

FOIA2011-3380-00000148

responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

Pursuant to the claims regulations, 33 C.F.R. § 136.233, a claimant must establish the following to prove loss of profits or impairment of earning capacity:

- (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.
- (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.

DETERMINATION OF LOSS

Claimant's Submission

Claimant submitted to the NPFC an Optional OSLTF Claim Form dated 18 October 2010 for lost profits and earnings capacity totaling \$60,000. Claimant filed an initial claim with the RP (BP) and was provided Claim # [REDACTED]. Claimant's claim was transferred to the GCCF and assigned Claimant # [REDACTED]. Claimant was compensated by the RP and GCCF in the total sum of \$52,824.

Claimant provided various licensing and permits to substantiate his certification as a boat captain. For evidence of prior income related to fishing activities, Claimant provided captain's revenue share reports for the F/V [REDACTED] and the Schedule C from his 2008 and 2009 tax return filings.

NPFC Determination

The claim is denied. Under 33 C.F.R. § 136.105(a) and § 136.105(e)(6), 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. § 136.233, a claimant must establish loss of profits or impairment of earning capacity. The NPFC considered all the documentation submitted by Claimant.

Based on the documentation provided by Claimant, all potential loss of profits and earnings sustained has been previously compensated by BP and the GCCF. Claimant provided Schedule C's from his 1040 Income Tax Return filing accompanied by W-2 statements from the owner of the [REDACTED]. The Schedule C and W-2's both report annual income of \$86,723 for 2008 and \$58,071 for 2009. On an annual basis, total income declined by 33% from 2008 to 2009. Based on limited captain's share reports provided by Claimant for periods during April, income from 2010 is about 50% less than the prior year.

In a response provided by Claimant on 29 October 2010, he indicated that he typically fishes from April through November, or 8 months of the year. Based on the 2009 total income and considering Claimant normally fished 8 months out of the year, Claimant's average monthly income equals \$7,259 per month for those 8 months of 2009. For the period May through October 2010, projected income is based on the prior year's monthly average, totaling \$43,554 (\$7,259 x 6 months). The 2009 Income Tax returns indicate expenses are about 17% of total income. Based on the 2009 profile, projected expenses for 2010 total \$7,404 or 17% of total income. After consideration of reduced expenses over a 6-month period, Claimant's potential lost net earnings total \$36,149.

Alternatively, Claimant earned income during 2010 totaling \$3,585 during April and May 2010. Based on the actual earnings from 2010 compared to the total income from 2009 of \$58,071, Claimant has a potential loss in income totaling \$54,486 before adjusting for saved expenses. Based on the expenses on the Income Tax returns, projected expenses for the 6-month period during 2010 would equal \$9,263 or 17% of lost income. After consideration of reduced expenses, Claimant's lost net earnings total \$45,223.

Claimant is denied because he has not provided evidence indicating that he has incurred lost profits or earnings in excess of the \$52,824 collectively paid by the RP and GCCF.

Claim Supervisor: [REDACTED]

Date of Review: 12/17/10

Supervisor's Actions: new. ac approved

Supervisor's Comments:

CLAIM SUMMARY / DETERMINATION FORM

Date : 11/08/2010
Claim Number : N10036-0035
Claimant : [REDACTED] - Scientist/Paleontologist
Type of Claimant : Private (US)
Type of Claim : Loss of Profits and Earning Capacity
Claim Manager : [REDACTED]
Amount Requested : \$109,627.00

FACTS:

On or about April 20, 2010, the Mobile Offshore Drilling Unit Deepwater Horizon exploded and sank in the Gulf of Mexico. As a result of the explosion and sinking, oil was discharged from an offshore facility, located on the Mississippi Canyon, Block 252. This area was leased by BP Exploration and Production, Inc. (BP). The Coast Guard designated the offshore facility as the source of the discharge and BP as the responsible party for the discharge. BP accepted the designation, advertised its OPA claims process and compensated claimants. On May 28, 2010, The U.S. Department of the Interior (DOI) issued a six-month moratorium on deepwater drilling, citing concerns over the safety of deepwater drilling and directing lessees and operators to cease drilling all new deepwater wells and related activities effective May 30, 2010. Lessees and operators conducting current drilling operations were directed to secure the wells and to take all necessary steps to cease operations and temporarily abandon or close the wells. On August 23, 2010 the Gulf Coast Claims Facility (GCCF) began accepting and adjudicating claims on behalf of BP. BP subsequently established a \$100 million Rig Workers Assistance Fund to help compensate rig workers impacted by the moratorium on deepwater well activities. The Assistance Fund is administered by the Gulf Coast Restoration and Protection Foundation.

CLAIM AND CLAIMANT:

Claimant [REDACTED] a paleontologist and sole proprietor, works in the oil industry examining microscopic fossils in rock samples obtained from exploratory oil rigs. He examines the samples to assess their age and potential for further oil exploration and production activities. Oil companies conducting exploratory oil and gas activities contract with him for his services. [REDACTED] receives samples at his home laboratory and occasionally works on a rig when his services are necessary to provide real-time data for critical decision-making.¹ [REDACTED] reports that he has not worked "since the tragic BP incident on April 20 and subsequent government issued moratorium."² He originally submitted a claim to BP on June 05, 2010. He later submitted a claim to the GCCF, which is accepting claims for BP. On September 23, 2010, the GCCF denied his claiming referring [REDACTED] to the Rig Worker's Compensation Fund.³ When the GCCF denied his claim, he submitted an optional Oil Spill Liability Trust Fund (OSLTF)

¹ Description of claimant's vocation obtained from his personal narrative dated 13 October 2010.

² Claimant's personal narrative, page 1.

³ The 23 September 2010 letter that [REDACTED] received from the GCCF referred him to the Gulf Coast Restoration and Protection Foundation's (GCRPF) adjudication process; the Rig Worker Assistance Fund (RWF). According to the organizations website, the GCRPF process "is limited to people who worked on deepwater rigs on May 6." See, GCRPF website retrieved 08 NOV 10 from <http://www.gcrpf.org/details/> As a paleontologist who works primarily from home, [REDACTED] does not consider himself a "rig worker" and has appealed the GCCF's decision. Further, the "first round" for rig worker claims ended on 30 September 10. [REDACTED] cannot presently submit to the RWF. As noted, [REDACTED] first submitted to the RP (BP) on 05 June 2010.

claim form seeking \$109,627.00, asserting that his loss of profits and impairment of earnings capacity resulted from the Deepwater Horizon oil spill.

APPLICABLE LAW:

Under the Oil Pollution Act of 1990 (OPA), 33 USC § 2702(a), responsible parties are liable for removal costs and damages resulting from the discharge or substantial threat of discharge of oil into navigable waters and adjoining shorelines or the exclusive economic zone, as described in Section 2702(b) of OPA.

The OSLTF which is administered by the NPFC, is available, pursuant to 33 USC §§ 2712(a)(4) and 2713 and the OSLTF claims adjudication regulations at 33 CFR Part 136, to pay claims for uncompensated damages. Damages pursuant to 33 CFR §136.231 include claims for loss of profits or impairment of earnings capacity due to injury, destruction or loss of real or personal property or natural resources.

With certain exceptions, a claimant must first present their claim to the responsible party. 33 U.S.C. § 2713(a). If the claim is not settled by any person by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

Under 33 CFR § 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.
- (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 CFR 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 CFR 136.235, the amount of compensation allowable for a claim involving loss of profits or impairment of earnings 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.

DETERMINATION OF LOSS:

A. Overview

██████████ submitted the following list of documentation:

- Optional OSLTF Claim Form Submission dated 13 October 2010.
- Personal narrative dated 13 October 2010.
- Letter from the Gulf Coast Claims Facility dated 23 September 2010 redirecting Mr. ██████████ to the Rig Worker's Assistance Fund.
- Letter from ██████████ dated 07 July 2010 relating to the well-site on the Yucatan South prospect.
- Second Letter from ██████████ dated 07 July 2010 relating to the well-site at Vito Sidetrack 3 prospect.
- Letter from ██████████ dated 26 August 2010 relating to the well-site Tucker 2 and Krakatoa

The NPFC reviewed the documentation submitted by ██████████

1. In his personal narrative and optional OSLTF claim form ██████████ asserts that his loss is moratorium related.
2. The letters provided by ██████████ from ██████████ and ██████████ and ██████████ all assert that the work that ██████████ would have engaged in was placed on hold due to the moratorium.

B. Analysis

Under 33 USC § 2702(b) and 33 CFR Part 136, a claimant must prove that his loss of income is due to the injury, destruction or loss of real or personal property or natural resources resulting from the discharge or substantial threat of discharge of oil. All documentary evidence submitted by ██████████ indicates that his loss directly resulted from a directive issued by the Department of the Interior imposing a six month offshore drilling moratorium in order to implement new safety requirements.⁴ As a result ██████████ claim is determined to be a direct result of the moratorium, not a direct result of an oil discharge. The claim is not compensable under the OPA.

AMOUNT: \$0.00

⁴ U.S. Department of the Interior, MINERALS MANAGEMENT SERVICE, MORATORIUM NOTICE TO LESSEES AND OPERATORS, NTL No. 2010-N04, Effective 30 May 2010. See, U.S. Department of the Interior, Minerals Management Service, NATIONAL NOTICE TO LESSEES AND OPERATORS OF FEDERAL OIL AND GAS LEASES, OUTER CONTINENTAL SHELF (OCS) NOTICE TO LESSEES AND OPERATORS, NTL No. 2010-N05, Effective 08 June 2010. (A preliminary injunction was issued against the May 28, 2010 Moratorium and, on June 8, 2010, The DOI revised the rationale to support a drilling suspension, based on drilling configurations and technologies instead of water depth. That action applied to all activities on the Outer Continental Shelf (OCS) suspended under the May 28, 2010 Moratorium and shallow water operations (under 500 feet in depth). See Also, See, Decision Memo dated 12 July 2010, From Secretary of the Interior To Director, Bureau of Ocean Energy Management, Regulation and Enforcement, Subject DECISION MEMORANDUM REGARDING THE SUSPENSION OF CERTAIN OFFSHORE PERMITTING AND DRILLING ACTIVITIES ON THE OUTER CONTINENTAL SHELF.

DETERMINATION: [REDACTED] claim for \$109,627.00 to the OSLTF is denied.

Claim Supervisor:

DENIAL APPROVED

Date:

11/9/10

Supervisor's Comments:

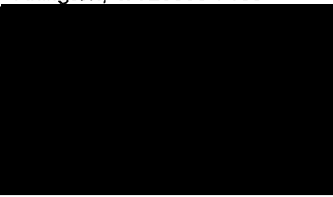
U.S. Department of
Homeland Security

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



12/10/2010

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]



RE: Claim Number: N10036-0036

Dear [REDACTED]

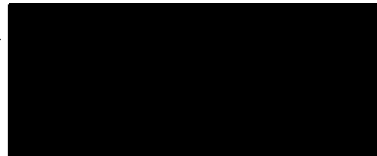
The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies your claim. The NPFC is unable to establish that the loss of profits you presented in your claim were a result of the Deepwater Horizon incident. Please see the attached claim summary for further explanation.

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.

Mail reconsideration requests to:

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



U.S. Coast Guard

CLAIM SUMMARY / DETERMINATION FORM

Date 10 December 2010
Claim Number N10036-0036
Claimant [REDACTED]
Type of Claimant Private (US)
Type of Claim Loss of Profits and Earning Capacity
Claim Manager [REDACTED]
Amount Requested \$13,500.00

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 was discharged from an offshore facility associated with the Deepwater Horizon and located on the Mississippi Canyon, Block 252 (the Deepwater Horizon oil spill). This area was leased by BP Exploration and Production, Inc. (BP). The Coast Guard designated the offshore facility as the source of the discharge and BP as the responsible party (RP) for the discharge. BP accepted the designation, advertised its OPA claims process, and compensated claimants. On 23 August 2010, the Gulf Coast Claims Facility (GCCF) began accepting and adjudicating claims on behalf of BP.

CLAIM AND CLAIMANT

[REDACTED] presented a claim in the amount of \$13,500 to the National Pollution Funds Center (NPFC) for loss of profits and impairment of earning capacity. The Claimant filed a 6 month emergency advance payment claim with BP (claim [REDACTED]) on 09 June 2010 which was resubmitted to the GCCF (claim [REDACTED])¹ on 13 October 2010. As of 30 November 2010, the GCCF shows the claims status as "under detailed compensability review."² After waiting the required 90 days after her original filing with BP, she presented a claim to the NPFC.

The Claimant is a security officer who worked on Panama City, Florida, beaches for many years. The Claimant has been receiving unemployment benefits since February 2009.³ The Claimant asserts that she began applying for security jobs at the time that the Deepwater Horizon incident occurred but no one was hiring summer crews at that time"⁴ and that her failure to obtain employment was the result of the oil spill incident.

APPLICABLE LAW

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a). Damages include the loss of profits or impairment of earning capacity due to the injury, destruction or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant. 33 U.S.C. § 2702(b)(2)(E).

¹ Email between [REDACTED] NPFC and Christine Terry of 22 Oct 10

² GCCF Claimant Status Print Out of 30 Nov 10

³ Florida Unemployment Internet Direct Claims Form of 13 Oct 10

⁴ Claimants Narrative of Oct 10

The OSLTF, which is administered by the NPFC, 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. With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

Pursuant to the claims regulations, 33 C.F.R. § 136.233, a claimant must establish the following to prove loss of profits or impairment of earning capacity:

- (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.
- (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.

DETERMINATION OF LOSS

Claimant's Submission & Analysis

To support her claim the Claimant submitted Wage and Tax Statements from 2007 through 2009, which confirm that she received unemployment compensation since February 15, 2009. She asserts that she began applying for security guard positions with two security companies (██████████ and ██████████) and three hotels/resorts (██████████ ██████████ Resort) in the February/March 2010 time period and continued to make applications after the Deepwater incident. She asserts that no company was hiring because of the oil spill. However, none of these companies had records of her applications with them. The NPFC considered all of the following documentation submitted by the Claimant:

- Optional OSLTF Claim Form Submission dated 22 October 2010.
- Personal Narrative (Not Dated)
- GCCF Claim Form, page 4 & 12
- 2007 W-2 Wage and Tax Statement. Unemployment Compensation of \$2,124.00
- 2008 W-2 Wage and Tax Statement. Gross Income of \$17,723.00
- 2009 W-2 Wage and Tax Statement. Unemployment Compensation of \$8,129.00
- 2008 IRS form 1040A. Gross Income of \$17,724.00
- Florida Unemployment Internet Direct Claims Print Out dated 13 October 2010
- Email titled "Unemployment Monthly Breakdown and Monthly Estimated income for 2007/2008/2009." Email is date 02 November 2010.
- Email response titled "Results of Verification Calls."
- Photocopy of FL Security Officer License. License [REDACTED] (currently expired)

NPFC Determination

The claim is denied because the Claimant has not established that she has suffered a loss of income related to the oil spill incident. The Claimant was receiving unemployment insurance from February 2009 that continues to the present. Also, while the Claimant asserts that she could not find employment because of the oil spill incident, evidence reflects that she did not apply to the security companies or resorts for which she provided information.

AMOUNT: \$0.00

DETERMINATION: [REDACTED] claim for \$13,500.00 to the OSLTF is denied

Claim Supervisor:

[REDACTED]

Date:

12/10/10

Supervisor's Actions:

Denial Allowed

Supervisor's Comments:

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)

1/20/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]

RE: Claim Number: N10036-0037

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number N10036-0124 involving Deepwater Horizon. Please see the attached Claim Summary / Determination Form for an explanation of this denial.

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 N10036-0037.

Mail reconsideration requests to:

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

[REDACTED]
U.S. Coast Guard

CLAIM SUMMARY / DETERMINATION FORM

Date	: January 20, 2011
Claim Number	: N10036-0037
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$4,620.00

FACTS:

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 of the explosion and sinking, oil was discharged from an offshore facility associated with the Deepwater Horizon and located on the Mississippi Canyon, Block 252 (the Deepwater Horizon incident). This area was leased by BP Exploration and Production, Inc. (BP). The Coast Guard designated the offshore facility as the source of the discharge and BP as the responsible party (RP) for the discharge. BP accepted the designation, advertised its OPA claims process, and compensated claimants. On August 23, 2010, the Gulf Coast Claims Facility (GCCF) began accepting and adjudicating claims on behalf of BP.

CLAIM AND CLAIMANT

On October 22, 2010, [REDACTED] (Claimant) presented a loss of profits & earnings claim in the amount of \$4,620.00 to the National Pollution Funds Center (NPFC). The Claimant is asserting that his condo rental was not able to generate income due to cancellations as a direct result of the Deepwater Horizon incident.

On January 18, 2011 the Claimant received a payment in full from the GCCF. The Claimant was has been compensated a total of \$6,100.00 for his 6 month emergency payment claim.

APPLICABLE LAW:

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a). Damages include the loss of profits or impairment of earning capacity due to the injury, destruction or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant. 33 U.S.C. § 2702(b)(2)(E).

The Oil Spill Liability Trust Fund (OSLTF), which is administered by the NPFC, 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. With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c). Finally, payment of any claim from the Fund is subject to the United States Government acquiring all rights of the claimant to recover from the responsible party. 33 U.S.C. § 2712(f).

DETERMINATION OF LOSS

In this case, the Claimant has been fully compensated for his loss by the GCCF, acting on behalf of the responsible party. The Fund is not available to pay any additional amount for the compensated claim and the claim is denied.

Claim Supervisor: 

Date of Supervisor's review: *1/20/11*

Supervisor Action: *Denial approved*

Supervisor's Comments:

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
United States Coast Guard
National Pollution Funds Center

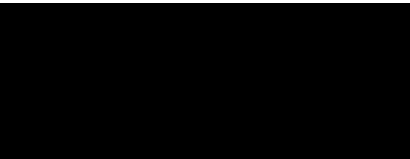
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd. Suite 1000

Fax: 202-493-6937

5890
4/26/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]



RE: Claim Number: N10036-0040

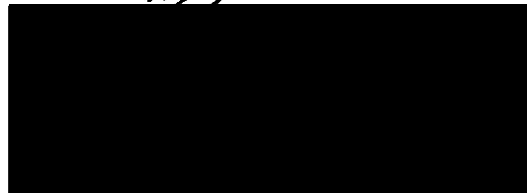
Dear [REDACTED]

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 claim number N10036-0040 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination Form for further explanation.

Disposition of this reconsideration constitutes final agency action.

If you have any questions or would like to discuss the matter, you may contact me at the above address and phone number.

Sincerely,



U.S. Coast Guard

Encl: Claim Summary / Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Date	: 4/25/2011
Claim Number	: N10036-0040
Claimant	: [REDACTED]
Type of Claimant	: Corporate (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$174,000.00

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

CLAIM AND CLAIMANT:

On 25 October 2010, [REDACTED] (Claimant), legally represented by [REDACTED] presented an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) claiming lost profits and earnings in the amount of \$174,000.00. Claimant arranged and prepared a contract for a single \$10,500,000.00 real estate transaction¹ and asserted that \$210,000 in commission, or 2% of the sales transaction value, was lost subsequent to a cancellation of a real estate sale directly resulting from the Deepwater Horizon incident and "not for a general downturn in business" thereby establishing the "causal connection" to the Deepwater Horizon Incident.² The Claimant states that the transaction entitled the \$210,000.00 amount "to be split [sic] amongst the Claimant, as broker, and two of its associates" and the claims of all three entities have been consolidated into a singular claim, to be administered on behalf of the Claimant and respective legal representation.³

According to Claimant's Optional OSLTF Claim Form, the claim was listed as "ineligible" on the GCCF website. The claim was assigned GCCF Identification Number: [REDACTED] and denied by the GCCF citing that the GCCF "does not handle claims for Real Estate Agents or Real Estate Brokers claiming damages for reduced commission or other lost income" in a letter dated 12 October 2010.⁴ This same letter directed the Claimant to the respective state Association of Realtors whereby the Florida Association of Realtors reviewed the claim and through the National Catastrophe Adjuster (NCA), tendered payment in the "arbitrary amount" of \$36,000.00 on behalf of the GCCF.⁵ The sum certain total of \$174,000.00 is the remaining amount claimed to the NPFC after partial compensation was tendered by the NCA in the amount of \$36,000.00.

¹ See, Letter from [REDACTED] to NPFC dated 25 October 2010, page 1, paragraph 3

² See, Letter from [REDACTED] to NPFC dated 25 October 2010, page 1, paragraph 2

³ *Id*

⁴ See, Letter from GCCF to Claimant, dated 12 October 2010, BP Claimant Identification Number: [REDACTED]

⁵ See, Letter from [REDACTED] to NPFC dated 25 October 2010, page 1, paragraph 1

On or about January 18, 2011, the NPFC denied Counts Real Estate Group's claim, through its legal representative, [REDACTED], on the grounds that the alleged loss of profits was not 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 but that the Claimant's alleged loss appeared to be the result of the Buyer and Seller failing to agree on amending the terms of the agreement, which resulted in the Seller's termination of the agreement on the final day on which it could be refunded its earnest money deposit.

On March 18, 2011, the Claimant, through its legal representative, requested reconsideration of the NPFC's January 18, 2011 denial based on the following information:

1. That the claim submitted to the NPFC for a \$174,000 loss of a real estate sale and associated real estate commission due to the oil spill is supported and detailed by the Claimant. Claimant received partial compensation of \$36,000.00 of the \$210,000.00 loss of commission filed with the Gulf Coast Claims Facility (GCCF) through the Florida National Catastrophe Adjuster (NCA) which left the remaining \$174,000.00 in unpaid commission and a loss of profits.
2. Claimant asserted that the NPFC denial letter cites that the \$174,000.00 loss experienced by the Claimant was "not due to injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil," is patently untrue.
3. Claimant further argues that the sale transaction would have occurred but for the oil spill resulting in damage to the Gulf and the surrounding environs. Claimant goes on to say..."The environmental impact on the Gulf and surrounding environs caused a negative economic effect throughout the Panhandle of Florida, including a ripple effect into the real estate market. Thus, the only proximate cause of the failure of the deal was the incident."
4. Additionally, the Claimant argues..."that the Intended Buyer in the failed real estate transaction received compensation from the GCCF for the money it spent performing due diligence work on the property and that the Intended Buyer was fully compensated for the due diligence inspection costs". The Claimant asserts that "the only difference in the viability of the claim filed by the Intended Buyer and the claimants herein is the fact that the Intended Buyer was not a real estate agent or broker. As such, the Intended Buyer was not directed to file its claim with another third party administrator, in this case the NCA, who administered a fund that had an arbitrary \$12,000.00 limit per claim per claimant. It is patently unfair that one party to the transaction receives compensation under OPA, while the other party receives no compensation."

Additionally, the Claimant's request for reconsideration letter identifies "inaccuracies" in the NPFC's initial denial determination:

1. The NPFC denial states the buyer "did not express any intentions or entertain the possibility of withdrawing their offer to complete the sales transaction";
2. The NPFC denial letter reads "[a]side from any stipulations made for amendments to the original sales agreement, the buyer was accepting the possibility to proceed with the property purchase, without any amendments to the contract terms, if the seller was willing to extend the closing date by one week";
3. The Claimant states that the assertion by the NPFC that the Intended Buyer did not try to reduce the purchase price is similarly incorrect and defies logic to determine otherwise;

4. The denial letter continues by stating that “[d]ocumentary evidence has not been provided to support the seller’s rejection of the buyer’s proposed terms of sale”;
5. The denial letter cites that the \$174,000.00 loss experienced by Counts was “not due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil.

Reconsideration Claim Analysis

The Claimant requested reconsideration via FedEx on March 18, 2011, and received at the NPFC on March 21, 2011.

NPFC Determination on Reconsideration

The Director, NPFC, upon written request of a claimant or a person duly authorized to act on the claimant’s behalf, reconsiders any claim denied. The request for reconsideration must be in writing and include the factual or legal grounds for the relief requested, providing any additional support for the claim. 33 CFR 136.115(d).

The NPFC performs a *de novo* review of the entire claim submission upon reconsideration.

To support the request for reconsideration, the Claimant submitted a CD that contains a copy of the original claim and supporting documentation for the claim. This information and documentation was already in the file. The reconsideration letter contained two new documents: (1) affidavit of J. [REDACTED], Intended Buyer, and (2) copy of a letter from [REDACTED] (Intended Buyer), to the GCCF dated August 23, 2010. The affidavit states that the reason for cancelling the purchase was the overriding concern for the continuation of oil flowing from the Deepwater Horizon spill site. [REDACTED] letter reflects that the Intended Buyer filed a claim with the GCCF for the costs it incurred performing due diligence on the proposed property and the GCCF Notice of Determination to the Intended Buyer to pay \$83,593.25.

Bases for Reconsideration:

On reconsideration, the Claimant again asserts that the \$174,000 claim to the OSLTF supports and details the loss of a single real estate commission that resulted from a cancellation of a real estate sale was due to the Deepwater Horizon incident but does not provide new information or any legal argument to support the request for reconsideration. Two new documents were submitted; however, neither of these documents are persuasive in support of the request for reconsideration.

First, while the [REDACTED] affidavit states that he drafted a letter to [REDACTED] to inform the bank that it had serious reservations with continuing the purchase while the oil was still freely flowing and it decided to cancel the purchase because of the overriding concern regarding the quantities of oil that continued to flow, there is other documentation in the file that evidences that the Intended Buyer requested an extension of the inspection period. The inspection period terminated on May 24, 2010, this was the final date on which the Intended Buyer could be refunded its earnest money deposit in full. Further, the e-mail dated May 23, 2010, evidences that the Intended Buyer sought to change the terms of the Sale and Assignment Agreement by requesting a reduction in the sales price and making part of the earnest money refundable. [REDACTED] the Intended Seller, refused to agree to any amendment to the

Agreement. It is unknown if the sales would have been consummated if [REDACTED] had agreed to renegotiate the terms of the agreement.

The [REDACTED] letter to GCCF evidences that the Intended Buyer presented a claim to the GCCF for costs associated with its due diligence inspections of the proposed property and GCCF paid the claim. However, this letter is not relevant to the claim before the NPFC. The Intended Buyer filed its claim with the GCCF, which is an independent claims process and the NPFC will not address the grounds on which the GCCF determined to pay that claim. The NPFC adjudicates and pays claims in accordance with the Oil Pollution Act of 1990 (OPA) and the associated claims regulations. GCCF does not necessarily determine whether to pay or deny claims based on the OPA.

While the Deepwater Horizon incident raised issues of concern for the Intended Buyer, the result of those concerns was its desire to extend the inspection period and to lower the sales price and to change the amount of the non-refundable deposit. When the [REDACTED] rejected the proposed changes in the contract the Intended Buyer ([REDACTED]) cancelled the contract on May 24, 2010, the last day on which it could be cancelled and the Intended Buyer receive its earnest money refunded in full. Thus, the failed negotiation between the Intended Buyer and Intended Seller was an intervening event that resulted in the cancellation of the sales contract and the loss of the real estate commission.

Claimant's request for reconsideration also focuses on what it identifies as inaccuracies. The NPFC acknowledges that its determination to deny the claim included some factual errors. However, these inaccuracies do not change the facts of the claim and the Claimant's failure to establish that the loss of its real estate commission resulted from the Deepwater Horizon incident. The NPFC has determined that the Claimant has again failed to meet the burden to demonstrate that the alleged loss was due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil.

This claim is denied upon reconsideration.

Claim Supervisor: [REDACTED]

Date of Supervisor's review: 4/26/11

Supervisor Action: *Denial on reconsideration approved*

Supervisor's Comments:

U.S. Department
of Homeland
Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd., Suite 1000
Arlington, VA 20598-7100

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: [REDACTED]

Re: Claim Number: N10036-0040

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with 33 C.F.R. Part 136, denies your claim. Please see the enclosed 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 N10036-0040.

Mail reconsideration requests to:

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

[REDACTED]
Claims Manager

Enclosure: (1) Claim Summary/Determination Form
(2) Documentation Provided to Support Claim # N10036-0040

09/13/11

FOIA2011-3380-00000167

CLAIM SUMMARY / DETERMINATION FORM

Date	18 January 2011
Claim Number	N10036-0040
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
Claim Manager	[REDACTED]
Amount Requested	\$174,000.00

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 was discharged from an offshore facility associated with the Deepwater Horizon and located on the Mississippi Canyon, Block 252 (the Deepwater Horizon incident or the incident). This area was leased by BP Exploration and Production, Inc. (BP). The Coast Guard designated the offshore facility as the source of the discharge and BP as the responsible party (RP) for the discharge. BP accepted the designation, advertised its OPA claims process, and compensated claimants. On 23 August 2010, the Gulf Coast Claims Facility (GCCF) began accepting and adjudicating claims on behalf of BP.

CLAIM AND CLAIMANT

On 25 October 2010, [REDACTED] (Claimant), legally represented by [REDACTED], presented an Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Funds Center (NPFC) claiming lost profits and earnings in the sum certain amount of \$174,000.00. The reported basis for this claim is that the Claimant arranged and prepared a contract for a single \$10,500,000.00 real estate transaction.¹ Claimant asserts that his \$210,000.00 commission, which would have resulted from 2% of the sales transaction value, was lost subsequent to a cancellation of a real estate sale directly resulting from the Deepwater Horizon incident and "not for a general downturn in business" thereby establishing the "causal connection" to the incident.²

APPLICABLE LAW

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a). Damages include the loss of profits or impairment of earning capacity due to the injury, destruction or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant. 33 U.S.C. § 2702(b)(2)(E).

The OSLTF, which is administered by the NPFC, 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. With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person

¹ See, Letter from [REDACTED] to NPFC dated 25 October 2010, page 1, paragraph 3

² See, Letter from [REDACTED] to NPFC dated 25 October 2010, page 1, paragraph 2

by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

Pursuant to the claims regulations, 33 C.F.R. § 136.233, a claimant must establish the following to prove loss of profits or impairment of earning capacity:

- (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.
- (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.

DETERMINATION OF LOSS

Claimant's Submission

To support their claim, Claimants submitted the documentation listed in enclosure (2).

Claimant, through legal Counsel, submitted to the NPFC an OSLTF Claim Form dated 25 October 2010 claiming lost profits and earning capacity in the amount of \$174,000.00. Claimant filed an initial claim with GCCF on 30 September 2010 and was assigned Identification Number: [REDACTED]. As stated by Claimant's legal counsel³, Claimants were advised that GCCF was not handling claims related to real estate agents or brokers and to submit a claim with the [REDACTED] for review by the [REDACTED]. Claimants presented their claim to the [REDACTED] on 01 October 2010 and received an "emergency payment" of \$36,000.00 on 08 October 2010. Claimants have made a claim to the NPFC for the

³ See, Letter from [REDACTED] to NPFC dated 25 October 2010, page 2, paragraph 2
09/13/11

remaining uncompensated portion of the \$210,000.00 in commissions they assert was lost due to the Deepwater Horizon incident.⁴

NPFC Determination

This claim is denied. 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. § 136.233, a claimant must establish loss of profits or impairment of earning capacity. The NPFC considered all the documentation submitted by the Claimant.

The basis for the subject claim is a sales commission from a single real estate transaction involving the purchase price of \$10,500,000.00. Claimant entered into a Commission Agreement with the buyer, [REDACTED], dated 22 March 2010, stating that Claimant, acting as the broker, would be compensated in the amount of 2% of the total purchase price upon closing of the property sale occurring on or before 30 August 2010. Claimant asserts that the buyer was concerned about the uncertainties surrounding the Deepwater Horizon incident and made an alternative proposal to the seller on 23 May 2010, 5 days prior to the anticipated closing date of the transaction.⁵ The buyer proposed extending the inspection period to 90 days and making \$50,000.00 of the \$1,500,000.00 deposit due upon closing, non-refundable by the Monday following the date of the email.

The buyer stated they were willing to leave the remainder of the deposit with the escrow agent stating the following reason: "During this time period, we would be fine leaving the remainder of the deposit with the escrow agent, as we would hope the ultimate time period to closing would be shorter." Based on the statement above, the buyer in this transaction appeared to be optimistic about the transaction being completed and was offering a partial guarantee in the form of a non-refundable deposit. Although the buyer cited concerns over the resolution of the Deepwater Horizon incident in the Gulf of Mexico, throughout their 23 May 2010 email, they did not express any intentions or entertain the possibility of withdrawing their offer to complete the sales transaction. Within the context of the email, the buyer's main concern specific to the sales transaction was making the deposit 100% non-refundable. The overall theme of the email from the buyer to the seller does not appear to be a notice to terminate the agreement, but to proceed with the sale, pending certain conditions.

To further express their intent to proceed with the sales transaction, the buyer stated the following: "If a formulation of this sort cannot be worked out, we believe the best course forward would be to simply extend the inspection period until say June 2nd and try and close on June 4th." Aside from any stipulations made for amendments to the original sales agreement, the buyer was accepting the possibility to proceed with the property purchase, without any amendments to the contract terms, if the seller was willing to extend the closing date by one week.

In a letter from Claimant's counsel dated 07 December 2010 to the NPFC, it makes reference to the 23 May 2010 email correspondence from the buyer and suggests that the buyer was attempting to re-negotiate the selling price from \$10,500,000.00 to \$10,000,000.00, which amount the seller did not agree with. Claimant's counsel cites this reference as a means to further

⁴ The claimed commissions are based on the Commission Agreement between the Claimant and [REDACTED] dated 22 March 2010 and pending the closing of the purchase of the property/ asset on or before 30 August 2010.

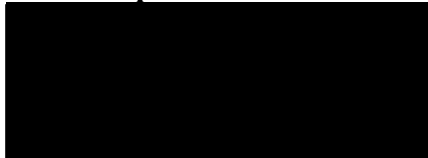
⁵ See, Email correspondence from [REDACTED] of [REDACTED] to [REDACTED] Bank dated 23 May 2010.

explain why the seller did not accept the buyer's request to extend the closing date. Although the email does mention a purchase price of \$10,000,000.00, there is no language contained within the context of the email where the buyer explicitly cites a request to reduce the original purchase price.

Documentary evidence has not been provided to support the seller's rejection of the buyer's proposed terms of sale. Claimant implies that the seller verbally rejected the proposal dated 23 May 2010. No documents are contained within the claims submission that confirms the seller's reason for not accepting the buyer's proposed terms.

The claim is denied because the alleged loss in the amount of \$174,000.00 is not due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil. Claimant's alleged loss of profits appears to be the result of a contractual Sale and Assignment Agreement in which the buyer and seller failed to agree to final terms, resulting in the Seller's need to terminate the agreement before that agreement was breached. The alleged losses have not been identified as being a direct result of the Deepwater Horizon incident.

Claim Supervisor:



Date of Review:

1/18/11

Supervisor's Actions:

Denial Allowed

Supervisor's Comments:

Documentation Provided to Support Claim # N10036-0040

Documentation Provided By Claimant:

1. NPFC Optional OSLTF Claim Form dated 25 October 2010.
2. Letter from [REDACTED] counsel for [REDACTED] accompanying OSLTF Claim Form dated 25 October 2010.
3. Letter from [REDACTED] to [REDACTED] Administrator dated 29 September 2010. Letter describes anticipated sales transaction.
4. Commission agreement between [REDACTED] and [REDACTED] dated 22 March 2010. Agreement specific to units at "Origin at Seahaven" in Panama City Beach, Florida. Commission agreement provides 2% of total sales price of transaction. Agreement limited to transaction occurring 22 March 2010 through 30 August 2010.
5. Sale and Assignment Agreement dated 07 May 2010 between [REDACTED] and [REDACTED]. [REDACTED] Stated purchase price of \$10,500,000.00. Deposit of \$1,500,000.00 due within 2 days of the agreement. Buyer has until 24 May 2010 to perform due diligence inspection with right to terminate if not satisfactory. Closing was scheduled to occur on or before 28 May 2010.
6. Escrow Agreement between [REDACTED] and [REDACTED] by [REDACTED] dated 07 May 2010.
7. "Notice of Termination" dated 24 May 2010 from [REDACTED] to [REDACTED]
8. Email from [REDACTED] of behalf of [REDACTED] to [REDACTED] of [REDACTED] dated 23 May 2010 regarding status of closing. [REDACTED] is requesting to extend the inspection period by 90 days and if not, at least until 02 June 2010. Request includes an offer to lower the purchase price to \$10,000,000.00 and to include a \$50,000.00 non-refundable deposit upon acceptance of the terms.
9. Gulf Coast Claims Facility Claim Form
10. Florida Real Estate Licensee Emergency Claim Form dated 26 August 2010.
11. Letter from [REDACTED] dated 07 December 2010 addressed to the NPFC.
12. "Property Condition Assessment Report" dated 17 May 2010, prepared by [REDACTED] on behalf of [REDACTED]
13. Environmental Site Assessment report prepared by [REDACTED] for [REDACTED]
14. "Profit and Loss Detail (Consolidated)" from January 2009 through December 2010.
15. Email correspondence from [REDACTED] on behalf of [REDACTED] to [REDACTED] dated 06 December 2010. The email states "[REDACTED] did not reply to the email below in writing. Instead, he rejected our proposal to extend verbally on a phone call".

U.S. Department of
Homeland Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd. Suite 1000
Arlington, VA 20598-7100
Staff Symbol: (CA)
Phone: [REDACTED]
E-mail: [REDACTED]
Fax: 202-493-6937

5890
4/18/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

VIA EMAIL: [REDACTED]@gmail.com

[REDACTED]
Coral Gables, FL 33134

RE: Claim Number: N10036-0041

Dear [REDACTED]:

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 claim number N10036-0041 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination Form for further explanation.

Disposition of this reconsideration constitutes final agency action.

If you have any questions or would like to discuss the matter, you may contact me at the above address and phone number.

Sincerely,

[REDACTED]

Claims Adjudication Division
U.S. Coast Guard

ENCL: Claim Summary / Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Date	: 4/18/2011
Claim Number	: N10036-0041
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$77,000.00

FACTS:

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 of the explosion and sinking, oil was 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 August 23, 2010, the Gulf Coast Claims Facility (GCCF) began accepting and adjudicating claims for certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On 06 October 2010, [REDACTED] (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Funds Center (NPFC)¹ seeking \$27,000.00 in lost profits and earnings capacity allegedly resulting from the Deepwater Horizon oil spill and \$50,000.00 in real or personal property damage for loss of equity in her rental home, bringing the Claimant's full requested amount to \$77,000.00.

Claimant owns and rents a single family home located in Placida, Florida. Claimant manages the property and handles reservations directly through the telephone and email. The rental property is advertised as the [REDACTED] on [REDACTED] island.² Claimant asserted that she has been unable to rent the beach house since April 20, 2010 due to the Deepwater Horizon oil spill.³

Claimant further asserted that she has not been able to sell the house as a result of the Deepwater Horizon oil spill.

On 23 August 2010, the Claimant filed a six-month Emergency Advance Payment claim of \$25,000 with the GCCF for lost profits and earnings. She was assigned GCCF Claimant ID # [REDACTED] and Claim # [REDACTED]. Claimant was paid \$21,500 by the GCCF on 26 November 2010.⁴

The NPFC denied the claim on March 14, 2011, on the basis that (1) the documentation provided associated with the Claimant's alleged depreciation in value of her real property, there is no

¹ Optional OSLTF Claim Form dated 06 October 2010 was received at the NPFC on 19 October 2010. The claim form indicates \$27,000.00 in lost profits and \$50,000.00 in property damages. Because the claim clearly describes the property damage as value depreciation, these two amounts have been joined under lost profits.

² [http://www.\[REDACTED\]house.com](http://www.[REDACTED]house.com) (last visited 10 March 2011).

³ Claim cover letter, dated 06 October 2010.

⁴ GCCF notice of determination emergency advance payment, dated 26 November 2010.

indication that the Claimant actually sold the property for an amount less than the original purchase price, either before or since the submission of her claim, to realize such a claimed loss. Therefore, the claimed loss of property value is prospective and not compensable under OPA and the associated regulations at 33 C.F.R. Part 136,⁵ and (2) the Claimant's alleged loss based on a decrease in rental earnings, the Claimant has not provide documentation to prove a financial loss greater than the \$21,500.00 she has already received from the GCCF. Based upon her provided reservation contracts from 2009, Claimant had gross earnings of \$25,150.00 for the corresponding six-month period (May-October) upon which she has claimed her 2010 loss.

The Claimant provided no rental contracts or cancellations from May 2010. Claimant's 2009 reservation records indicate that all the reservations for May 2009 were made prior to 10 April 2009. Assuming the same reservation dates for 2010, the Claimant should have been able to produce rental reservations for May 2010. The absence of rental reservations for May 2010 indicates that losses in that month may have resulted from factors other than the Deepwater Horizon oil spill although without sufficient information, the NPFC can only assume. Subtracting losses from May 2010 reduces the Claimant's total damages below her GCCF award of \$21,150.00.⁶ Therefore, this component of the claim is denied because the NPFC could not verify through evidence presented that the Claimant suffered an uncompensated economic loss as a result of the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil.

REQUEST FOR RECONSIDERATION:

On March 27, 2011, the Claimant sent a request for reconsideration via email dated March 27, 2010 to [REDACTED] stating she would like the NPFC to reconsider her claim. The Claimant argued on reconsideration for the depreciation of value in her home only. The Claimant amended her amount requested on reconsideration via typed letter dated March 30, 2011, that she has provided new information that the property has sold at public auction and her mortgage holder, [REDACTED] obtained the home for a bid of \$286,100.00. Claimant further asserted that she bought the home originally for \$749,000.00 and is therefore seeking compensation in the amount of \$462,900.00 which is the difference of the purchase price less the amount the home was sold for at public auction.⁷ Claimant presented no evidence that she had presented this sum certain to the GCCF.

RECONSIDERATION CLAIM ANALYSIS:

The claimant requested reconsideration via email on March 27, 2011. To support her request for reconsideration, the claimant provided a copy of the "Notice of Foreclosure Sale" that was advertised in the [REDACTED] Newspaper dated September 4, 2011 and the Claimant also provided a copy of the Certificate of Sale dated September 20, 2010 from the Circuit Court of the 20th Judicial Circuit in, and for [REDACTED] Florida that shows Bank [REDACTED] bought the home for the total sum of \$286,100.00.⁸

⁵ 33 CFR § 136.235 limits compensation to the actual net reduction or loss of earnings suffered (emphasis added). Similarly, although Claimant alleges that she has not been able sell her property as a result of the Deepwater Horizon oil spill, it is unclear how she realized a loss from failed sales negotiations because she retained her property after the negotiations fell through and she failed to subsequently sell it at a lower price.

⁶ For a detailed breakdown of Claimant's losses, refer to Enclosure 3 of original denial determination dated March 14, 2011.

⁷ See, letter from Claimant dated March 30, 2011.

⁸ See, Certificate of Sale dated September 20, 2010.

NPFC Determination on Reconsideration

Under 33 CFR 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 CFR § 136.233, a claimant must establish loss of profits or impairment of earning capacity. A request for reconsideration must be in writing and include the factual or legal grounds for the relief requested, providing any additional support for the claim. The NPFC considered all the documentation submitted by the Claimant.

The NPFC performed a *de novo* review of the entire claim submission upon reconsideration. The NPFC will first discuss the Claimant's increased sum certain request for the amount associated with the depreciation of value of her home. The Claimant initially requested \$50,000.00 although the sale of the home had not taken place at the time her original claim was received by the NPFC. On reconsideration, the Claimant provided evidence that the home had sold at Public Action on or about September 20, 2010 for which she has now increased her amount requested to \$462,900.00.

The NPFC has confirmed with the GCCF that the Claimant has only presented a claim for lost rents. The Claimant has never presented a claim to the GCCF associated with the depreciation of value of her home in any amount therefore the NPFC must deny this request for reconsideration based upon the fact that the Claimant has not made proper presentment of costs to the Responsible Party (RP) as required by regulation in accordance with 33 C.F.R. § 136.103(a), which states that all claims for removal costs and damages must be presented first to the Responsible Party or guarantor.

While this claim on reconsideration is denied due to failure of the Claimant to make proper presentment to the RP, the NPFC did obtain information on the validity of the Claimant's assertions both in her initial claim submission and on reconsideration and will discuss those findings below.

In the Claimant's original submission to the NPFC, the Claimant stated in a typed letter dated October 6, 2010 that..."I had to put the house up for sale, I did get an offer but the buyers backed out as they saw the oil spill issue not resolved." Then again on reconsideration, the Claimant asserted in her email dated March 27, 2011 to [REDACTED] that..."It seems they saw we tried to see and [c]ontracts got canceled as buyers got scared with the Oil Spill."

The NPFC contacted the Intended Buyers who entered into a sales contract with the Claimant for purchase of the subject property. The NPFC obtained a written statement from Mr. [REDACTED] the Intended Buyer for the sales contract dated February 11, 2011 in the purchase amount of \$400,000.00 that was subsequently terminated on May 25, 2011. Mr. [REDACTED] provided a written statement on April 7, 2011 stating that they ..."did not purchase that home because they (the sellers) rejected our offer and we purchased another on the island. It had nothing to do with the oil spill."⁹

The NPFC again denies the claim because (1) the Claimant has failed to make proper presentment of costs to the RP in accordance with 33 C.F.R. § 136.103(a), which states that all claims for removal costs and damages must be presented first to the Responsible Party or guarantor and (2) the Claimant has made false statements in connection with her claim

⁹ See, Email from [REDACTED] to [REDACTED] dated April 7, 2011.

submissions to the NPFC in order to obtain funds for an alleged loss of profits as a result of the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil.

Under 33 C.F.R. 136.9, persons submitting false claims or making false statements in connection with claims under this part may be subject to prosecution under Federal law, including but not limited to 18 U.S.C. 287 and 1001. In addition, persons submitting written documentation in support of claims under this part which they know, or should know, is false or omits a material fact may be subject to a civil penalty for each claim. The NPFC considered all of the documentation submitted by the Claimant.

This claim is denied upon reconsideration.

Claim Supervisor: 

Date of Supervisor's review: **4/18/11**

Supervisor Action: ***Denial on reconsideration approved***

Supervisor's Comments:

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

Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]



RE: Claim Number: N10036-0041

Dear Mrs. [REDACTED]:

The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act (OPA) (33 U.S.C. 2701 et seq.) and the associated regulations at 33 C.F.R. Part 136, denies payment on the claim number N10036-0041 involving the Deepwater Horizon oil spill. Please see the attached Claim Summary/Determination Form for the rationale regarding this denial.

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 N10036-0041.

Mail reconsideration requests to:

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

Sincerely,



U. S. Coast Guard
Claims Manager

Enclosure(s): (1) Claim Summary/Determination Form
(2) List of Documentation Provided by Claimant, N10036-0041
(3) Calculation of Potential Lost Net Profit

09/13/11

FOIA2011-3380-00000178

CLAIM SUMMARY / DETERMINATION FORM

Date	: 10 March 2011
Claim Number	: N10036-0041
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$77,000.00

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

CLAIM AND CLAIMANT

On 06 October 2010, [REDACTED] (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Funds Center (NPFC)¹ seeking \$77,000.00 in lost profits and earnings capacity allegedly resulting from the Deepwater Horizon oil spill.

Claimant owns and rents a single family home located in Placida, Florida. Claimant manages the property and handles reservations directly through the telephone and email. The rental property is advertised as the [REDACTED] on [REDACTED]. [REDACTED] Claimant asserted that she has been unable to rent the beach house since April 20, 2010 due to the Deepwater Horizon oil spill.³

Claimant further asserted that she has not been able to sell the house as a result of the Deepwater Horizon oil spill.

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

¹ Optional OSLTF Claim Form dated 06 October 2010 was received at the NPFC on 19 October 2010. The claim form indicates \$27,000.00 in lost profits and \$50,000.00 in property damages. Because the claim clearly describes the property damage as value depreciation, these two amounts have been joined under lost profits.

² [REDACTED] (last visited 10 March 2011).

³ Claim cover letter, dated 06 October 2010.

the navigable waters or adjoining shorelines or the exclusive economic zone, as described in § 2702(b) of OPA.

The OSLTF which is administered by the NPFC, is available, pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136, to pay claims for uncompensated damages. 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.

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

- 1) That real or personal property or natural resources have been injured, destroyed, or lost.
- 2) 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.
- 3) 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.
- 4) 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—

- 1) All income resulting from the incident;
- 2) All income from alternative employment or business undertaken;
- 3) Potential income from alternative employment or business not undertake, but reasonably available;
- 4) Any saved overhead or normal expenses not incurred as a result of the incident; and
- 5) State, local, and Federal taxes.

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support her claim, Claimant submitted the documentation listed in Enclosure Two.

Claimant seeks a total of \$77,000.00 in loss of profits allegedly resulting from the Deepwater Horizon oil spill.

On 23 August 2010, the Claimant filed a six-month Emergency Advance Payment claim of \$25,000 with the GCCF for lost profits and earnings. She was assigned GCCF Claimant ID # [REDACTED] and Claim # [REDACTED]. Claimant was paid \$21,500 by the GCCF on 26 November 2010.⁴

NPFC Determination

This claim is denied. Under 33 C.F.R. § 136.105(a) and §136.105(e)(6), the claimant bears the burden of proving to the NPFC all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim. Under 33 CFR § 136.233, a claimant must establish loss of profits or impairment of earning capacity. The NPFC considered all the documentation submitted by Claimant.

The majority of the Claimant's alleged loss is based on the depreciation in value of her real property. She indicated that her claimed loss of \$50,000 was a conservative estimate of the decrease in value her property has suffered due to the Deepwater Horizon oil spill.⁵ However, from the documentation provided, there is no indication that the Claimant actually sold the property for an amount less than the original purchase price, either before or since the submission of her claim, to realize such a claimed loss. Therefore, the claimed loss of property value is prospective and not compensable under OPA and the associated regulations at 33 C.F.R. Part 136.⁶

With respect to Claimant's alleged loss based on a decrease in rental earnings, the Claimant has not provided documentation to prove a financial loss greater than the \$21,500.00 she has already received from the GCCF. Based upon her provided reservation contracts from 2009, Claimant had gross earnings of \$25,150.00 for the corresponding six-month period (May-October) upon which she has claimed her 2010 loss.

However, the Claimant provided no rental contracts or cancellations from May 2010. Claimant's 2009 reservation records indicate that all the reservations for May 2009 were made prior to 10 April 2009. Assuming the same reservation dates for 2010, the Claimant should have been able to produce rental reservations for May 2010. The absence of rental reservations for May 2010 indicates that losses in that month may have resulted from factors other than the Deepwater Horizon oil spill although without

⁴ GCCF notice of determination emergency advance payment, dated 26 November 2010.

⁵ Claim cover letter signed 6 October 2010.

⁶ 33 CFR § 136.235 limits compensation to the actual net reduction or loss of earnings suffered (emphasis added). Similarly, although Claimant alleges that she has not been able sell her property as a result of the Deepwater Horizon oil spill, it is unclear how she realized a loss from failed sales negotiations because she retained her property after the negotiations fell through and she failed to subsequently sell it at a lower price.

sufficient information, the NPFC can only assume. Subtracting losses from May 2010 reduces the Claimant's total damages below her GCCF award of \$21,150.00.⁷ The claim is denied because the NPFC could not verify through evidence presented that the Claimant suffered an uncompensated economic loss as a result of the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil.

Claim Supervisor:

Date of Supervisor's review: *3/11/11*

Supervisor Action: *Denial approved*

Supervisor's Comments:

⁷ For a detailed breakdown of Claimant's losses, refer to Enclosure 3.

- Optional OSLTF Claim Form signed 6 October 2010.
- Claim cover letter signed 6 October 2010.
- GCCF Claim Status report dated 6 October 2010.
- (16) Signature pages of rental agreements, 2009 and 2010.
- Beach house rental summary, 2009.
- Beach house rental summary, 2010.
- FPL (Florida Power & Light) Billing & Charge History, 2 October 2008 through 27 October 2010.
- 2008 Schedule E (Form 1040).
- 2009 Schedule E (Form 1040).
- <http://www.huffingtonpost.com> post 5 June 2010 'Gulf Oil Spill: More Florida Waters Closed to Fishing as Slick Creeps Closer'.
- <http://www.bloomberg.com> post 11 June 2010, 'Oil Spill May Cost \$4.3 Billion in Property Values'.
- <http://www.businessweek.com> post 2 August 2010, 'BP Spill May Cost Gulf Coast Homes \$56,000 Apiece in Value'.
- <http://www.theatlantic.com> post 6 October 2010, 'How Does Florida Save Its Tourism Despite the Oil?'.
- Listing: <http://www.zillow.com/homedetails/8800-Grand-Ave-FL-33946/43>.
- "As Is" Contract for Sale and Purchase, on [REDACTED] completed 4 June 2010.
- Short Sale Decline Letter (fax date 5 October 2010).
- Property Appraiser Real Property Record, [REDACTED] County Property Appraiser, last updated 6 October 2010.
- OfficeMax Copy activity report dated 6 October 2010.
- Claimant undated document (created 13 November 2010) replies to Questions Asked on 9 November 2010.
- [REDACTED] Bank statements, January 2009 through October 2010.
- 2009-2010 Paypal receipts.
- [REDACTED] Reservation Sheet.
- Exclusive Right of Sale Listing Agreement between Claimant and [REDACTED] Properties.
- Claimant email dated 29 December 2010 replies to Questions Asked on 20 December 2010.
- Release and Cancellation of Contract for Sale and Purchase, completed 7 July 2010.
- "As Is" Contract for Sale and Purchase, on [REDACTED] completed 16 February 2010.
- Release and Cancellation of Contract for Sale and Purchase, completed 25 May 2010.

Calculation of Potential Lost Net Profit

Description	June	July	August	Sept.	Oct.	Total
2009 Rental Income	\$5,200	\$5,200	\$3,600	\$3,800	\$0	\$17,800
Less: Actual 2010 Income	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Less: Noncontinuing Expenses						
Cleaning & Maint.	\$150.00	\$150.00	\$150.00	\$150.00	\$150.00	\$750.00
Supplies	\$41.67	\$41.67	\$41.67	\$41.67	\$41.67	\$208.35
Total	\$191.67	\$191.67	\$191.67	\$191.67	\$191.67	\$958.35
Total Potential Lost Profits	5008.33	5008.33	3408.33	3608.33	-191.67	16841.65
Less Payments from BP/GCCF						\$ 21,500.00
TOTAL						-4658.35

U.S. Department
of Homeland
Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd., Suite 1000

Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim # N10036-044
19 January 2011

Re: Claim Number: N10036-0044

Dear [REDACTED]:

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies your claim. Please see the enclosed claim summary 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 N10036-0044.

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 Manager

Enclosure: (1) Claim Summary/Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Date	19 January 2011
Claim Number	N10036-0044
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
Claim Manager	[REDACTED]
Amount Requested	\$17,646.00

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 was discharged from an offshore facility associated with the Deepwater Horizon and located on the Mississippi Canyon, Block 252 (the Deepwater Horizon incident). This area was leased by BP Exploration and Production, Inc. (BP). The Coast Guard designated the offshore facility as the source of the discharge and BP as the responsible party (RP) for the discharge. BP accepted the designation, advertised its OPA claims process, and compensated claimants. On 23 August 2010, the Gulf Coast Claims Facility (GCCF) began accepting and adjudicating claims on behalf of BP.

CLAIM AND CLAIMANT

On 28 October 2010, [REDACTED] (Claimant) presented an Oil Spill Liability Trust Fund (OSLTF) claim form for lost profits and earnings in the amount of \$17,646.00 to the National Pollution Funds Center (NPFC) for reimbursement. Claimant is asserting that his work hours and earnings were reduced as a result of the Deepwater Horizon incident.

Claimant is employed by [REDACTED] as a painter and has previously received assignments aboard offshore drilling platforms.¹

APPLICABLE LAW

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a). Damages include the loss of profits or impairment of earning capacity due to the injury, destruction or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant. 33 U.S.C. § 2702(b)(2)(E).

The OSLTF, which is administered by the NPFC, 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. With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

¹ See Claimant's response to NPFC's request for additional information, response to question #12. Response faxed to NPFC on 06 January 2011.

Pursuant to the claims regulations, 33 C.F.R. § 136.233, a claimant must establish the following to prove loss of profits or impairment of earning capacity:

- (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.
- (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.

DETERMINATION OF LOSS

Claimant's Submission

To support his claim, the Claimant submitted the NPFC OSLTF Claim Form on 28 October 2010, a copy of the denial letter from the Gulf Coast Claims Facility (GCCF), letter and response from Claimant and 2008 and 2009 Form W-2's. On 22 December 2010 the NPFC requested additional information. On 06 January 2011 the NPFC received Claimant's response.

Claimant submitted an Emergency Advance Payment claim to the GCCF and was issued GCCF Claimant ID # [REDACTED] and Claim # [REDACTED]. On 25 October 2010 the GCCF denied his claim. This information was verified by the NPFC.

Claimant is employed by [REDACTED] as a painter and has previously received assignments aboard offshore drilling platforms. Claimant asserts that his work hours and earnings were reduced because there was less work available as a result of the Deepwater Horizon incident. Claimant provided limited information to explain the circumstances of his

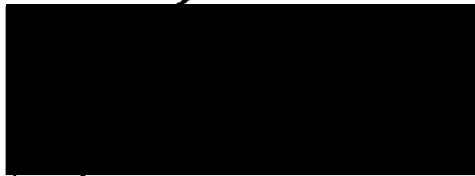
claim, but provided a response to the NPFC stating that he "could not work because of oil in the water".²

NPFC Determination

This claim is denied. 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. § 136.233, a claimant must establish loss of profits or impairment of earning capacity. The NPFC considered all the documentation submitted by the Claimant.

The claim is denied because the Claimant has not provided sufficient evidence to indicate either that he has experienced an economic loss or that his alleged loss is the result of the Deepwater Horizon incident. For example, Claimant has not provided any documentation to support a reduction in earnings during 2010. Although Claimant provided his earnings from 2009 on his W-2 forms, he did not provide any earnings information specific to 2010. As a result of insufficient documentation, this claim is denied.

Claim Supervisor:



Date of Review:

1/19/11

Supervisor's Actions:

0-2100 All noted

Supervisor's Comments:

² See Claimant's response to NPFC's request for additional information, response to question #12. Response faxed to NPFC on 06 January 2011.

U.S. Department of
Homeland Security

United States
Coast Guard

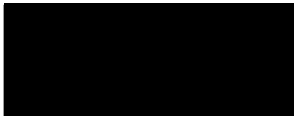


Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd, Suite 1000

Fax: 202-493-6937
5890
12/14/2010

VIA MAIL and EMAIL: [REDACTED]



RE: Claim Number: N10036-0045

Dear [REDACTED]

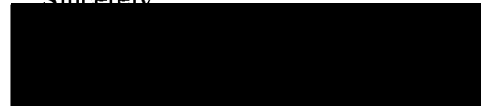
The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number N10036-0045 involving Deepwater Horizon. Please see the attached Claim Summary / Determination Form for the rationale regarding this denial.

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 N10036-0045.

Mail reconsideration requests to:

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

Sincerely,



Claims Manager
U.S. Coast Guard

Encl: Claim Summary / Determination Form

09/13/11

FOIA2011-3380-00000189

CLAIM SUMMARY / DETERMINATION FORM

Date	13 December 2010
Claim Number	N10036-0045
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
Claim Manager	[REDACTED]
Amount Requested	\$48,000.00

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 was discharged from an offshore facility associated with the Deepwater Horizon and located on the Mississippi Canyon, Block 252 (the Deepwater Horizon incident). This area was leased by BP Exploration and Production, Inc. (BP). The Coast Guard designated the offshore facility as the source of the discharge and BP as the responsible party (RP) for the discharge. BP accepted the designation, advertised its OPA claims process, and compensated claimants. On 23 August 2010, the Gulf Coast Claims Facility (GCCF) began accepting and adjudicating claims on behalf of BP.

CLAIM AND CLAIMANT

On 01 November 2010 Claimant, [REDACTED] presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$48,000.00 in lost profits and earning capacity resulting from the Deepwater Horizon oil spill. [REDACTED] is a production electrician who worked on various short term projects for companies that manufacture components used on offshore oil rigs. The Claimant was unemployed prior the Deepwater Horizon incident and is currently receiving unemployment compensation. He is claiming lost earnings and wages due to his inability to find new employment.

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 waters or adjoining shorelines or the exclusive economic zone, as described in Section 2702(b) of OPA.

The OSLTF which is administered by the NPFC, is available, pursuant to 33 U.S.C. § 2712(a)(4) and 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136, to pay claims for uncompensated damages. 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.

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.
- (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 undertake, 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.

DETERMINATION OF LOSS

Claimant's Submission

To support his claim, the claimant submitted the NPFC OSLTF Claim Form dated November 1, 2010, a letter from [REDACTED] dated October 28, 2010 verifying claimant's prior employment, and various W-2's from 2008 and 2009. . Claimant presented a claim to the GCCF (claim identification [REDACTED]). The GCCF issued a denial letter to the Claimant dated October 19, 2010 advising [REDACTED] that he needed to file a claim with the Gulf Coast Restoration and Protection Fund (GCRF) which has been set up to assist deep water rig workers affected by the moratorium. The Claimant stated he did not file a claim with the GCRF since he is not a rig worker but rather works on land. The Claimant tried to call GCCF to explain he is not a rig worker but was unable to obtain assistance therefore exercised his right to file a claim with the NPFC based on the receipt of a denial from the RP.

The claimant described that his prior employment comprised of working on temporary projects installing electrical components in devices that were being assembled for off-shore drilling operations and hook ups. The claimant's last date of work as supported by the record was a temporary assignment that began on September 25, 2009 and ended on March 18, 2010, which was well before the Deepwater Horizon incident occurred.

NPFC Determination

The claim is denied because the alleged loss is not due to injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of discharge of oil. The Claimant alleges his inability to find employment is due to the Deepwater Horizon oil-spill although the evidence provided by the Claimant fails to establish his lack of employment was related to the Deepwater Horizon incident.

After a thorough review of the claimant's financial information as well as his prior work history, it is clear that the claimant has had sporadic employment since as far back as 2008. The NPFC held a telephone conference with the claimant on November 10, 2010 where the claimant described his employment history.

Under 33 CFR 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 CFR § 136.233, a claimant must establish loss of profits or impairment of earning capacity. The NPFC considered all the documentation submitted by the Claimant.

Under 33 U.S.C. § 2702(b)(2)(E) and 33 C.F.R. Part 136, a claimant must prove that his loss of income was due to injury or destruction or loss of real or personal property or a natural resource as a result of a discharge or substantial threat of a discharge of oil. The Claimant's temporary job ended a month prior to the Deepwater Horizon incident and he is collecting unemployment insurance. He has not established an alleged loss of income nor that the alleged loss is due to the Deepwater Horizon oil-spill incident. The claim is denied.

Claim Supervisor:

Date of Supervisor's review:

12/14/10

Supervisor Action:

Deny all claims

Supervisor's Comments:

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

5890

Claim # N10036-0046

11 January 2011

BY EMAIL AND MAIL

EMAIL: [REDACTED]



RE: Claim Number: N10036-0046

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with 33 C.F.R. Part 136, denies payment on the claim number N10036-0046 involving Deepwater Horizon. Please see the enclosed Claim Summary / Determination for further explanation.

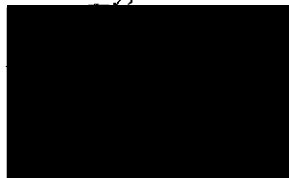
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-0046.

Mail reconsideration requests to:

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

Sincerely,



U.S. Coast Guard
Claims Manager

Enclosure: Claim Summary / Determination Form

09/13/11

FOIA2011-3380-00000193

CLAIM SUMMARY / DETERMINATION FORM

Date	: 11 January 2011
Claim Number	: N10036-0046
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$31,968.00

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 was discharged from an offshore facility associated with the Deepwater Horizon and located on the Mississippi Canyon, Block 252 (the Deepwater Horizon incident). This area was leased by BP Exploration and Production, Inc. (BP). The Coast Guard designated the offshore facility as the source of the discharge and BP as the responsible party (RP) for the discharge. BP accepted the designation, advertised its OPA claims process, and compensated claimants. On 23 August 2010, the Gulf Coast Claims Facility (GCCF) began accepting and adjudicating claims on behalf of BP.

CLAIM AND CLAIMANT

On 02 November 2010, The Claimant presented an Optional Oil Spill Trust Fund (OSLTF) claim form to the National Pollution Fund Center (NPFC) seeking \$31,968.00 in lost profits and earnings capacity resulting from the Deepwater Horizon incident.

The Claimant is a carpenter. He was hired by PS2 as a responder. The responders "were laid off in two months." "Since he was laid off by PS2, {he has} been unable to find a job due to the economic impact on the Gulf Coast." ¹

The Claimant is self-employed and works on a project by project basis. According to a letter from [REDACTED], The Claimant has done work for them in the past, "mainly decks. ... if they "had the work, he would be doing it." ²

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 waters or adjoining shorelines or the exclusive economic zone, as described in § 2702(b) of OPA.

The OSLTF which is administered by the NPFC, is available, pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136, to pay claims for uncompensated damages. 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.

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

¹ Claimant's OSLTF Claim Form Submission dated 02 November 2010.

² Letter from [REDACTED] to [REDACTED], NPFC, fax dated 12/05/2010.

09/13/11

ENCLOSURE

FOIA2011-3380-0000194

- (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.
- (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.

DETERMINATION OF LOSS

Claimant's Submission:

To support his claim, Claimant provided the documentation listed in enclosure (2) to the NPFC.

The claimed amount of \$31,968.00 was calculated by GCCF for the claimant using the 18 June 2010 PS2 pay stub of \$1,332.00 for one week of work x 4 weeks per month x 6 months. His last pay stub with PS2 was dated 06 August 2010 for 4-hours of work for the period ending 31 July 2010. The claimant estimates that he has lost \$1,243.00 "per week since May 2010".³

Claimant asserts that he a self-employed carpenter who was unable to find work as a result of the Deepwater Horizon incident. Claimant notes the poor economy but describes the Deepwater Horizon incident as the "icing on the cake" that has affected the local economy to the degree that he cannot find work as a carpenter. Claimant sought work as an oil-spill cleanup worker with P2S but was laid off after only two months of work.

Pursuant to his OSLTF claim form, Claimant originally sought compensation from the fund in the amount of \$31,968.00, ostensibly to compensate him for the money he would have made as a clean-up worker. Discussions with the Claimant broadened the basis for his claim to include his difficulty finding carpentry work, generally, following the Deepwater Horizon incident.

³ Fax Letter To Whom It May Concern dated 12/05/2010.

On 14 December 2010, the NPFC requested additional information from the Claimant. In his response, the claimant asserted that since his lay-off from PS2, he has attempted to find work but has been unsuccessful due to a lack of work resulting from the Deepwater Horizon incident. Further, he states that "there is very little work in construction here on the Gulf Coast" since the Deepwater Horizon incident. Claimant asserts that he had consistent work before the Deepwater Incident and that, while the economy was bad prior to the incident, he believes that his construction work was "definitely affected by the oil spill."⁴

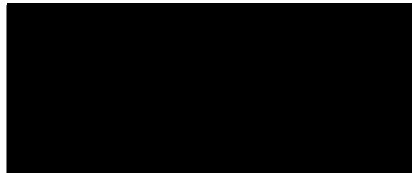
Claimant first submitted to the GCCF on 01 October 2010 and was issued Claimant # [REDACTED] and Claim # [REDACTED]. On 28 October 2010, Claimant was denied by the GCCF. This information was independently verified by the NPFC.

NPFC Determination

This claim is denied. 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. In a claim for lost profits or impairment of earning capacity, a claimant must also prove the elements established 33 C.F.R. § 136.233 as described above. The NPFC reviewed all of the information submitted by the Claimant.

The claim is denied because the evidence provided by the Claimant does not establish that his income was reduced as a consequence of injury to, destruction of, or loss of property or natural resources.

Claim Supervisor:



Date of Supervisor's Review:

1/11/11

Supervisor's Actions:

Denial Approved

Supervisor's Comments:

⁴ Additional Information provided in email to [REDACTED] NPFC, on 28 December 2010.

Enclosure (2)

List of Documentation Provided by Claimant for Claim N10036-0046

- NPFC OSLTF Claim form received 02 November 2010.
- 28 October 2010 GCCF Claim Denial Letter for your claimant ID # [REDACTED]
- 01 November 2010 letter to GCCF requesting GCCF reconsideration.
- [REDACTED] Deepwater Horizon Responder Earnings Statement for pay period ending 06/12/2010 in the amount of \$1,332.00 (total 66 hours documented).
- Last P2S [REDACTED] Deepwater Horizon Responder Earnings Statement for pay period ending 07/31/2010 in the amount of \$72.00 (total 4 hours documented) showing year to date earnings of \$6,678.00 with P2S.
- 2008 IRS Form 1040 documenting gross annual income of \$61,045.00.
- 2009 IRS Form 1040 documenting gross annual income of \$40,524.00.
- Checks received related to his carpentry work:
 - Check Deposit Slip dated 01/04/2010 for \$ 500.00.
 - Check Deposit Slip dated 01/05/2010 for \$ 400.00.
 - Check Deposit Slip dated 01/07/2010 for \$ 450.00.
 - Check Deposit Slip dated 01/14/2010 for \$ 600.00.
 - Check Deposit Slip dated 01/19/2010 for \$ 230.00.
 - Check Deposit Slip dated 01/21/2010 for \$ 550.00.
 - Check Deposit Slip dated 01/22/2010 for \$ 500.00.
 - Check Deposit Slip dated 02/19/2010 for \$1000.00.
 - Check Deposit Slip dated 02/26/2010 for \$1680.00.
 - Check Deposit Slip dated 03/06/2010 for \$ 850.00.
 - Check Deposit Slip dated 03/15/2010 for \$1000.00.
 - Check Deposit Slip dated 04/19/2010 for \$1000.00.
 - Check Deposit Slip dated 04/22/2010 for \$4000.00.
 - Check Deposit Slip dated 04/26/2010 for \$1900.00.
 - Check Deposit Slip dated 05/11/2010 for \$ 690.00.
 - Check Deposit Slip dated 05/13/2010 for \$1000.00.
 - Check Deposit Slip dated 05/26/2010 for \$ 725.00.

Total \$17,075.00 for period 1/1/2010 to 5/26/2010

- Letter fax of 05 December 2010 documenting self employment as a carpenter and downturn in construction work available since the oil spill and estimated loss of "\$1243.00 a week since May 2010 if not more."
- Letter from [REDACTED] fax dated 05 December 2010 validating his work as a carpenter and the slowdown in carpentry work this year. [REDACTED] states: "the last six months has been very slow with very few jobs of that nature."⁵

⁵ Letter from [REDACTED] to [REDACTED] NPFC, fax dated 12/05/2010.

U.S. Department of
Homeland Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

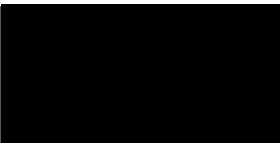
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd., Suite 1000

Fax: 202-493-6937

5890
4/18/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]



RE: Claim Number: N10036-0047

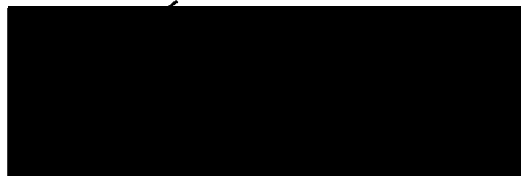
Dear [REDACTED]

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 claim number N10036-0047 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination Form for further explanation.

Disposition of this reconsideration constitutes final agency action.

If you have any questions or would like to discuss the matter, you may contact me at the above address and phone number.

Sincerely,



U.S. Coast Guard

Encl: Claim Summary / Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Date	: 4/18/2011
Claim Number	: N10036-0047
Claimant	: [REDACTED]
Type of Claimant	: Corporate (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$670,536.00

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

CLAIM AND CLAIMANT:

On 03 November 2010, [REDACTED] (Claimant) submitted an Optional Oil Spill Trust Fund (OSLTF) claim form seeking \$670,536.00 in lost profits and earnings capacity resulting from the Deepwater Horizon oil spill. Claimant informed the NPFC that the company is "an oil field service company based out of New Iberia, Louisiana" and that "all of Pin Torque's business is conducted in the Gulf of Mexico." [REDACTED] describes the nature and extent of damages claimed as "a result of the Deepwater Horizon Oil Spill."

Claimant submitted a claim with the GCCF for an Emergency Advance Payment (EAP) with Claimant ID [REDACTED]. This claim was confirmed denied in a letter from the GCCF dated 23 October 2010.

The NPFC denied the claim on December 28, 2010, on the basis that the Claimant's alleged loss was not due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil.

REQUEST FOR RECONSIDERATION:

On February 24, 2011, the Claimant sent a request for reconsideration via email to the NPFC stating he would like the NPFC to reconsider his claim. The Claimant provided a justification in writing requesting a 45 day extension in order to support his official request for reconsideration. The NPFC granted the Claimant's request for extension via an email dated February 24, 2011 advising the Claimant that he only had until the close of business on April 14, 2011 to provide all necessary support for his reconsideration request.

RECONSIDERATION CLAIM ANALYSIS:

The claimant requested reconsideration via email on February 24, 2011. To support his request for reconsideration, the claimant provided four new invoices that range in date from December 2,

09/13/11

FOIA2011-3380-00000199

2010 through February 21, 2011 for services provided to [REDACTED] showing total new revenue of \$33,798.00. The Claimant also provided a total income listing from January 1, 2008 through February 25, 2010. It is important to note that the new information provided, without further explanation and support, provides no meaning to the claim.

NPFC Determination on Reconsideration

Under 33 CFR 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 CFR § 136.233, a claimant must establish loss of profits or impairment of earning capacity. The NPFC considered all the documentation submitted by the Claimant.

The Claimant requested a 45 day extension of time to provide full documentation along with the factual and/or legal basis for his request for reconsideration. The Claimant had until close of business to provide all information to the NPFC in support of his request. As of the date of this determination, the Claimant has failed to provide the necessary explanation and detailed support for his request for reconsideration therefore the NPFC again denies the claim because the Claimant has failed to (1) demonstrate a loss and (2) demonstrate that the loss, if one had been established, was due to injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of discharge of oil. This claim is denied upon reconsideration.

Claim Supervisor [REDACTED]

Date of Supervisor's review: 4/18/11

Supervisor Action: *Denial on reconsideration approved*

Supervisor's Comments:

U.S. Department of
Homeland Security

United States
Coast Guard

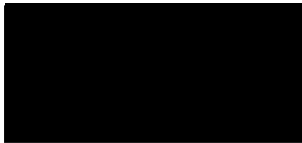


Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd. Suite 1000

5890
28 December 2010

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: [REDACTED]



RE: Claim Number: N10036-0047
EMAIL: [REDACTED]

Dear [REDACTED]

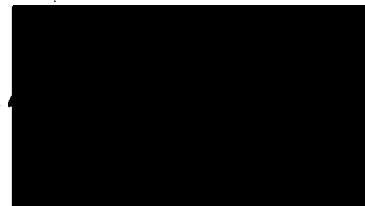
The National Pollution Funds Center (NPFC), in accordance with 33 C.F.R. § Part 136, denies payment on the claim number N10036-0047 involving the Deepwater Horizon incident. Please see the enclosed Claim Summary / Determination for further explanation.

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 N10036-0047.

Mail reconsideration requests to:

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



Claims Manager

Enclosure: Claim Summary/Determination Form

09/13/11

FOIA2011-3380-00000201

CLAIM SUMMARY / DETERMINATION FORM

Date	: 28 December 2010
Claim Number	: N10036-0047
Claimant	: [REDACTED]
Type of Claimant	: Corporate (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$670,536.00

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 was discharged from an offshore facility associated with the Deepwater Horizon and located on the Mississippi Canyon, Block 252 (the Deepwater Horizon incident). This area was leased by BP Exploration and Production, Inc. (BP). The Coast Guard designated the offshore facility as the source of the discharge and BP as the responsible party (RP) for the discharge. BP accepted the designation, advertised its OPA claims process, and compensated claimants.

On 28 May 2010, The U.S. Department of the Interior (DOI) issued a six-month moratorium on deepwater drilling, citing concerns over the safety of deepwater drilling and directing lessees and operators to cease drilling all new deepwater wells and related activities effective 30 May 2010. Lessees and operators conducting current drilling operations were directed to secure the wells and to take all necessary steps to cease operations and temporarily abandon or close the wells.

On 23 August 2010, the Gulf Coast Claims Facility (GCCF) began accepting and adjudicating claims on behalf of BP. BP subsequently established a \$100 million Rig Workers Assistance Fund (RWAFF) to help compensate rig workers impacted by the moratorium on deepwater well activities. The Assistance Fund is administered by the Gulf Coast Restoration and Protection Foundation (GCRPF).¹

CLAIM AND CLAIMANT

On 03 November 2010, [REDACTED] (Claimant) submitted an Optional Oil Spill Trust Fund (OSLTF) claim form seeking \$670,536.00 in lost profits and earnings capacity resulting from the Deepwater Horizon oil spill. Claimant informed the NPFC that the company is "an oil field service company based out of New Iberia, Louisiana" and that "all of [REDACTED] business is conducted in the Gulf of Mexico." [REDACTED] describes the nature and extent of damages claimed as "a result of the Deepwater Horizon Oil Spill."²

¹ U.S. Department of the Interior, MINERALS MANAGEMENT SERVICE, MORATORIUM NOTICE TO LESSEES AND OPERATORS, NTL No. 2010-N04, Effective 30 May 2010. See, Decision Memo dated 12 July 2010, From Secretary of the Interior To Director, Bureau of Ocean Energy Management, Regulation and Enforcement, Subject Decision Memorandum regarding the suspension of certain offshore permitting and drilling activities on the Outer Continental Shelf. See also, U.S. Department of the Interior, Minerals Management Service, NATIONAL NOTICE TO LESSEES AND OPERATORS OF FEDERAL OIL AND GAS LEASES, OUTER CONTINENTAL SHELF (OCS) NOTICE TO LESSEES AND OPERATORS, NTL No. 2010-N05, Effective 08 June 2010.

² [REDACTED] OSLTF Claim Submission and included letter to NPFC of 03 November 2010

APPLICABLE LAW

The Oil Pollution Act of 1990 (OPA), provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shoreline or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a). Damages include the loss of profits or impairment of earning capacity due to injury, destruction or loss of real property, personal property, or impairment of earning capacity due to the injury, destruction, or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant. 33 U.S.C. § 2702(b)(2)(E).

The Oil Spill Liability Trust Fund (OSLTF), which is administered by the NPFC, is available, pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136. With certain exceptions, a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

Pursuant to the claims regulations 33 C.F.R. § 136.233, in order to prove loss of profits or impairment of earning capacity, 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 the 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.
- (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 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 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.

DETERMINATION OF LOSS

Claimant's Submission

Claimant submitted the following documentation in support of the claim:³

- OSLTF Claim form Submission dated 16 November 2010
- Claimant's Letter of Explanation dated 03 November 2010
- GCCF Denial Letter dated 23 October 2010
- Monthly Financial Breakdown of Claim Period
- Articles of Organization and [REDACTED]
- Income Tax Forms for 2007, 2008, and 2009 with monthly financial statements and invoices.
- Press Releases & Newspaper Articles documenting evidence of spill:
 - USCG/BOEMRW/JIT extension of the deadline for final report on Deepwater Horizon Oil Spill
 - Gulf Coast Claims Facility Now Processing Oil Spill Claims
 - New York Times Officials Ask BP to Assure it Will cover Spill Claims
- [REDACTED] Informational Brochure

In his OSLTF claim form, Claimant alleged losses in profits and earnings in the amount of \$670,536.00 which, he believes are the result of the Deepwater Horizon incident.

On 17 June 2010 Claimant filed a claim with BP but no resolution was reached. On 23 August 2010, Claimant filed a second claim for an Emergency Advance Payment with the GCCF in the amount of \$480,000.00. The GCCF issued Claimant ID # [REDACTED] and Claim # [REDACTED]. On 14 September 2010 Claimant was denied by the GCCF who cited the basis for the denial as the claim being moratorium related. The NPFC verified that the GCCF claim was denied.

NPFC Determination

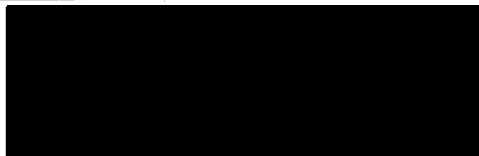
The claim is denied. Under 33 U.S.C. 33 § 2702(b)(2)(E) and C.F.R. Part 136, a claimant must prove that his loss of income was due to injury or destruction or loss of real or personal property or a natural resources as a result of a discharge or substantial threat of a discharge of oil. Under 33 C.F.R.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

The NPFC considered all the documentation submitted by the Claimant. In the present claim, the evidence presented by the Claimant leads the NPFC to conclude that his alleged losses, if any, are the result of the six-month moratorium on deepwater drilling put into effect by the DOI and not the result of the Deepwater Horizon incident. Further, the NPFC examined the time period between 20 April and 30 May 2010, before the moratorium was enacted, to determine whether the evidence presented indicated a loss that was unrelated to the moratorium. The evidence presented did not show a loss for that period because the Claimant's sales history in the six months prior to the Deepwater Horizon incident was drastically reduced, including some months with no revenue.

³ [REDACTED] OSLTF Claim Submission and included letter to NPFC of 03 November 2010

Consequently, the claim is denied because the Claimant has not proven that he has incurred a loss 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 related to the Deepwater Horizon incident.

Claim Supervisor:



Date of Supervisor's Review: 12/29/10

Supervisor's Actions: *Denial approved*

U.S. Department
of Homeland
Security

United States
Coast Guard

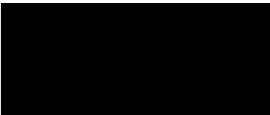


Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd., Suite 1000
Arlington, VA 20598-7100

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]



5890/DWHZ
Claim # N10036-0048
28 December 2010

Email: [REDACTED]

Claim Number: N10036-0048

Dear [REDACTED]

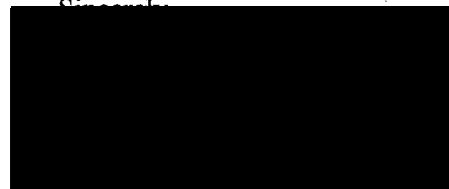
The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies your claim claiming losses as a result of the Deepwater Horizon incident. Please see the enclosed Claim Summary / Determination for further explanation.

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 N10036-0048.

Mail reconsideration requests to:

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



Claims Manager

Enclosure: Claim Summary/Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Date	28 December 2010
Claim Number	N10036-0048
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
Claim Manager	[REDACTED]
Amount Requested	\$4,800.00

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 was discharged from an offshore facility associated with the Deepwater Horizon and located on the Mississippi Canyon, Block 252 (the Deepwater Horizon incident). This area was leased by BP Exploration and Production, Inc. (BP). The Coast Guard designated the offshore facility as the source of the discharge and BP as the responsible party (RP) for the discharge. BP accepted the designation, advertised its OPA claims process, and compensated claimants. On 23 August 2010, the Gulf Coast Claims Facility (GCCF) began accepting and adjudicating claims on behalf of BP.

CLAIM AND CLAIMANT

On 05 October 2010, [REDACTED] (Claimant) presented an Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Funds Center (NPFC) claiming lost profits and earnings in the amount of \$4,800. Claimant asserts that her commissions were reduced and that she was terminated from her sales position at an [REDACTED] kiosk in the [REDACTED] in [REDACTED] because of the Deepwater Horizon incident.

APPLICABLE LAW

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a). Damages include the loss of profits or impairment of earning capacity due to the injury, destruction or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant. 33 U.S.C. § 2702(b)(2)(E).

The OSLTF, which is administered by the NPFC, 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. With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

Pursuant to the claims regulations, 33 C.F.R. § 136.233, a claimant must establish the following to prove loss of profits or impairment of earning capacity:

- (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.
- (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.

DETERMINATION OF LOSS

Claimant's Submission

To support her claim, Claimant submitted the following documentation to the NPFC: an OSLTF Claim Form dated 05 October 2010, a letter from Claimant to the GCCF dated 29 October 2010 explaining the circumstances of her claim, 2009 Federal Income Tax Return Transcript and W-2's, earnings statements from [REDACTED] from 14 April 2010 through 31 October 2010, various bank account transactions from April through August 2010, and a handwritten computation of average earnings of \$3,800.00.

Claimant was employed as a sales associate for [REDACTED], a retail store located inside of a shopping mall in [REDACTED]. Claimant began her employment with [REDACTED] sometime in October 2009. Claimant asserts that the retail store where she was working had reduced business activity after the Deepwater Horizon incident, including reduced business from tourists, causing her to earn fewer commissions. Claimant indicated that she earned reduced commissions as a result of the overall decrease in business, leading her employer to reduce her work hours and ultimately terminating her employment for not meeting sufficient sales quotas. Claimant asserts that her earnings from June through October 2010 should have been consistent with her average earnings from January through April 2010. Claimant is making a claim for reduced wages and commissions while employed by [REDACTED] from June through October 2010 and for lost earnings after she was terminated by her employer in August of 2010.

Claimant indicated on her OSLTF Claim Form that she presented an initial claim with GCCF on 07 October 2010. Claimant was assigned GCCF Claimant ID # [REDACTED] and GCCF Claim # [REDACTED]. She reports on her OSLTF claim form that her claim was denied. The NPFC independently verified this information on 15 November 2010.

NPFC Determination

The claim is denied. 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. § 136.233, a claimant must establish loss of profits or impairment of earning capacity. The NPFC considered all the documentation submitted by the Claimant.

Claimant provided earnings statements from [REDACTED] from April through October 2010 to prove a reduction in her earnings. Claimant asserts that her earnings after the Deepwater Horizon incident should be comparable to her earnings from January through April 2010. Claimant provided her handwritten computation showing her average monthly earnings was \$3,800 per month from January through April 2010.¹ Claimant has a short history at the [REDACTED] Mobility kiosk in the Lakeside Mall beginning November 2009.²

The claim is denied because the evidence presented by the Claimant does not establish that she would have sustained the same level of earnings throughout the duration of her employment at the [REDACTED] kiosk that she had from January through March 2010. As a result, she has not proven her economic loss. Further, the Claimant has not provided evidence that her alleged losses are due to injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of discharge of oil as required by OPA.

Claim Supervisor:

Date of Review:

12/29/10

Supervisor's Actions:

Denial approved

¹ See claimant's handwritten computation of average earnings of \$3,800.00.

² See e-mail from [REDACTED] to NPFC dated 23 November 2010.

U.S. Department of
Homeland Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd. Suite 1000
Arlington, VA 20598-7100
Staff Symbol: (CA)
Phone: [REDACTED]

E-mail: [REDACTED]

Fax: 202-493-6937

5890
2/2/2011

VIA MAIL and EMAIL: [REDACTED]@att.net

[REDACTED]
Marrero, LA 70072

RE: Claim Number: N10036-0049

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number N10036-0049 involving Deepwater Horizon. Please see the attached Claim Summary / determination Form for an explanation regarding this denial.

Disposition of this reconsideration constitutes final agency action.

If you have any questions or would like to discuss the matter, you may contact me at the above address and phone number.

Sincerely,

[REDACTED]

[REDACTED] Claims Adjudication Division
U.S. Coast Guard

ENCL: Claim Summary / Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Date	: 2/1/2011
Claim Number	: N10036-0049
Claimant	: [REDACTED]
Type of Claimant	: Corporate (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$30,000.00

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 was discharged from an offshore facility associated with the Deepwater Horizon and located on the Mississippi Canyon, Block 252 (Deepwater Horizon incident). This area was leased by BP Exploration and Production, Inc. (BP). The Coast Guard designated the offshore facility as the source of the discharge and BP as the responsible party (RP) for the discharge. BP accepted the designation, advertised its OPA claims process, and compensated claimants. On 23 August 2010, the Gulf Coast Claims Facility (GCCF) began accepting adjudicating claims on behalf of BP.

CLAIM AND CLAIMANT:

On 4 November 2010, Mr. [REDACTED], President of [REDACTED] (Claimant) presented a claim for lost profits and earnings in the amount of \$30,000.00. The Claimant asserted that his lost profits and earnings resulted from the loss of his customer base as a direct result of the Deepwater Horizon incident. The Claimant started a new business, [REDACTED], an independent cell phone retailer business on February 21, 2010.

Claimant asserted that his alleged loss of profits associated with [REDACTED] was due to the Deepwater Horizon incident. The NPFC denied the claim on November 22, 2010, on the grounds that the Claimant had not established that the loss of profits resulted from the Deepwater Horizon incident. Documentation submitted reflected that the business did not sustain an identifiable loss of sales. From the start of the business in February 2010, [REDACTED] sales increased every month through July 2010. Sales during the months of August, September, and October 2010 were lower than July 2010, but were still consistent with the level of sales earned during prior months. Lower sales earned during August, September, and October 2010 may be indicative that the business' startup growth reached a plateau and began to level off. Seasonality may have also affected [REDACTED] increases and decreases in monthly sales.

Additionally, the Claimant provided a letter that stated many of the local residents were fishermen who were re-employed as oil-spill responders working offshore however the Claimant has failed to establish how the fishermen's re-employment negatively impacted his business sales. The Claimant also provided notes on the Statement of Revenue and Expenses whereby he suggests there is a loss based on their negative cash flows. The Statement of Revenue and Expenses appears to be prepared on a cash basis rather than an accrual basis and in doing so, a cash basis statement does not indicate the month in which income and related expenses were

earned or incurred. Evidence of this is shown in the [REDACTED] cost of goods sold from the Statement of Revenue and Expenses.

During the first month of operation, February 2010, the cost of sales were \$31,281.00 compared to total sales of \$464.00. It is likely the Claimant recorded the initial purchase of product inventory or business startup costs within the cost of sales. In nearly every month since inception, the cost of sales have been greater than actual sales which is not an indication that the business activity has declined.

Reconsideration Claim Analysis

The claimant requested reconsideration via facsimile on December 23, 2010. To support his request for reconsideration, the claimant provided no new information other than a request for the NPFC to reconsider his claim with the utmost consideration.

NPFC Determination on Reconsideration

The NPFC again denies the claim because the alleged loss is not due to injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of discharge of oil. The Claimant has failed to meet his burden to establish that the [REDACTED] has suffered an economic loss as a direct result of the Deepwater Horizon incident.

Claim Supervisor: [REDACTED]

Date of Supervisor's review: *February 1, 2011*

Supervisor Action: *Denial on reconsideration approved*

Supervisor's Comments:

CLAIM SUMMARY / DETERMINATION FORM

Date 11/22/2010
Claim Number N10036-0049
Claimant [REDACTED]
Type of Claimant Private (US)
Type of Claim Loss of Profits and Earning Capacity
Claim Manager [REDACTED]
Amount Requested \$30,000.00

FACTS:

On or about 20 April 2010, the Mobile Offshore Drilling Unit (MODU) Deepwater Horizon exploded and sank in the Gulf of Mexico. As a result of the explosion and sinking, oil was discharged from an offshore facility associated with the MODU and located on the Mississippi Canyon, Block 252 (the Deepwater Horizon Oil Spill). This area was leased by BP Exploration and Production, Inc. (BP). The Coast Guard designated the offshore facility as the source of the discharge and BP as the responsible party for the discharge. BP accepted the designation, advertised its OPA claims process, and compensated claimants. On 23 August 2010 the Gulf Coast Claims Facility (GCCF) began accepting adjudicating claims on behalf of BP.

CLAIM AND CLAIMANT:

Claimant, [REDACTED] submitted an Oil Spill Liability Trust Fund (OSLTF) Claim Form to the NPFC on 4 November 2010, by one of its three principals, [REDACTED] based in [REDACTED]. [REDACTED] is an independent cell phone retailer with one physical location situated in a strip mall. [REDACTED] opened for business on 21 February 2010. Based on a letter prepared by [REDACTED], a principal of [REDACTED], many of [REDACTED] customers were fishermen who had found alternative employment as offshore oil spill responders. As such, [REDACTED] asserts that a portion of their normal customer base was employed away from the vicinity of their retail location. [REDACTED] submitted a claim for \$30,000.00 to the NPFC for Profits and Lost Earnings due to a reduction in their customer base.

[REDACTED] submitted their initial claim to GCCF on or before 29 October 2010 and was issued the Claim Number # [REDACTED]. Wireless Center's claim with the GCCF was subsequently denied on 29 October 2010 citing the Claimant's inability to demonstrate lost profits as a direct result of the spill.

APPLICABLE LAW:

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a). Damages include the loss of profits or impairment of earning capacity due to the injury, destruction or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant. 33 U.S.C. § 2702(b)(2)(E).

The OSLTF, which is administered by the NPFC, is available to pay claims for uncompensated damages pursuant to 33 USC §§ 2712(a)(4) and 2713 and the OSLTF claims adjudication regulations at 33 CFR Part 136. With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

Pursuant to the claims regulations, 33 CFR § 136.233, a claimant must establish the following to prove loss of profits or impairment of earning capacity:

- (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.
- (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 CFR 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 CFR 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.

DETERMINATION OF LOSS:

A. Documentation Provided by [REDACTED]

The NPFC received the following documentation:

- Optional OSLTF Claim Form dated 4 November 2010 and signed by [REDACTED]
- Letter from [REDACTED] dated 4 November 2010 accompanying the Optional OSLTF Claim Form.

- Denial letter from GCCF dated 29 October 2010.
- 2010 Occupational License from [REDACTED]
- [REDACTED] Monthly Sales Tax Remittances from February 2010 through October 2010.
- Louisiana Department of Revenue Sales Tax Returns from February 2010 through October 2010.
- State of Louisiana Department of Revenue Sales Tax Registration Certificate dated 1 January 2010.
- Monthly Statement of Revenue and Expenses for February 2010 through October 2010.

B. NPFC Analysis of the Claim

The documents submitted by the Claimant evidence the following:

1. [REDACTED] did not sustain an identifiable loss of sales. From the start of the business in February 2010, [REDACTED] sales increased every month through July 2010. Sales earned during the months of August, September and October 2010 were lower than July 2010, but were still consistent with the level of sales earned during prior months. Sales earned during August, September and October 2010 may be indicative that the businesses startup growth reached a plateau and was beginning to level off. Seasonality may also affect [REDACTED] changes increases and decreases to monthly sales. The Claimant's reported monthly sales are as follows:
 - a. February 2010 (partial month) - \$464;
 - b. March 2010 - \$3,096;
 - c. April 2010 - \$2,834;
 - d. May 2010 - \$3,722;
 - e. June 2010 - \$4,597;
 - f. July 2010 - \$5,268;
 - g. August 2010 - \$4,837;
 - h. September 2010 - \$4,295;
 - i. October 2010 - \$3,892
2. [REDACTED] has not provided budgets or forecasts to indicate the level of sales they expected to earn during the claimed period.
3. Per the letter provided by [REDACTED] dated 04 November 2010, many of the local residents were fishermen. The Claimant stated the customers who were fishermen, were re-employed as oil spill responders working offshore. The Claimant has not demonstrated how their clientele's re-employment has negatively impacted [REDACTED] business.
4. Based on notes provided by the Claimant on the Statement of Revenue and Expenses, the Claimant suggests there is a loss based on their negative cash flows. The Statement of Revenue and Expenses provided appears to be prepared on a cash basis rather than an accrual basis. A cash basis statement does not indicate the month in which income and

related expenses were earned or incurred. Evidence of this is shown in [REDACTED]
cost of goods sold from the Statement of Revenue and Expenses.

5. During February 2010, the first month of operation, cost of sales were \$31,281 compared to total sales of \$464. It is likely that the Claimant recorded the initial purchase of product inventory or business startup costs within the cost of sales. In nearly every month since inception, the cost of sales have been greater than actual sales. This is not an indication that their business activity declined.
6. [REDACTED] has not demonstrated that their business was negatively impacted during the claimed period through a computation of their potential losses, evidence of a decrease in customer accounts, decreased merchandise sales or overall decline in business activity.

LEGAL ANALYSIS:

Under 33 U.S.C. § 2702(b) and 33 C.F.R. Part 136, the claimant bears the burden of proving his loss. The documentation submitted by [REDACTED] does not establish that the corporation has suffered an economic loss resulting from the Deepwater Horizon Oil Spill.

AMOUNT: \$0.00

DETERMINATION: [REDACTED] claim for \$30,000 to the OSLTF is denied.

Claim Supervisor: [REDACTED]

Date of Review: 11/22/10

Supervisor's Comments:

Approved

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
United States Coast Guard
National Pollution Funds Center

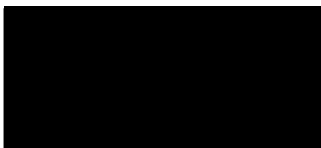
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd. Suite 1000
Arlington, VA 20598-7100

Fax: 202-493-6937

5890
4/27/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]



RE: Claim Number: N10036-0050

Dear [REDACTED]

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 claim number N10036-0050 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination Form for further explanation.

Disposition of this reconsideration constitutes final agency action.

If you have any questions or would like to discuss the matter, you may contact me at the above address and phone number.

Sincerely,



U.S. Coast Guard

Encl: Claim Summary / Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Date	: 4/26/2011
Claim Number	: N10036-0050
Claimant	: [REDACTED]
Type of Claimant	: Corporate (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$330,962.45

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

CLAIM AND CLAIMANT:

On 04 November 2010, Mr. Harry W. Wilk, III, on behalf of [REDACTED] (Claimant), presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Funds Center (NPFC) seeking \$330,962.45 in lost profits and earnings resulting from the Deepwater Horizon incident.

Claimant is an outdoor furniture manufacturer, distributor, and sales business headquartered in Corpus Christi, Texas. The Claimant asserted that "we manufacture, sell and distribute high quality wooden outdoor/beach Adirondack style furniture along the Gulf Coast from Texas to Florida to individuals, resorts, garden stores, beach stores, etc. . . ."¹ Claimant offers various furniture designs and styles with some custom pieces featuring various college sports team's logos.

Claimant sells products to end users through its website and also offers "Producer Packages" to individuals who are interested in becoming independent distributors and producers of the company's products. "[REDACTED]" are comprised of materials, templates and furniture designs necessary to assemble the style of products produced by the company.² When an individual purchases a producer package and becomes a producer, the Claimant provides the producer with materials and sales support.

Claimant submitted a map showing the geographic areas of its producers, which includes the Southeast, Midwest and East Coast of the United States, along with some producers within the western regions of the country. Producers are not limited to any specific geographic areas and the producer program is marketed as an opportunity for individuals to work out of their homes to earn income or to supplement their existing employment. Claimant utilizes producers, who are located within proximity of sales orders, to assemble furniture and deliver the final product to

¹ Optional OSLTF Claim Form dated 02 November 2010.

² Conference call held on 09 December 2010, between the Claimant and NPFC representatives.

customers as a means of reducing shipping costs and transit times for delivery. Producers can obtain their own product orders directly from customers and or can receive production and sales orders from the Claimant. Claimant's business model appears to be largely contingent upon sales to producers. Sales of producer packages seem to outweigh the volume of sales to end users or retail customers.

Claimant asserted that no orders were received from the Gulf Coast area as a result of the Deepwater Horizon incident. Claimant estimated that "sales were off over 57% and profits down over 250% and we expect this downturn to extend through the end of 2010."³

On 24 June 2010, the Claimant filed an initial claim with the responsible party (BP) and was assigned Claimant [REDACTED]. The Claim was denied. On 24 August 2010, the Claimant filed a 6-month Emergency Advance Payment (EAP) for \$60,883.22 in lost profits with the GCCF. The GCCF assigned the Claimant ID # [REDACTED] and Claim [REDACTED] to the EAP claim. On 22 October 2010, the Claimant filed a supplemental EAP for \$131,267.00 in lost profits with the GCCF. The GCCF assigned Claim [REDACTED] to this supplemental claim. Both claims were denied.⁴

The NPFC denied the claim on February 15, 2011, on the basis the evidence provided does not support Claimant's allegation that it lost profits due to the Deepwater Horizon incident. The Determination to deny the claim explained that while the profit and loss statements reflected a loss of profits, there was not sufficient or detailed documentation to establish that the loss was due to the incident. The geographic map indicated that some producers were located near the Gulf but that the total population of Producers suggests proportionately that there are a greater number of producers far removed from the Gulf area. Thus without specific and detailed financial documents reflecting losses for direct sales or Producers located in the Gulf, Claimant did not establish that its loss of profits was due to the Deepwater Horizon incident. The NPFC denied the alleged loss of \$330,962.45.

REQUEST FOR RECONSIDERATION:

On April 20, 2011, the Claimant mailed via priority mail a request for reconsideration to the NPFC stating he would like the NPFC to reconsider his claim. The NPFC received the request on April 26, 2011. Based on the 60-day time frame the Claimant's request for reconsideration was due on April 16, 2011. The Claimant's denial letter specifically states in part..." 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." The Claimant did not seek an extension of time nor did he provide additional facts or legal argument to support the request for reconsideration.

RECONSIDERATION CLAIM ANALYSIS:

NPFC Determination on Reconsideration

The Director, NPFC, upon written request of the claimant reconsiders any claim denied. The request for reconsideration must be in writing and include the factual or legal grounds for the

³ Optional OSLTF Claim Form dated 02 November 2010.

⁴ Claimant also filed a Final Payment claim with the GCCF. This claim is under review.

relief requested, providing any additional support for the claim. The request must be received by the Director, NPFC, within 60 days after the date the denial was mailed to the Claimant. 33 CFR 136.115(d).

The Claimant request for reconsideration must have been received at the NPFC by close of business on April 16, 2011 and must have provided all information to the NPFC in support of his request. As of the date of this determination, the Claimant failed to submit his official request for reconsideration in a timely manner as provided for in his initial denial letter dated February 15, 2011. Therefore the NPFC denies the claim on reconsideration on the grounds that the Claimant has failed to timely (1) provide additional factual or legal grounds that would demonstrate a loss of profits in the amount requested and (2) demonstrate that the loss, if one had been established, was due to injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of discharge of oil. This claim is denied upon reconsideration.

Claim Supervisor: 

Date of Supervisor's review: 4/27/11

Supervisor Action: *Denial on reconsideration approved*

Supervisor's Comments:

U.S. Department
of Homeland
Security

United States
Coast Guard



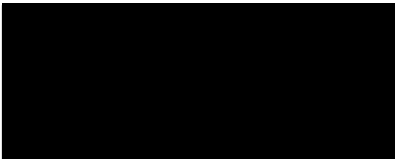
Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd., Suite 1000



CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]



5890/DWHZ
Claim # N10036-0050
15 February 2011

Re: Claim Number: N10036-0050

Dear [REDACTED],

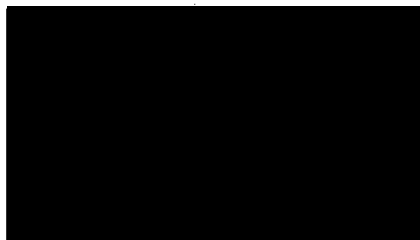
The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies your claim. Please see the attached Claim Summary / Determination Form for further explanation.

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 N10036-0050.

Mail reconsideration requests to:

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



Claims Manager

Enclosures: (1) Claim Summary/Determination Form
(2) Summary of Documentation Provided by Claimant

CLAIM SUMMARY / DETERMINATION FORM

Date	15 February 2011
Claim Number	N10036-0050
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
Claim Manager	[REDACTED]
Amount Requested	\$330,962.45

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 was discharged from an offshore facility associated with the Deepwater Horizon and located on the Mississippi Canyon, Block 252 (the Deepwater Horizon incident). This area was leased by BP Exploration and Production, Inc. (BP). The Coast Guard designated the offshore facility as the source of the discharge and BP as the responsible party (RP) for the discharge. BP accepted the designation, advertised its OPA claims process, and compensated claimants. On 23 August 2010, the Gulf Coast Claims Facility (GCCF) began accepting and adjudicating claims on behalf of BP.

CLAIM AND CLAIMANT

On 04 November 2010, [REDACTED] (Claimant), presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Funds Center (NPFC) seeking \$330,962.45 in lost profits and earnings resulting from the Deepwater Horizon incident.

Claimant is an outdoor furniture manufacturer, distributor and sales business headquartered in Corpus Christi, Texas. The Claimant asserts that "we manufacture, sell and distribute high quality wooden outdoor/beach Adirondack style furniture along the Gulf Coast from Texas to Florida to individuals, resorts, garden stores, beach stores, etc. . . ."¹

Claimant offers various furniture designs and styles with some custom pieces featuring various college sports team's logos. Claimant sells products to end users through its website and also offers "Producer Packages" to individuals who are interested in becoming independent distributors and producers of the company's products. "Producer Packages" are comprised of materials, templates and furniture designs necessary to assemble the style of products produced by the company.² When an individual purchases a producer package and becomes a producer, Claimant provides the producer with materials and sales support.

Producers are not limited to any specific geographic areas and the producer program is marketed as an opportunity for individuals to work out of their homes to earn income or to supplement their existing employment. Claimant utilizes producers, who are located within proximity of sales orders, to assemble furniture and deliver the final product to customers as a means of reducing shipping costs and transit times for delivery. Producers can obtain their own product orders directly from customers and or can receive production and sales orders from Claimant. Claimant's business model appears to be largely contingent upon sales to producers. Sales of producer packages seem to outweigh the volume of sales to end users or retail customers.

Claimant asserts that no orders were received from the Gulf Coast area as a result of the Deepwater Horizon incident. Claimant estimates that "sales were off over 57% and profits down over 250% and we expect this downturn to extend through the end of 2010."³

¹ Optional OSLTF Claim Form dated 02 November 2010.

² Conference call, held on 09 December 2010, between the Claimant and NPFC representatives.

³ Optional OSLTF Claim Form dated 02 November 2010.

09/21/11
ENCLOSURE

FOIA2011-3380-0000222

APPLICABLE LAW

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a). Damages include the loss of profits or impairment of earning capacity due to the injury, destruction or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant. 33 U.S.C. § 2702(b)(2)(E).

The OSLTF, which is administered by the NPFC, 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. With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

Pursuant to the claims regulations, 33 C.F.R. § 136.233, a claimant must establish the following to prove loss of profits or impairment of earning capacity:

- (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.
- (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.

DETERMINATION OF LOSS

Claimant's Submission

To support the claim, Claimant provided various forms of documentation detailed in enclosure (2). Claimant provided tax return filings from 2007 through 2009 and financial statements from 2007 through 2009. The NPFC requested the Claimant to provide documentation identifying the type of customers the business sold products to, the locations of its customers and the type of industries served. In response to

this request, Claimant provided bank statements and sales invoices to support customer specific transactions.⁴

On 24 June 2010, the Claimant filed an initial claim with the responsible party (BP) and was assigned Claimant # [REDACTED]. The Claim was denied. On 24 August 2010, the Claimant filed a 6-month Emergency Advance Payment (EAP) for \$60,883.22 in lost profits with the GCCF. The GCCF assigned the Claimant ID # [REDACTED] and Claim # [REDACTED] to the EAP claim. On 22 October 2010, the Claimant filed a supplemental EAP for \$131,267.00 in lost profits with the GCCF. The GCCF assigned Claim # [REDACTED] to this supplemental claim. Both claims were denied.⁵

NPFC Determination

This claim is denied because the evidence provided does not support Claimant's allegation that it lost profits as a result of the Deepwater Horizon incident. 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. § 136.233, a claimant must establish loss of profits or impairment of earning capacity.

Claimant provided financial statements to demonstrate a reduction in net profits. Profits and Loss statements were provided from January 2007 through October 2010 to show the historical sales and the most current data available at the time. In the 6 months following the Deepwater Horizon incident, May through October 2010, gross sales appear to decline when compared to the prior year. Gross sales for this period during 2010 total \$445,163.00 compared with \$758,968.00 during 2009—a difference of \$313,805.00. The aforementioned difference is only in regards to gross sales and not net profits. Although there is some indication of a reduction in sales, these figures represent total sales for the company, which are not exclusive to any particular type of customer or geographical area.

The NPFC requested that Claimant provide documentation linking this general decline with his business in the Gulf Coast region, which would suggest impact from the Deepwater Horizon incident. In response to the NPFC's initial request for data supporting specific customer information, Claimant stated that its accounting data did not contain a customer specific sales ledger to identify customers.⁶ As sales ledgers were not available, Claimant provided bank statements and asserted that those statements would indicate the customer names in a manner where the NPFC could identify the type of businesses that products were sold to.⁷ It should be noted that on Claimant's optional OSLTF claim form, Claimant indicated that products were sold to "individuals, resorts, garden stores, beach stores, etc."⁸ Upon review of the bank statements, the statements were inconclusive and did not distinguish the customer names and the nature of the deposits.⁹ The bank statements presumably illustrate sales to "producers," but they do not identify specific customers or end users of the products as Claimant had suggested.

The Claimant also provided a map, showing the geographical areas of its producers, to prove that many of its customers and producers were located near the Gulf.¹⁰ The map shows many producers located throughout the Southeast, Midwest and East Coast of the United States. A smaller number of producers are located within the western region of the country. The map, all in all, does indicate that there are producers located near the Gulf; however, the total population of producers suggests proportionately there are a greater number of producers far removed from the Gulf area. Based on the volume of the producers indicated on the map, it would seem unlikely that the decline in sales as evidenced through the 2010 Profit and Loss statements would have solely been caused by a reduction in sales in the Gulf region. This map also only relates to the locations of producers, not customers. The NPFC notes, however, that

⁴ Refer to Enclosure (2) for specific submission documentation.

⁵ Claimant also filed a Final Payment claim with the GCCF. This claim is under review.

⁶ Conference call, held on 09 December 2010, between the Claimant and NPFC representatives.

⁷ Conference call, held on 09 December 2010, between the Claimant and NPFC representatives.

⁸ Optional OSLTF Claim Form dated 02 November 2010.

⁹ Additional information documentation presented on 27 December 2010 and 03 January 2011.

¹⁰ Map titled "Texas, United States, North America, bp."

existing producers, per Claimant's website, as of 17 August 2010 were reporting "record sales despite the economy."¹¹

Although Claimant asserted that its business declined because of a specific segment of customers (those in Gulf region),¹² no documentation has been provided to identify the actual customer or end users of the products. On 05 January 2011, the NPFC contacted the Claimant to explain the burden of proof for demonstrating causation between the Deepwater Horizon incident and its asserted impact on Claimant's woodworking business.¹³ A second request for invoices to substantiate the impact on Claimant's Gulf Coast customers resulted in forty-one (41) invoices, covering sales from November 2003 through October 2010.¹⁴ A minimal number of the invoices actually pertained to the Gulf Coast area.¹⁵

Based upon the paragraphs above, the evidence presented does not support Claimant's allegation that the business lost profits as a result of the Deepwater Horizon incident. Accordingly, his claim is denied.

Claim Supervisor:



Date of Review:

2/6/11

Supervisor's Actions:

Denial 2/6/11

Supervisor's Comments:

¹¹ Claimant's submission and website at [REDACTED] (last visited 13 February 2011).

¹² Optional OSLTF Claim Form dated 02 November 2010.

¹³ Conversation between Claimant and the NPFC on 04 January 2011.

¹⁴ Additional information received on 18 January 2011.

¹⁵ Claimant explained that most of the cash sales had no documentation as there was an inherent liability for the company in storing sensitive information and therefore that data wouldn't be available.

Enclosure (2)
Summary of Documentation Provided by Claimant N10036-0050

1. Income tax forms: 2007 (Form 1040 Schedule C)
2. 2008 (Form 1120S, Schedule K-1, Form 4562)
3. 2009 (Form 1120S, Schedule K-1, Form 4562)
4. P&L statements: 2007, 2008 and 2009
5. Balance sheets: 2007, 2008 and 2009
6. P&L statements: May-Sept 2007, 2008 and 2009
7. P&L statements: Jan-April 2007, 2008 and 2009
8. [REDACTED] product brochure
9. "Witness Information" statement for [REDACTED]
10. Financial Data Spreadsheet provided by the Claimant on 13 December 2010
11. Additional Information received by the NPFC on 15 December 2010 including—
 - a. Letter dated 06 December 2010 response to Item 2 (cancelled orders)
 - b. [REDACTED] Performance Report 12 January through 31 October 2010
 - c. Claimant invoice #2230 dated 27 August 2010
 - d. Claimant invoice #2237 dated 02 September 2010
 - e. Claimant invoice #2088 dated 28 May 2010
 - f. Letter dated 06 December 2010 response to Item 1
 - g. 3 page business description
 - h. Letter dated 06 December 2010 response to Item 2 (expenses)
 - i. Letter dated 06 December 2001 response to Item 3 (2 pages)
 - j. Letter dated 06 December 2010 response to Item 4
 - k. Letter dated 06 December 2010 response to Item 5
 - l. Letter dated 06 December 2010 response to Item 6
 - m. Letter dated 06 December 2010 response to Item 7
 - n. Letter dated 06 December 2010 response to Item 8
 - o. Letter dated 06 December 2010 response to Item 9
12. Claimant 2009 bank deposit received 13 December 2010
13. Additional Information received by the NPFC on 17 December 2010 including—
 - a. Claimant GCCF claim application
 - b. Items 1-17 with supporting documentation
 - c. Map titled "Texas, United States, North America, bp"
14. Additional Information received by the NPFC on 20 December 2010 including—
 - a. Bank statements 2009 (complete year) & 2010 (through November)
15. Additional Information received by the NPFC on 27 December 2010 including—
 - a. Credit card processing statements for 2009 (complete year) and 210 (through November, missing January)
16. Additional Information received by the NPFC on 03 January 2011 including—
 - a. Credit card processing statement for January 2010
17. Additional Information received 18 January 2011 including—
 - a. Email correspondence dated 09 January 2011 with 3 responses
 - b. Assorted invoices from a sampling of Claimant's accounts in Texas, Louisiana, Mississippi, Georgia and Florida

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)

5890 DWHZ
03 February 2011
N10036-0051

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]

[REDACTED]

RE: Claim Number: N10036-0051

Dear [REDACTED],

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number N10036-0051 involving the Deepwater Horizon incident. Please see the enclosed 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 N10036-0051.

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 Manager

Enclosure: Claim Summary / Determination Form
09/13/11

FOIA2011-3380-00000227

CLAIM SUMMARY / DETERMINATION FORM

Date : 03 February 2011
Claim Number : N10036-0051
Claimant : [REDACTED]
Type of Claimant : Private (US)
Type of Claim : Loss of Profits and Earning Capacity
Claim Manager : [REDACTED]
Amount Requested : \$72,000.00

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 was discharged from an offshore facility associated with the Deepwater Horizon and located on the Mississippi Canyon, Block 252 (the Deepwater Horizon incident). This area was leased by BP Exploration and Production, Inc. (BP). The Coast Guard designated the offshore facility as the source of the discharge and BP as the responsible party (RP) for the discharge. BP accepted the designation, advertised its OPA claims process, and compensated claimants. On 23 August 2010, the Gulf Coast Claims Facility (GCCF) began accepting and adjudicating claims on behalf of BP.

CLAIM AND CLAIMANT

On 03 November 2010, [REDACTED] (Claimant), presented an Optional Oil Spill Trust Fund (OSLTF) claim form to the National Pollution Fund Center (NPFC). The claim form alleged \$72,000 in lost profits and earnings capacity, resulting from the Deepwater Horizon incident.

Claimant is an oysterman from Louisiana. He pilots oyster boats and harvests oysters from private leases and public grounds in Louisiana. In April 2010, Claimant entered into an agreement with [REDACTED] to operate [REDACTED] oyster vessel (LA-7091-JV) and harvest [REDACTED] private oyster leases in Areas 11 & 12 (see figure 1).¹ According to this agreement, gross profits from the sale of harvested oysters were to be split 50/50 between [REDACTED]

Claimant asserts that Area 11 opened to harvesting on 15 May 2010. From 18-20 May 2010, Claimant harvested oysters from [REDACTED] private leases; however, after 20 May 2010, Claimant alleges that he was not allowed to work because "[the] Area[s] closed due to the oil spill."²

Claimant estimates his total lost profits from the closure of Areas 11 & 12 to be \$72,000.00.

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 waters or adjoining shorelines or the exclusive economic zone, as described in § 2702(b) of OPA.

¹ Claimant faxed response to NPFC Info Request received 29 November 2010, Explanation of claimant's employment as oyster fisherman.

² Handwritten timeline (18-21 May 2010) detailing claimant's lost profits.

The OSLTF which is administered by the NPFC, is available, pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136, to pay claims for uncompensated damages. 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.

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.
- (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 undertake, 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.

DETERMINATION OF LOSS

Claimant's Submission:

To support his claim, Claimant provided the following:

- 1. Optional OSLTF claim form;
- 2. BP letter addressed to claimant dated 16 August 2010;
- 3. Handwritten timeline (18-21 May 2010) detailing Claimant's lost profits;
- 4. Louisiana trip ticket landings data for Claimant dated 06 August 2010 (5 pages);
- 5. DHH status of harvest areas (undated);
- 6. Claimant faxed response to NPFC Info Request received 29 November 2010 (10 pages);
 - a. Cover sheet
 - b. Explanation of Claimant's employment as oyster fisherman (2 pages)
 - c. Check from GCCF to Claimant in the amount of \$9,200.00
 - d. [REDACTED] receipts (22 & 24 May 2010)

e. [REDACTED] Receipt #1880079, 1879824, 1880210, 1975267, 1976208 (5pages.

Claimant seeks \$72,000.00 for lost profits resulting from the state of Louisiana's closure of Areas 11 & 12 in response to the Deepwater Horizon incident.

On May 10, 2010, Claimant filed a claim with BP. BP paid Claimant \$32,676.00. On 23 August 2010, Claimant filed a claim with the GCCF for an Emergency Advance Payment in the amount of \$43,176.00 for lost profits. GCCF assigned him Claimant ID # [REDACTED] and Claim # [REDACTED]. GCCF released a check dated 11 September 2010 in the amount of \$9,200.00 as payment on this claim.

To date, the Claimant has received the following compensation:

From BP Claims:	\$32,676.00
From GCCF:	<u>\$9,200.00</u>
Total Compensation:	\$41,876.00

On 03 November 2010, [REDACTED] filed a claim for \$72,000 in lost profits and earnings capacity, resulting from the Deepwater Horizon incident, with the NPFC.³

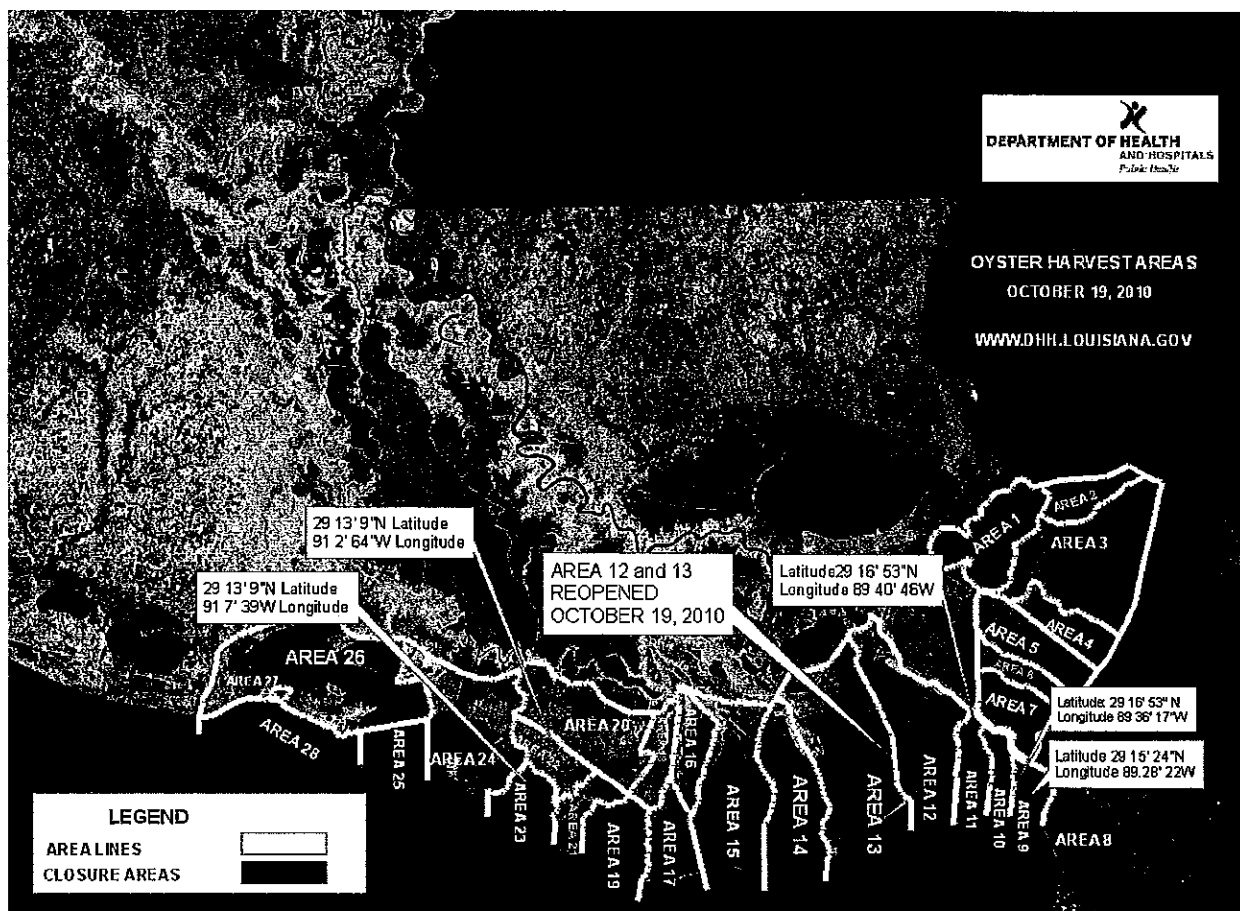


Figure 1. Oyster Harvesting Areas 11 & 12 from the Louisiana Department of Health and Hospital records dated 19 October 2010.

NPFC Analysis:

This claim is denied because, as described below, the analysis of the asserted losses as compared compensation provided by the responsible party indicate4s that the Claimant has been fully compensated by the responsible party. In making this analysis, the NPFC accepted claimant assertions and statement for the purposes of the comparison without challenging evidentiary support, causation or the possibility of mitigating losses.

On 23 May, 2010, the Louisiana Department of Health and Hospitals (DHH) announced the closure of harvest areas 11 & 12, among others, "as a precautionary response to the BP oil spill in the Gulf."⁴ These areas remained closed until DHH announced the reopening of area 12 on 19 October 2010.⁵

The NPFC accordingly uses 23 May to 19 October 2010 as the duration of Claimant's lost profits. This period covers 21 weeks.⁶

Claimant estimated his daily loss of profits to be \$600.00, and he alleged that he worked 6 day weeks. Claimant further used a 20 week closure period to calculate his total lost profits claim.

Estimated daily loss of profits:	\$600.00
Days worked a week:	<u>x 6</u>
Weekly loss:	\$3,600.00
Weeks in closure period:	<u>x 20</u>
Total loss profits:	\$72,000.00

To calculate Claimant's total loss of profits, the NPFC will do the following:

- 1) determine an average daily sack total that Claimant could harvest from Areas 11 & 12 and the market price that he could sell those sacks for during the closure period;
- 2) multiply those figures to determine Claimant's daily gross revenue;
- 3) identify and subtract Claimant's typical operational expenses from this total to determine daily net profits;
- 4) determine the number of days Claimant would likely work per week during the closure period based upon prior periods;
- 5) multiply this figure by the daily net profits to determine weekly net profits;
- 6) multiply this weekly total by 21 weeks (the duration of the closure) to determine Claimant's total net profits during the closure period
 - a. this amount will be Claimant's loss of profits resulting from the closure in response to the Deepwater Horizon incident.

To determine an average sack total, the NPFC reviewed Claimant's Louisiana Trip Ticket Landings Data for Areas 11 & 12. Claimant only provided landings data from 2006, 2007, 2009 and 2010.⁷ The average of Claimant's sack totals from these years is 36.67 or 37 sacks (see figure 3).

We note that the 3 days in 2010 when Claimant sold oyster sacks, these sacks sold for \$11.00. Claimant explained that this figure represented his half of the selling price, which means that the

⁴ DHH Department News for 23 May 2010.

⁵ DHH Department News for 28 October 2010.

⁶ [REDACTED] noted that he anticipated harvesting his private leases through the end of September when the public grounds would generally open up.

⁷ Claimant explained that he may have been injured in 2008 and could not harvest oysters. FOIA2011-3380-0000231

oyster sacks actually sold for \$22.00. We will use \$11.00 to calculate Claimant's daily gross revenues.⁸

Selling price per sack:	\$11.00
Daily sack average:	<u>x 37</u>
Daily gross:	\$407.00

Claimant explained that his operational expenses include deckhand pay, fuel, and food. A check from [REDACTED], dated 22 May 2010, reveals that Claimant's deckhand, [REDACTED] earned \$195.00 for the harvest of 65 sacks. This amounts to \$3.00 per sack. Additionally, daily fuel cost about \$15.00 and daily food \$20.00.

Deckhand pay:	\$3.00
Daily sack average:	<u>x 37</u>
Daily average deckhand earnings:	\$111.00
Fuel:	\$15.00
Food: ⁹	<u>+ \$20.00</u>
Total daily expenses:	\$146.00

Daily gross:	\$407.00
Total daily expenses:	<u>- \$146.00</u>
Daily net profits:	\$261.00

Claimant asserted that he would have worked 6 day weeks for the duration of the closure of Areas 11 & 12. Although we note that Claimant's Trip Ticket Landings Data do not indicate that Claimant ever worked a 6 day week in 2006, 2007, 2009 or 2010, we will use the 6 day work figure for the purposes of calculating Claimant's losses from the closure.

Daily net profits:	\$261.00
Work week:	<u>x 6</u>
Weekly net:	\$1,566.00
Weeks in closure period:	<u>x 21</u>
Claimant's total lost profits:	\$32,886.00

Claimant's total lost profits is \$32,886.00. We lastly determine the degree to which Claimant has been compensated for his losses.

To date, the Claimant has received the following compensation:

From BP Claims:	\$32,676.00
From GCCF:	<u>\$9,200.00</u>
Total Compensation:	\$41,876.00
Claimant's loss:	<u>-\$32,886.00</u>
Overcompensation:	\$8,990.00

⁸ It isn't clear from the Trip Ticket Landings Data whether the price per sack from 2006, 2007 2009 & 2010 is the whole price or claimant's half.

⁹ Food and Fuel estimates are based upon PHONECON between [REDACTED] (NPFC) and Claimant dtd 02 February 11 and PHONECON between [REDACTED] (NPFC) and Claimant's employer dtd 02 February 11.

Claimant has been fully compensated for his losses. His claim to the NPFC is accordingly denied.

Claim Supervisor:



Date of Review:

2/4/11

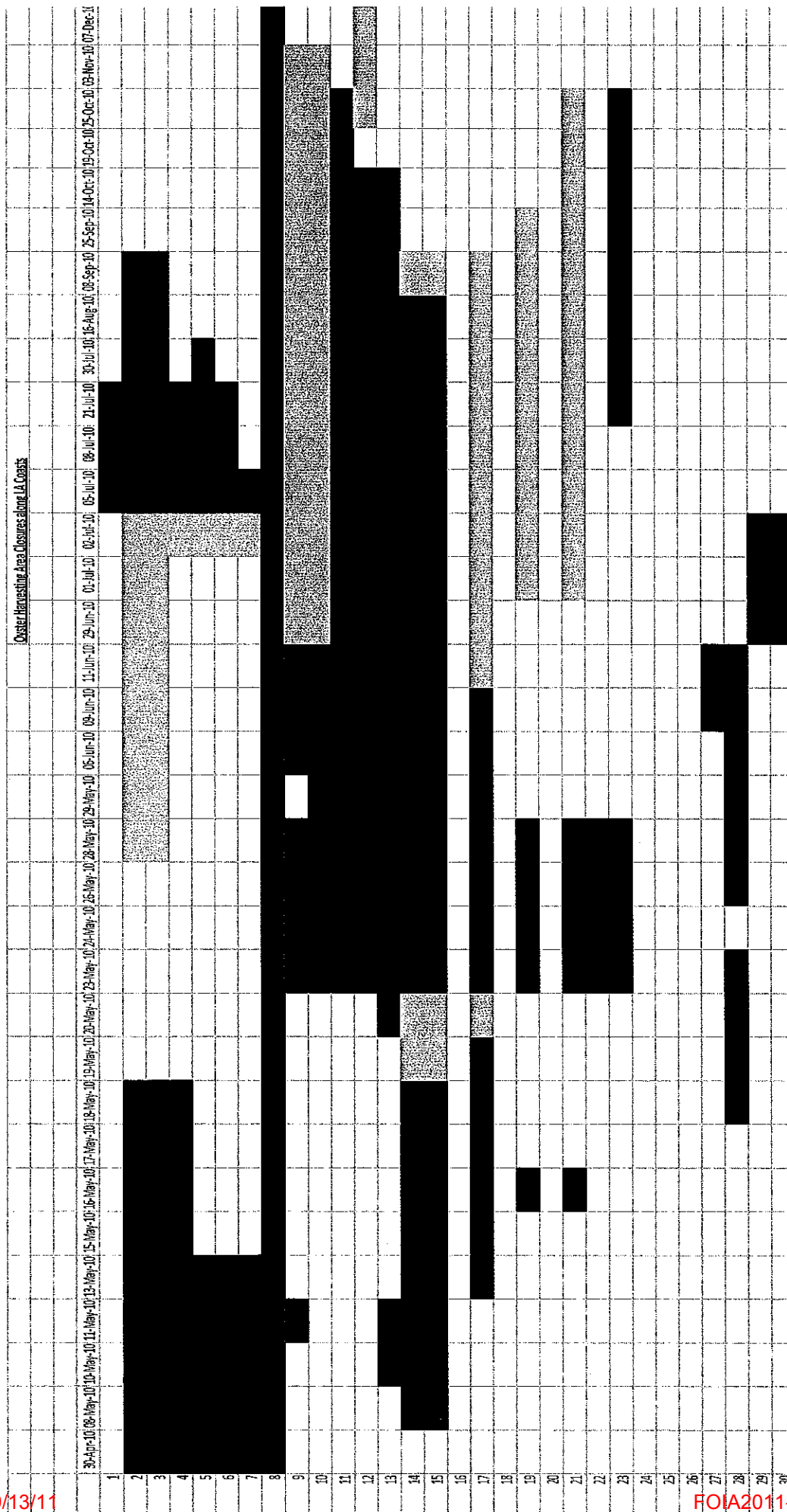
Supervisor's Actions:

Denial of loss

Supervisor's Comments:

Figure 2. Louisiana Department of Health and Hospitals Oyster Bed Closure Summary Report

09/13/11



FOIA2011-3380-0000234

Figure 3. Trip Ticket Landings Data for Areas 11 & 12.

Date	Sacks	Price per sack	Total Gross	Expenses	Net
08/22/2006	55	\$ 14.00	\$ 770.00	205	\$ 565.00
08/23/2006	35	\$ 14.00	\$ 490.00	145	\$ 345.00
08/24/2006	40	\$ 14.00	\$ 560.00	160	\$ 400.00
08/28/2006	55	\$ 14.00	\$ 770.00	205	\$ 565.00
08/29/2006	53	\$ 14.00	\$ 742.00	199	\$ 543.00
08/30/2006	43	\$ 14.00	\$ 602.00	169	\$ 433.00
08/31/2006	45	\$ 14.00	\$ 630.00	175	\$ 455.00
09/06/2006	14	\$ 22.00	\$ 308.00	82	\$ 226.00
09/07/2006	41	\$ 22.00	\$ 902.00	163	\$ 739.00
09/08/2006	31	\$ 23.00	\$ 713.00	133	\$ 580.00
09/09/2006	30	\$ 23.00	\$ 690.00	130	\$ 560.00
09/14/2006	23	\$ 23.00	\$ 529.00	109	\$ 420.00
09/21/2006	51	\$ 14.00	\$ 714.00	193	\$ 521.00
09/22/2006	52	\$ 14.00	\$ 728.00	196	\$ 532.00
09/23/2006	53	\$ 14.00	\$ 742.00	199	\$ 543.00
09/26/2006	50	\$ 14.00	\$ 700.00	190	\$ 510.00
09/27/2006	54	\$ 14.00	\$ 756.00	202	\$ 554.00
09/28/2006	54	\$ 14.00	\$ 756.00	202	\$ 554.00
10/02/2006	51	\$ 15.00	\$ 765.00	193	\$ 572.00
10/03/2006	20	\$ 15.00	\$ 300.00	100	\$ 200.00
10/04/2006	56	\$ 15.00	\$ 840.00	208	\$ 632.00
10/05/2006	51	\$ 15.00	\$ 765.00	193	\$ 572.00
03/01/2007	20	\$ 25.00	\$ 500.00	100	\$ 400.00
03/02/2007	40	\$ 25.00	\$ 1,000.00	160	\$ 840.00
03/05/2006	29	\$ 25.00	\$ 725.00	127	\$ 598.00
03/06/2007	39	\$ 25.00	\$ 975.00	157	\$ 818.00
03/07/2009	42	\$ 25.00	\$ 1,050.00	166	\$ 884.00
03/08/2010	40	\$ 25.00	\$ 1,000.00	160	\$ 840.00
03/12/2007	30	\$ 25.00	\$ 750.00	130	\$ 620.00
03/16/2007	8	\$ 25.00	\$ 200.00	64	\$ 136.00
03/19/2007	30	\$ 25.00	\$ 750.00	130	\$ 620.00
03/20/2007	30	\$ 25.00	\$ 750.00	130	\$ 620.00
03/21/2007	35	\$ 25.00	\$ 875.00	145	\$ 730.00
03/26/2007	7	\$ 25.00	\$ 175.00	61	\$ 114.00
03/27/2007	30	\$ 25.00	\$ 750.00	130	\$ 620.00
03/28/2007	30	\$ 25.00	\$ 750.00	130	\$ 620.00
03/29/2007	27	\$ 25.00	\$ 675.00	121	\$ 554.00
04/02/2007	26	\$ 25.00	\$ 650.00	118	\$ 532.00
04/03/2007	32	\$ 25.00	\$ 800.00	136	\$ 664.00
04/04/2007	40	\$ 25.00	\$ 1,000.00	160	\$ 840.00
04/11/2007	45	\$ 25.00	\$ 1,125.00	175	\$ 950.00
04/16/2007	34	\$ 25.00	\$ 850.00	142	\$ 708.00
04/17/2007	34	\$ 25.00	\$ 850.00	142	\$ 708.00
04/18/2007	50	\$ 25.00	\$ 1,250.00	190	\$ 1,060.00
04/19/2007	16	\$ 25.00	\$ 400.00	88	\$ 312.00
04/26/2007	26	\$ 25.00	\$ 650.00	118	\$ 532.00
04/30/2007	30	\$ 25.00	\$ 750.00	130	\$ 620.00
05/01/2007	38	\$ 25.00	\$ 950.00	154	\$ 796.00
05/02/2007	45	\$ 25.00	\$ 1,125.00	175	\$ 950.00
05/03/2007	35	\$ 25.00	\$ 875.00	145	\$ 730.00
05/05/2007	36	\$ 25.00	\$ 900.00	148	\$ 752.00
05/07/2007	30	\$ 25.00	\$ 750.00	130	\$ 620.00
05/08/2007	35	\$ 25.00	\$ 875.00	145	\$ 730.00
05/09/2007	31	\$ 25.00	\$ 775.00	133	\$ 642.00
05/10/2007	40	\$ 25.00	\$ 1,000.00	160	\$ 840.00
05/15/2007	34	\$ 25.00	\$ 850.00	142	\$ 708.00
05/16/2007	50	\$ 25.00	\$ 1,250.00	190	\$ 1,060.00
05/17/2007	30	\$ 25.00	\$ 750.00	130	\$ 620.00
05/23/2007	24	\$ 25.00	\$ 600.00	112	\$ 488.00
05/24/2007	61	\$ 25.00	\$ 1,525.00	223	\$ 1,302.00
05/25/2007	30	\$ 25.00	\$ 750.00	130	\$ 620.00
05/26/2007	34	\$ 25.00	\$ 850.00	142	\$ 708.00
05/28/2007	31	\$ 25.00	\$ 775.00	133	\$ 642.00
05/29/2007	44	\$ 25.00	\$ 1,100.00	172	\$ 928.00
05/30/2007	51	\$ 25.00	\$ 1,275.00	193	\$ 1,082.00
05/31/2007	52	\$ 25.00	\$ 1,300.00	196	\$ 1,104.00
06/03/2007	30	\$ 25.00	\$ 750.00	130	\$ 620.00
06/05/2007	50	\$ 25.00	\$ 1,250.00	190	\$ 1,060.00
06/06/2007	47	\$ 25.00	\$ 1,175.00	181	\$ 994.00
06/15/2007	40	\$ 25.00	\$ 1,000.00	160	\$ 840.00
06/19/2007	40	\$ 25.00	\$ 1,000.00	160	\$ 840.00
06/21/2007	12	\$ 25.00	\$ 300.00	76	\$ 224.00
06/22/2007	32	\$ 25.00	\$ 800.00	136	\$ 664.00
09/05/2007	18	\$ 19.00	\$ 342.00	94	\$ 248.00
09/10/2007	21	\$ 18.00	\$ 378.00	103	\$ 275.00
09/13/2007	29	\$ 18.00	\$ 522.00	127	\$ 395.00
05/18/2010	5	\$ 11.00	\$ 55.00	55	\$ -
05/19/2010	60	\$ 11.00	\$ 660.00	220	\$ 440.00
05/20/2010	55	\$ 11.00	\$ 605.00	205	\$ 400.00
average =	36.67089				

09/13/11

FOIA2011-3380-0000235

U.S. Department
of Homeland
Security

United States
Coast Guard



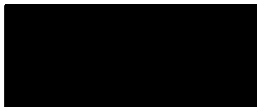
Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd., Suite 1000
Arlington, VA 20598-7100
Staff Sergeant (CA)



CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: [REDACTED]

5890/DWHZ
Claim # N10036-0052
16 February 2011



Re: Claim Number: N10036-0052

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with 33 C.F.R. Part 136, denies your claim. Please see the enclosed Claim Summary / Determination Form for further explanation.

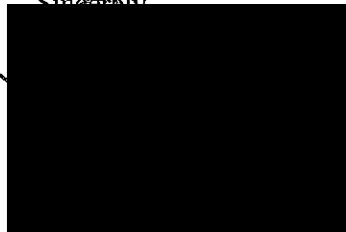
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-0052.

Mail reconsideration requests to:

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

Sincerely,



Claims Manager

Enclosure: Claim Summary/Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Date	16 February 2011
Claim Number	N10036-0052
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
Claim Manager	[REDACTED]
Amount Requested	\$45,528.00

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

CLAIM AND CLAIMANT

On 04 November 2010 [REDACTED] (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Funds Center (NPFC) seeking \$45,528.00 in lost profits & earnings. Claimant asserts that he had reduced earnings from his employment selling insurance products for [REDACTED].

Claimant began working for Liberty on 01 July 2009 as an insurance salesman. Claimant asserts that he typically sold insurance products to employees of companies within the hotel, restaurant and cleaning industries.¹ Claimant believes his sales within these industries in and near Destin, Florida, were impacted, causing him reduced commissions from existing and new accounts. Claimant indicates that his typical clients' employment and earnings were impacted by the Deepwater Horizon oil spill, resulting in reduced opportunities for him to sell his insurance products. Claimant also asserts that many existing clients cancelled their insurance policies because of losing their jobs or having cutbacks in hours. For clients who cancelled policies, [REDACTED] would chargeback (debit) commissions on policies in effect less than one year—a significant impact since Claimant had worked there less than one year. Claimant was paid no salary at [REDACTED], only commissions. Claimant left [REDACTED] for another job.

APPLICABLE LAW

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a). Damages include the loss of profits or impairment of earning capacity due to the injury, destruction or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant. 33 U.S.C. § 2702(b)(2)(E).

The OSLTF, which is administered by the NPFC, 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. With certain exceptions, a claim must first be presented to the

¹ Claimant letter explaining his employment and impact from the Deepwater Horizon oil spill.

responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

Pursuant to the claims regulations, 33 C.F.R. § 136.233, a claimant must establish the following to prove loss of profits or impairment of earning capacity:

- (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.
- (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.

DETERMINATION OF LOSS

Claimant's Submission

To support his claim, Claimant provided the following documentation:

- OSLTF claim form dated 04 November 2010;
- Claimant letter titled “[Claimant] income 2009 vs 2010;”
- Claimant email to the NPFC dated 13 December 2010;
- Claimant letter detailing page-by-page contents of claim submission;
- Claimant letter explaining his employment and impact from the Deepwater Horizon incident;
- Claimant email titled “to look over b4 I send to all. . . .;”
- Claimant email to [REDACTED];
- Claimant 2009 W-2 from [REDACTED];

- Claimant 2009 W-2 misc income;
- Earnings statement from October 2010;
- Various bank statements;
- Claimant 2009 1040;
- Letter from [REDACTED] dated 09 August 2010;
- Additional information received by the NPFC 14 December 2010 including—
 - 1) Letter from [REDACTED] showing Claimant's gross earnings for 2009 & 2010
 - 2) [REDACTED] contract with appendices
 - 3) Commission report 2009-2010
- Additional information received by the NPFC 16 December 2010 including—
 - 1) Claimant deposits for 2009 & 2010
- Additional information received by the NPFC 12 January 2011 including—
 - 1) Claimant client list

The Claimant asserts that he typically sells insurance products to employees of companies associated with the hospitality and tourism industry. He asserts that certain industries were negatively impacted by the Deepwater Horizon oil spill, which in turn affected his ability to earn sales commissions. Claimant also asserts that existing accounts were cancelled prematurely, resulting in chargebacks or deductions to Claimant's commissions. He seeks \$45,528.00 in lost profits & earnings, the alleged impact of the Deepwater Horizon incident on his business.

On 23 August 2010, the Claimant filed a six-month Emergency Advance Payment (EAP) claim for \$19,600.00 in lost profits and earnings with the GCCF. He was assigned Claimant ID # [REDACTED] and Claim # [REDACTED]. On 29 October 2010, the GCCF denied this claim. The NPFC verified this information.³

NPFC Determination

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. § 136.233, a claimant must establish loss of profits or impairment of earning capacity. The NPFC considered all the documentation submitted by the Claimant.

Claimant has not provided documentary evidence to support the causal link between the Deepwater Horizon oil spill and his ability to earn commissions or to support that chargebacks were the result of the Deepwater Horizon oil spill. Claimant has indicated that he sold insurance products to individuals through their respective employers and within certain industries. Claimant speculates that there were fewer employees working within the businesses that he typically sells insurance to and a reduction in income and discretionary spending for those individuals who were still employed.

Claimant indicated that he cannot contact his former customers for documentation that might support his claim due to a non-disclosure agreement with [REDACTED]. Claimant did provide names of 16 references, indicated as former clients, which represented a bulk of his business. The NPFC contacted each of those references. Two companies confirmed that they had done business with the Claimant, that they had suffered serious financial distress due to the Deepwater

² Letter from [REDACTED] dated 9 August 2010. Claimant's correspondence refers to [REDACTED] as Claimant's manager and boss.

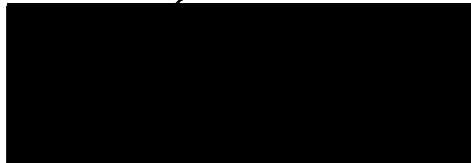
³ On 29 November 2010, the Claimant also filed a Final Payment claim with the GCCF. This claim is still under review.

Horizon oil spill and that they had been paid by the GCCF. The other 14 references could not confirm doing business with Claimant or with Liberty, or reported that their business had not been seriously impacted by the Deepwater Horizon oil spill.

Although Claimant provided Commission Account statements that indicate the names of the individual customers who caused a loss of income for Claimant via chargebacks, sufficient causation doesn't exist without further connection of those individual customers to businesses that have been definitively damaged by the Deepwater Horizon oil spill.

The claim is denied because the alleged loss in the amount of \$45,528 has not been shown as due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil. Claimant has not provided sufficient documentary evidence to support a loss of earnings, resulting from the Deepwater Horizon oil spill

Claim Supervisor:



Date of Review:

2/17/11

Supervisor's Actions:

Denial of claim

Supervisor's Comments:

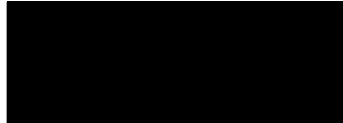
U.S. Department
of Homeland
Security

United States
Coast Guard



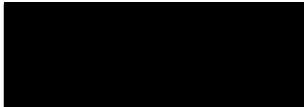
Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd., Suite 1000
Arlington, VA 20598-7100



BY EMAIL AND REGULAR MAIL

5890/DWHZ
Claim # N10036-0053
11 January 2011



Re: Claim Number: N10036-0053

EMAIL: 

Dear :

The National Pollution Funds Center (NPFC), in accordance with 33 C.F.R. Part 136, denies your claim. Please see the enclosed 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 N10036-0053.

Mail reconsideration requests to:

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

Sincerely,



Claims Manager

Enclosure: Claim Summary/Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Date	11 January 2011
Claim Number	N10036-0053
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
Claim Manager	[REDACTED]
Amount Requested	\$11,310.00

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 was discharged from an offshore facility associated with the Deepwater Horizon and located on the Mississippi Canyon, Block 252 (the Deepwater Horizon incident). This area was leased by BP Exploration and Production, Inc. (BP). The Coast Guard designated the offshore facility as the source of the discharge and BP as the responsible party (RP) for the discharge. BP accepted the designation, advertised its OPA claims process, and compensated claimants. On 23 August 2010, the Gulf Coast Claims Facility (GCCF) began accepting and adjudicating claims on behalf of BP.

CLAIM AND CLAIMANT

On 08 November 2010 [REDACTED] (Claimant) presented a lost profits & earnings claim in the amount of \$11,310.00 to the National Pollution Funds Center (NPFC) for reimbursement. Claimant is asserting that her work hours and wages were reduced because of the Deepwater Horizon incident.

Claimant is employed by [REDACTED], a company providing dialysis treatment with over 1,500 locations in 43 states. Claimant has been working at the company's Gulf Shores, Alabama, treatment center since May 2009 and previously worked at another [REDACTED]. Claimant stated she is a certified clinical hemodialysis technician and is responsible for patient treatment and office management activities¹.

APPLICABLE LAW

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a). Damages include the loss of profits or impairment of earning capacity due to the injury, destruction or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant. 33 U.S.C. § 2702(b)(2)(E).

The OSLTF, which is administered by the NPFC, 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. With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

¹ Letter from Claimant dated 22 November 2010 provided as a response to NPFC request for additional information.

Pursuant to the claims regulations, 33 C.F.R. § 136.233, a claimant must establish the following to prove loss of profits or impairment of earning capacity:

- (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.
- (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.

DETERMINATION OF LOSS

Claimant's Submission

To support her claim, Claimant submitted the NPFC OSLTF Claim Form dated 08 November 2010, a copy of the denial letter from the Gulf Coast Claims Facility (GCCF), 2008 and 2009 Tax Return filings, earnings statements from January 2009 through October 2010, and her handwritten responses for additional information dated 22 November 2010.

Claimant asserts that the dialysis treatment center where she is employed is frequented by patients visiting the Gulf Coast for vacation. As a result of reduced tourism after the Deepwater Horizon incident, Claimant asserts that patient visits declined leading to a reduction in her work hours and wages.

Claimant originally filed a claim with BP and was assigned BP Claim # [REDACTED]. She subsequently filed for an Emergency Advance Payment with the GCCF and was assigned GCCF Claimant Identification # [REDACTED] and GCCF Claim # [REDACTED]. Claimant was denied by the GCCF on 28 October 2010. Her denial was independently verified by the NPFC.

The NPFC requested that Claimant provide written documentation from her employer to confirm that her work hours were reduced as result of declining tourism after the Deepwater Horizon incident. Claimant stated that her employer refused to provide written confirmation and did not want to get involved with the claims process².

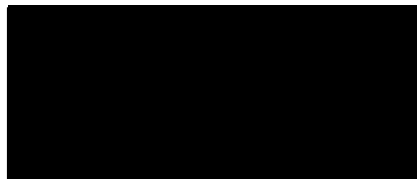
NPFC Determination

This claim is denied. 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 CFR § 136.233, a claimant must establish loss of profits or impairment of earning capacity. The NPFC considered all the documentation submitted by the Claimant.

The claim is denied because the Claimant has not shown that her alleged loss is the result of the Deepwater Horizon incident. Claimant provided earnings statements to demonstrate a reduction in hours worked following the incident. The earnings statements provided by Claimant indicate that her "regular" (non-overtime) work hours following the incident were consistent with periods preceding the incident. However, while Claimant's regular work hours did not decline, the NPFC notes that her earnings statements show that Claimant's overtime hours were 83% lower after the Deepwater Horizon incident compared to the same periods of the prior year. This said, however, the NPFC also notes that her overtime hours began to decline several months prior to the incident. Claimant's overtime hours during January through April 2010 were 39% lower than the prior year. As a result, it is evident that Claimant's overtime hours were declining prior to the Deepwater Horizon incident. Further, Claimant was not able to obtain verification from her employer to explain her reduction in work hours, nor was she able to provide any documentation indicating her employer's business was impacted by the Deepwater Horizon incident.

Although there appears to have been a decline in overtime hours worked following the Deepwater Horizon incident, Claimant has not provided evidence to prove her reduction in hours was a result of the Deepwater Horizon incident. Therefore, her alleged loss in the amount of \$11,310.00 is not due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil and her claim is denied.

Claim Supervisor:



Date of Review:

1/12/11

Supervisor's Actions: DENIED APPROVED

Supervisor's Comments:

² See, letter from Claimant to NPFC dated 22 November 2010.

U.S. Department
of Homeland
Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd., Suite 1000
Arlington, VA 20598-7100
Staff Symbol: (CA)

VIA MAIL AND EMAIL: [REDACTED]

5890/DWHZ
Claim # N10036-0054
05 January 2011

Re: Claim Number: N10036-0054

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number N10036-0054 involving Deepwater Horizon. Please see the attached Claim Summary / Determination Form for the rationale regarding this denial.

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 N10036-0054.

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 Manager

Enclosure: Claim Summary/Determination Form

09/13/11

FOIA2011-3380-00000245

CLAIM SUMMARY / DETERMINATION FORM

Date	05 January 2011
Claim Number	N10036-0054
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
Claim Manager	[REDACTED]
Amount Requested	\$56,710.27

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 was discharged from an offshore facility associated with the Deepwater Horizon and located on the Mississippi Canyon, Block 252 (the Deepwater Horizon incident). This area was leased by BP Exploration and Production, Inc. (BP). The Coast Guard designated the offshore facility as the source of the discharge and BP as the responsible party (RP) for the discharge. BP accepted the designation, advertised its OPA claims process, and compensated claimants. On 23 August 2010, the Gulf Coast Claims Facility (GCCF) began accepting and adjudicating claims on behalf of BP.

On May 28, 2010, The U.S. Department of the Interior (DOI) issued a six-month moratorium on deepwater drilling, citing concerns over the safety of deepwater drilling and directing lessees and operators to cease drilling all new deepwater wells and related activities effective May 30, 2010¹. Lessees and operators conducting current drilling operations were directed to secure the wells and to take all necessary steps to cease operations and temporarily abandon or close the wells. On August 23, 2010 the Gulf Coast Claims Facility (GCCF) began accepting and adjudicating claims on behalf of BP. BP subsequently established a \$100 million Rig Workers Assistance Fund to help compensate rig workers impacted by the moratorium on deepwater well activities. The Assistance Fund is administered by the Gulf Coast Restoration and Protection Foundation (GCRF).

CLAIM AND CLAIMANT

On 28 October 2010 [REDACTED] (Claimant) presented a claim to the NPFC seeking \$56,710.27 in lost profits and earning capacity resulting from the Deepwater Horizon oil spill. Claimant is an offshore winch operator for [REDACTED] and is claiming reduced earnings as a result of the moratorium.

Claimant was employed by [REDACTED] and has provided documentation indicating that he has been with the company since at least 2008. Claimant is an offshore winch operator and works aboard [REDACTED] to provide anchoring support services for Mobile Offshore Drilling Units (MODUs) in the Gulf of Mexico. Claimant stated that the MODUs that

¹ U.S. Department of the Interior, MINERALS MANAGEMENT SERVICE, MORATORIUM NOTICE TO LESSEES AND OPERATORS, NTL No. 2010-N04, Effective 30 May 2010. See, Decision Memo dated 12 July 2010, From Secretary of the Interior To Director, Bureau of Ocean Energy Management, Regulation and Enforcement, Subject Decision Memorandum regarding the suspension of certain offshore permitting and drilling activities on the Outer Continental Shelf. See also, U.S. Department of the Interior, Minerals Management Service, NATIONAL NOTICE TO LESSEES AND OPERATORS OF FEDERAL OIL AND GAS LEASES, OUTER CONTINENTAL SHELF (OCS) NOTICE TO LESSEES AND OPERATORS, NTL No. 2010-N05, Effective 08 June 2010.

were serviced, were drilling units that typically move every 3 to 6 months. Claimant asserts that as a result of the moratorium, the mobile drilling units discontinued operations in the Gulf of Mexico and were relocating to other worldwide locations². Claimant asserts that his work hours were reduced and he was eventually out of work on 17 July 2010³.

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 navigable waters and adjoining shorelines, as described in Section 2702(b) of OPA.

The OSLTF which is administered by the NPFC, is available, pursuant to 33 U.S.C. §§ 2712(a)(4) and 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136, to pay claims for uncompensated damages. 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.

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.
- (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 undertake, 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.

² See, letter from Claimant dated 08 October 2010.

³ See, letter from Claimant dated 02 August 2010.

DETERMINATION OF LOSS

Claimant's Submission

To support his claim, Claimant provided various earnings statements from 2010, reported earnings from the tax years 2006 through 2009 and his claim submission to the GCCF. Claimant did not submit an Optional OSLTF Claim Form to the NPFC. Claimant's initial claim with the GCCF was assigned identification number # [REDACTED]. On 14 September 2010, GCCF sent a letter to Claimant redirecting his claim to the Gulf Coast Restoration and Protection Foundation (GCRPF). Claimant indicates that the GCRPF denied his claim because he was not a rig worker⁴. Claimant also presented a flyer from his employer, [REDACTED] which explicitly details the perceived negative impacts of the drilling moratorium as it relates to the company's ability to continue operations⁶.

B. NPFC Determination

Under 33 U.S.C. § 2702(b) and 33 C.F.R. Part 136, a claimant must prove that his loss of income resulted from injury to or destruction of a natural resource. All documentary evidence submitted by the Claimant as well as his own interpretation indicates that his loss resulted from the six month deepwater drilling moratorium. Claimant's loss, therefore, did not occur because there was an oil spill in the Gulf of Mexico, but because a determination was made and a directive issued by the Department of the Interior to enact a six month moratorium to implement new safety requirements.⁵ As a result, the claimant's claim is considered a consequence of the moratorium, not the oil spill, and is not compensable under OPA.

Claim Supervisor: [REDACTED]

Date of Review: 1/5/11

Supervisor's Comments: *Denial approved*

⁴ See, letter from Claimant dated 08 October 2010.

⁵ U.S. Department of the Interior, MINERALS MANAGEMENT SERVICE, MORATORIUM NOTICE TO LESSEES AND OPERATORS, NTL No. 2010-N04, Effective 30 May 2010. See, Decision Memo dated 12 July 2010, From Secretary of the Interior To Director, Bureau of Ocean Energy Management, Regulation and Enforcement, Subject *Decision: Memorandum regarding the suspension of certain offshore permitting and drilling activities on the Outer Continental Shelf*. See also, U.S. Department of the Interior, Minerals Management Service, NATIONAL NOTICE TO LESSEES AND OPERATORS OF FEDERAL OIL AND GAS LEASES, OUTER CONTINENTAL SHELF (OCS) NOTICE TO LESSEES AND OPERATORS, NTL No. 2010-N05, Effective 08 June 2010.

⁶ See, flyer from Claimant titled "Mr. Obama You Should Not Eliminate Our Jobs"

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

5890
04 January 2010

Email: [REDACTED]

RE: Claim Number: N10036-0055

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with 33 C.F.R. Part 136, denies your claim. Please see the enclosed 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 N10036-0055.

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 Manager

Enclosure: Claim Summary/Determination Form

09/13/11

FOIA2011-3380-00000249

CLAIM SUMMARY / DETERMINATION FORM

Date 04 January 2011
Claim Number N10036-0055
Claimant: [REDACTED]
Type of Claimant Private (US)
Type of Claim Loss of Profits and Earning Capacity
Claim Manager [REDACTED]
Amount Requested \$10,920.00

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 was discharged from an offshore facility associated with the Deepwater Horizon and located on the Mississippi Canyon, Block 252 (Deepwater Horizon incident). This area is leased by BP Exploration and Production, Inc. (BP). The Coast Guard designated the offshore facility as the source of the discharge and BP as the responsible party (RP) for the discharge. BP accepted the designation, advertised its OPA claims process, and compensated claimants. On 23 August 2010, the Gulf Coast Claims Facility (GCCF) began accepting claims on behalf of BP.

CLAIM AND CLAIMANT

On 09 November 2010, [REDACTED] (Claimant) submitted an Oil Spill Liability Trust Fund (OSLTF) claim form to the NPFC claiming a loss of profits and impairment of earning capacity in the amount of \$10,920.00.

Claimant is employed by [REDACTED].¹ She claims that as a result of the Deepwater Horizon incident she was neither "traveling out of town to work on any jobs and contracts" nor "receiving any out of town or travel pay." As a result, she claims, her income has "been cut in half."²

APPLICABLE LAW

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a). Damages include the loss of profits or impairment of earning capacity due to the injury, destruction or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant. 33 U.S.C. § 2702(b)(2)(E).

The OSLTF, which is administered by the NPFC, 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. With certain exceptions, a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

¹ OSLTF Claim Form Submission dated November 9, 2010; Email of 9 December 2010 from [REDACTED]

² OSLTF Claim Form Submission dated November 9, 2010 and series of emails to GCCF in October and November 2010.

Pursuant to the claims regulations, 33 C.F.R. § 136.233, a claimant must establish the following to prove loss of profits or impairment of earning capacity:

- (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.
- (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 Deepwater Horizon oil-spill;
- (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 Deepwater Horizon oil-spill; and
- (e) State, local, and Federal taxes.

DETERMINATION OF LOSS

Claimant's Submission

To support her claim, Claimant submitted the following list of documentation:

- Claimant's payroll detail from [REDACTED] Customer: [REDACTED] from pay date of 04 Jan 2009 to 14 October 2010.
- Claimant's 2009 Form 1040 Federal Tax Return W-2 Wage and Tax Statement.
- Claimant's Fax letter to GCCF Re: Denied Claim # [REDACTED] of 26 October 2010.
- Letter from Claimant to GCCF of 01 November 2010 requesting reconsideration of GCCF denial.
- Email from Claimant to GCCF on 05 November 2010 12:13 PM requesting claim review.
- Email from Claimant to GCCF on 07 November 2010 9:22 AM requesting claim review.
- Email from Administrator GCCF to Claimant on 08 November 2010 "acknowledging receipt of her fax dated October 26, 2010 and an email dated November 1, 2010 regarding [her] claim."

Claimant's OSLTF claim form states a claim for loss of profits and impairment of earning capacity in the amount of \$10,920.00. Claimant is employed by [REDACTED].³ On her OSLTF claim form, Claimant asserts that "Since the oil spill, [REDACTED] have not received new jobs. Due to [REDACTED] not being contracted out by the oil rigs," she claims that she was "not traveling out of town to work on any jobs and contracts," and that her income has been reduced by half as a result of decreased travel pay.⁴

According to Claimant's OSLTF claim form, she filed her claim with the GCCF on 14 October 2010 and was issued Claimant ID # [REDACTED] and Claim # [REDACTED].⁵ Claimant received a GCCF denial letter on or about 26 October 2010.⁶ This information has been verified by the NPFC.

NPFC Determination

1. This claim is denied. 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. § 136.233, a claimant must establish loss of profits or impairment of earning capacity. As described below, Claimant has failed to prove that she has lost profits or earnings as a result of the Deepwater Horizon incident.
2. Claimant asserts that she suffered a loss of profits or impairment of earning capacity in the amount of \$10,920.00 resulting from the Deepwater Horizon incident. She provides Payroll Detail [REDACTED] statements that document regular employment with [REDACTED] Marketing Group: [REDACTED] Customer: [REDACTED] [REDACTED] Her leave and earnings statements show consistent employment from pay period Begin Date 18 April 2010 to Pay End Date 30 October 2010.
3. On 09 December 2010, NPFC contacted the [REDACTED] [REDACTED] to confirm her employment and how it was impacted by the DWH incident. [REDACTED] confirmed Claimant's employment with [REDACTED] [REDACTED] stated that Claimant's employment has not been impacted by the Deepwater Horizon incident. [REDACTED] stated:

[REDACTED] has not had any loss of business nor have we been adversely affected by the disaster. So as a result our employees have not had any reduction in work hours or pay as a result. [REDACTED] was working on a project last year in Corpus Christi, TX where there was a lot of overtime required to complete the job on time and the budget for that job was exceeded as a result. This is not an uncommon occurrence in the construction business. When that project ended she was moved to a project in Pascagoula, MS. The job she moved to is only working 5 days a week. So yes she is working less hours on this

³ OSLTF Claim Form Submission dated November 9, 2010; Email of 9 December 2010 from [REDACTED] Vice President of Human Resources.

⁴ OSLTF Claim Form Submission dated November 9, 2010

⁵ See, OSLTF Claim Form Submission dated November 9, 2010.

⁶ See, GCCF email Re: Escalation Team -Claim # [REDACTED] dated 8 November 2010

project than she did on the last one. However this is not related in any way to the oil spill disaster.”⁷

4. The evidence presented by the Claimant reflects that she was consistently employed by [REDACTED] from January 2009, (prior to the Deepwater Horizon incident) through November 2010. Her employer confirmed that neither [REDACTED] nor the Claimant were impacted by the Deepwater Horizon incident. Therefore, Claimant has not established that she suffered a loss of profits or impairment of earning capacity and her claim is denied.

Claim Supervisor: [REDACTED]

Date:

1/5/11

Supervisor's Actions:

Denial Approved

Supervisor's Comments:

⁷ Email of 9 December 2010 FROM [REDACTED] Vice President of Human Resources T [REDACTED] (NPFC CTR)
SUBJ: FW: Request for Information; Reference [REDACTED]

U.S. Department of
Homeland Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd., Suite 1000
Arlington, VA 20598-7100
Staff Symbol: (CA)

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]

Claim # N10036-0056
16 December 2010

Email: [REDACTED]

Re: Claim Number: N10036-0056

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies your claim. Please see the enclosed Claim Summary / Determination 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 N10036-0056.

Mail reconsideration requests to:

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

[REDACTED]
Claims Manager

Enclosure: Claim Summary / Determination Form

09/13/11

FOIA2011-3380-00000254

CLAIM SUMMARY / DETERMINATION FORM

Date	16 December 2010
Claim Number	N10036-0056
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
Claim Manager	[REDACTED]
Amount Requested	\$4,515.00

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 was discharged from an offshore facility associated with the Deepwater Horizon and located on the Mississippi Canyon, Block 252 (the Deepwater Horizon incident). This area was leased by BP Exploration and Production, Inc. (BP). The Coast Guard designated the offshore facility as the source of the discharge and BP as the responsible party (RP) for the discharge. BP accepted the designation, advertised its OPA claims process, and compensated claimants. On 23 August 2010, the Gulf Coast Claims Facility (GCCF) began accepting and adjudicating claims on behalf of BP.

CLAIM AND CLAIMANT

On 02 November 2010, [REDACTED] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$4,515.00 in lost profits and earning capacity resulting from the Deepwater Horizon incident. Claimant is a boat captain who worked for [REDACTED] with the responsibility to ferry people and supplies between barges and the docks.

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 waters or adjoining shorelines or the exclusive economic zone, as described in § 2702(b) of OPA.

The OSLTF which is administered by the NPFC, is available, pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136, to pay claims for uncompensated damages. 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.

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.

- (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.

DETERMINATION OF LOSS

Claimant's Submission

To support his claim, the Claimant presented the NPFC Optional OSLTF Claim Form dated 02 November 2010, three letters to "Whom It May Concern" dated 15 August 2010, 27 October 2010 and 12 November 2010 respectively, 2008 W-2 Form L4UP and two (2) pay stubs with period end dates of 05 June 2010 and 27 March 2010 respectively.

The Claimant submitted a claim with BP on 19 July 2010 and an Emergency Advanced Payment claim with GCCF on 05 September 2010, Claimant ID # [REDACTED] Claim # [REDACTED], both of which were denied. On 30 November 2010, the GCCF confirmed for the NPFC that his claim was denied.

Claimant asserts that he was terminated by his employer on 07 June 2010 because he was unable to pilot his vessel for [REDACTED] due to oil and oil collection booms in the waterways surrounding his worksite.

NPFC Determination

The claim is denied. Under 33 U.S.C. § 2702(b)(2)(E) and 33 C.F.R. Part 136, a claimant must prove that his loss of income was due to injury or destruction or loss of real or personal property or 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 to the NPFC all evidence, information, and documentation deemed necessary by the Director, NPFC, to support his claim.

In the present claim, the NPFC reviewed the evidence presented by the Claimant and interviewed a representative at [REDACTED] his former employer. The [REDACTED] representative reported that the Claimant was terminated for reasons unrelated to the Deepwater Horizon incident. The Claimant has failed to meet his burden and his claim is denied.

Claim Supervisor: [REDACTED]

Date of Supervisor's Review: 12/17/10

Supervisor's Action: OLCAC APPROVED

Supervisor's Comments:

09/13/11

FOIA2011-3380-00000256

U.S. Department
of Homeland
Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd., Suite 1000
Arlington, VA 20598-7100
Staff Symbol: (CA)
Phone: 1-800-280-7118
E-mail: [REDACTED]
Fax: [REDACTED]

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: [REDACTED]

5890/DWHZ
Claim # N10036-0058
31 January 2011

[REDACTED]

D'Iberville, MS 39540

Re: Claim Number: N10036-0058

Dear [REDACTED]:

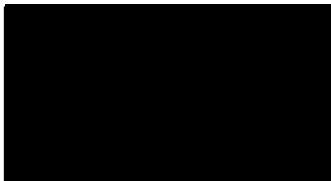
The National Pollution Funds Center (NPFC), in accordance with 33 C.F.R. Part 136, denies payment on claim number N10036-0058 involving the Deepwater Horizon incident. Please see the enclosed Claim Summary/Determination Form for further explanation.

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 N10036-0058.

Mail reconsideration requests to:

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



U. S. Coast Guard
Claims Manager

Enclosure: Claim Summary / Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Date	31 January 2011
Claim Number	N10036-0058
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
Claim Manager	[REDACTED]
Amount Requested	\$18,000.00

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 was discharged from an offshore facility associated with the Deepwater Horizon and located on the Mississippi Canyon, Block 252 (the Deepwater Horizon incident). This area was leased by BP Exploration and Production, Inc. (BP). The Coast Guard designated the offshore facility as the source of the discharge and BP as the responsible party (RP) for the discharge. BP accepted the designation, advertised its OPA claims process, and compensated claimants. On 23 August 2010, the Gulf Coast Claims Facility (GCCF) began accepting and adjudicating claims on behalf of BP.

CLAIM AND CLAIMANT

On 12 November 2010 [REDACTED] (Claimant) presented a signed facsimile and typed paragraph seeking \$18,000.00 in lost profits and earning capacity to the National Pollution Fund Center (NPFC) alleging damages resulting from the Deepwater Horizon incident.

Claimant worked for [REDACTED] dating back as far as 2008. [REDACTED] is an industrial construction company that is focused on the oil and gas industry. Their operations include a shipyard located in Venice, Louisiana, the site where Claimant worked. Based on Claimant's descriptions, his duties included rigging and loading supplies onto vessels at the dock via cranes. As a result of the Deepwater Horizon incident, Claimant asserts that the waterways in and around the shipyard were covered in oil, which prevented vessels from accessing their dock.¹ Claimant provided a letter from his employer to suggest that he was terminated sometime during April 2010, immediately following the Deepwater Horizon incident.² Aside from this letter, Claimant did not provide additional information to verify the circumstances regarding his termination from [REDACTED]. At the time of his claim submission, Claimant indicated that he had been unemployed since his release from [REDACTED].

APPLICABLE LAW

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a). Damages include the loss of profits or impairment of earning capacity due to the injury, destruction or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant. 33 U.S.C. § 2702(b)(2)(E).

The OSLTF, which is administered by the NPFC, 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. With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

¹ Letter provided by Claimant on 20 December 2010 describing his prior employment duties and the circumstances behind his claimed loss.

² Undated letter from [REDACTED], presumably prepared by [REDACTED] (title undisclosed) of said company, stating that the Claimant was permanently laid off from his job position.

Pursuant to the claims regulations, 33 C.F.R. § 136.233, a claimant must establish the following to prove loss of profits or impairment of earning capacity:

- (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.
- (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.

DETERMINATION OF LOSS

Claimant's Submission

Claimant contacted the NPFC on 12 November 2010 to initiate his claims submissions. To support his claim, Claimant provided various letters including one unsigned and undated letter from [REDACTED] presumably from his former employer. Additionally, claimant submitted earnings statements for employment during 2008, 1040 Individual Income Tax Return filing from 2008 and his 2009 W-2 provided by [REDACTED]. Claimant did not submit an Optional OSLTF Claim Form or provide any claim correspondence he had with the GCCF regarding his initial claim. Claimant stated in a letter that he had filed a claim with GCCF but it was denied because he was working for an offshore company.³

NPFC sent a letter dated 23 December 2010 to the Claimant requesting additional information.

Claimant is claiming lost earnings and wages \$18,000.00 alleging that he was laid off from [REDACTED] as a result of the Deepwater Horizon incident.

Claimant presented an Emergency Advance Payment (EAP) claim to the GCCF and was issued GCCF Claimant ID [REDACTED] and Claim [REDACTED]. On 28 October 2010 the GCCF denied his EAP claim. Claimant has submitted an Interim Claim to the GCCF and has been issued First Interim Claim # [REDACTED]. This information was verified by the NPFC.

³ Letter provided by Claimant on 20 December 2010 describing his prior employment duties and the circumstances behind his claimed loss.

NPFC Determination

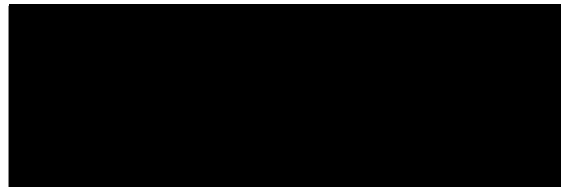
This claim is denied. Under 33 U.S.C. § 2702(b)(2)(E) and 33 C.F.R. Part 136, a claimant must prove that his loss of income was due to the injury or destruction or loss of real or personal property or a natural resource as a result of a discharge or substantial threat of a discharge of oil. Under 33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

The claim is denied because the evidence presented by the Claimant does not prove that he has experienced an economic loss due to the Deepwater Horizon incident. Claimant was laid-off from his employment with [REDACTED] sometime during April 2010, immediately following the Deepwater Horizon incident. Claimant has not provided information from 2010 to prove any earnings. Based upon review of Claimant's 2009 form W-2 from his prior employment with [REDACTED] there is some indication that he may have only worked a partial year during 2009. Additionally, his earnings from [REDACTED] during 2009 are considerably lower than 2008, indicating that work activity had already dramatically declined.

In addition to not proving a financial loss, Claimant has not proved that his alleged economic loss, if one had occurred, was the result of the Deepwater Horizon incident. Claimant asserts that customers of [REDACTED] were not able to utilize the shipyard where he was working due to oil in the water. However, the Claimant has not provided documentation to support this assertion. Additionally, the letter that purports to be from his employer is unsigned, undated, and not on company letterhead and does not explain either the nature of the industry or how it was affected by the Deepwater Horizon incident.

Thus, the claim is denied because the evidence presented does not prove that Claimant's 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 a discharge of oil.

Claim Supervisor:



Date of Supervisor's Review: 1/31/11

Supervisor's Actions: Review approved

Supervisor's Comments:

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

Fax: 202-493-6937

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim# N10036-00059
01 February 2011

RE: Claim Number: N10036-0059

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with 33 C.F.R. Part 136, denies payment on claim number N10036-0059 involving the Deepwater Horizon incident. Please see the enclosed 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 N10036-0059.

Mail reconsideration requests to:

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

Sincerely,

[REDACTED]
U. S. Coast Guard
Claims Manager

Enclosure: Claim Summary/Determination Form

09/13/11

FOIA2011-3380-00000262

CLAIM SUMMARY / DETERMINATION FORM

Date	: 01 February 2011
Claim Number	: N10036-0059
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$7,729.42

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 was discharged from an offshore facility associated with the Deepwater Horizon and located on the Mississippi Canyon, Block 252 (the Deepwater Horizon incident). This area was leased by BP Exploration and Production, Inc. (BP). The Coast Guard designated the offshore facility as the source of the discharge and BP as the responsible party (RP) for the discharge. BP accepted the designation, advertised its OPA claims process, and compensated claimants. On 23 August 2010, the Gulf Coast Claims Facility (GCCF) began accepting and adjudicating claims on behalf of BP.

CLAIM AND CLAIMANT

On 11 November 2010 [REDACTED] Claimant) presented an Oil Spill Liability Trust Fund Claim Form (OSLTF) on behalf of himself and his business [REDACTED] seeking \$7,729.42 in lost profits and earning capacity resulting from the Deepwater Horizon incident. The Claimant is a manufacturer and wholesaler of ornamental gift items which are sold to various merchants, many of which are located along the Florida Gulf Coast.

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 waters or adjoining shorelines or the exclusive economic zone, as described in § 2702(b) of OPA.

The OSLTF which is administered by the NPFC, is available, pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136, to pay claims for uncompensated damages. 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.

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.

- (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.

DETERMINATION OF LOSS

Claimant's Submission

To support his claim, the Claimant presented the following documentation:

- Optional OSLTF Claim Form dated 11 November 2010;
- Letter dated 11 November 2010 explaining Claimant's business and client base;
- Letter dated 22 November 2010 explaining Claimant's situation;
- Federal Income Tax Returns for an S Corporation from 2008 and 2009;
- Profit and Loss Summaries for January, February, March, April and June through September 2010;
- Monthly Gross Sales Reports for 2008, 2009 and January through September 2010;
- Monthly Payroll Reports for June through September 2010;
- Customer List;
- Sales invoices;
- Responses to Additional Information request dated 13 December 2010;
- Email between [REDACTED] dated 30 January 2011.

The Claimant asserts that the Deep Water Horizon incident had a negative impact on tourism in the communities along the Florida Gulf Coast, which in turn "discouraged [his] clients from placing orders because clients did not foresee a tourist trade for purchasing his products."¹ This resulted in reduced or curtailed orders leading to lost profits for the period June through September 2010. The claimed amount is equal to the difference in overall gross sales between the period June through September 2010 and that same period in 2009.

¹ Claimant's OSLTF Claim Form presented on 11 November 2010.

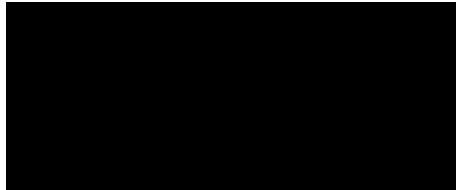
Claimant originally submitted his claim to BP but has not provided a BP claim number or filing date. That his original claim was submitted to BP was verified through the GCCF, which entity took over claims processing for BP on 23 August 2010. The GCCF assigned Claimant GCCF Claimant ID [REDACTED] based upon his prior submission to the BP. The GCCF has no record of the Claimant ever submitting an Emergency Advance Payment claim to the GCCF. Thus, Claimant is before the NPFC based upon the expiration of ninety days since he submitted his claim to the RP (BP) with no action on his claim.

NPFC Determination

The claim is denied. Under 33 U.S.C. § 2702(b)(2)(E) and 33 C.F.R. Part 136, a claimant must prove that his loss of income was due to the injury or destruction or loss of real or personal property or 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 to the NPFC, all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim.

The NPFC conducted an extensive review of the documentation presented by the Claimant and interviewed the Claimant by telephone. The claim is denied because the documentation presented by Claimant does not support his assertion that his 2010 reduction in sales was the result of the Deepwater Horizon incident rather than other extraneous economic factors. Hence, Claimant has not sufficiently proven to NPFC that his loss \$7,729.42 is due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil.

Claim Supervisor:



Date of Supervisor's Review:

2/2/11

Supervisor's Action:

Denial Approved

Supervisor's Comments:

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

Fax: 202-493-6937
5890

December 16, 2010

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number [REDACTED]

RE: Claim Number: N10036-0060

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number N10036-0060 involving Deepwater Horizon. Please see the enclosed Claim Summary / Determination 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 N10036-0060.

Mail reconsideration requests to:

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

Sincerely,



U. S. Coast Guard
Claims Manager

Enclosure: Claim Summary/Determination

09/13/11

FOIA2011-3380-00000266

CLAIM SUMMARY / DETERMINATION FORM

Date	: 12/16/2010
Claim Number	: N10036-0060
Claimant	[REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	[REDACTED]
Amount Requested	: \$15,000.00

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 was discharged from an offshore facility associated with the Deepwater Horizon and located on the Mississippi Canyon, Block 252 (the Deepwater Horizon incident). This area was leased by BP Exploration and Production, Inc. (BP). The Coast Guard designated the offshore facility as the source of the discharge and BP as the responsible party (RP) for the discharge. BP accepted the designation, advertised its OPA claims process, and compensated claimants. On 23 August 2010, the Gulf Coast Claims Facility (GCCF) began accepting and adjudicating claims on behalf of BP.

CLAIM AND CLAIMANT

On 15 November 2010, [REDACTED] (Claimant) presented a lost profits and earnings claim in the amount of \$15,000.00 to the National Pollution Funds Center (NPFC). Claimant was employed with Mobile Fire and Rescue with the City of Mobile. Express employment offered her a job. She was interviewed and was hired by [REDACTED] who was under contract with BP to start a claim center for vessels of opportunity. She resigned her job with Mobile Fire in Alabama to take advantage of the opportunity. Claimant left her primary employment at Mobile Fire in order to pursue better paying employment arising from the Deepwater Horizon incident.

APPLICABLE LAW

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a). Damages include the loss of profits or impairment of earning capacity due to the injury, destruction or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant. 33 U.S.C. § 2702(b)(2)(E).

The OSLTF, which is administered by the NPFC, 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. With certain exceptions, a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

ENCLOSURE

09/13/11

FOIA2011-3380-00000267

Pursuant to the claims regulations, 33 C.F.R. § 136.233, a claimant must establish the following to prove loss of profits or impairment of earning capacity:

- (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.
- (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.

DETERMINATION OF LOSS

Claimant's Submission

To support her claim, the Claimant submitted the NPFC OSLTF claim form dated 15 November 2010, a letter to the National Pollution Funds Center, her 2007 IRS Tax Return, her 2008 IRS Tax Return, her 2009 IRS Tax Return, her City of Mobile payroll check stubs for checks dated from 01/08/2010 through 05/28/2010, a series of emails between the Claimant and [REDACTED] from 28 June 2010 through 17 August 2010 discussing response employment, [REDACTED] Statement dated 28 October 2010, Chapter 13 bankruptcy filing plan confirmation, 23 January 2010 Citi Residential Lending servicing letter, SEPP Account Status Dated 30 September 2010, and Express Employment Professionals invoice dated 22 October 2010. Since the Claimant was only employed for a few days performing oil-spill response related work, she is claiming lost earnings related to the balance of six-months of work that she was expecting if she remained with Mobile Fire.

On 11 October 2010, the Claimant presented a claim to GCCF. She received GCCF Claim [REDACTED] and was subsequently denied. She submitted a series of letter emails to GCCF requesting denial reconsideration for her GCCF Claim [REDACTED] dated 04 and 05 December 2010. The NPFC received confirmation that she was denied on 30 November 2010.

NPFC Determination

The claim is denied because the alleged loss in the amount of \$15,000.00 is not 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. The alleged loss is due to personal decisions made by the Claimant. Such a loss as the one claimed in this case is not a damage that may be compensated from the OSLTF.

Claim Supervisor:



Date of Supervisor's Review:

12/17/10

Supervisor Action:

Deny Appeal

Supervisor's Comments:

U.S. Department
of Homeland
Security

**United States
Coast Guard**



Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd., Suite 1000
Arlington, VA 20598-7100
Staff Symbol: (CA)
Phone: 1-800-280-7118
E-mail: [REDACTED]
Fax: [REDACTED]

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: [REDACTED]

5890/DWHZ
Claim # N10036-0061
02 February 2011

[REDACTED]
Fort Walton Beach, FL 32547

Re: Claim Number: N10036-0061

Dear [REDACTED]:

The National Pollution Funds Center (NPFC), in accordance with 33 C.F.R. Part 136, denies payment on claim number N10036-0061 involving the Deepwater Horizon incident. Please see the enclosed 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 N10036-0061.

Mail reconsideration requests to:

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

Sincerely,

[REDACTED]

U. S. Coast Guard
Claims Manager

Enclosure: Claim Summary / Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Date	02 February 2011
Claim Number	N10036-0061
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
Claim Manager	[REDACTED]
Amount Requested	\$12,200.00

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 was discharged from an offshore facility associated with the Deepwater Horizon and located on the Mississippi Canyon, Block 252 (the Deepwater Horizon incident). This area was leased by BP Exploration and Production, Inc. (BP). The Coast Guard designated the offshore facility as the source of the discharge and BP as the responsible party (RP) for the discharge. BP accepted the designation, advertised its OPA claims process, and compensated claimants. On 23 August 2010, the Gulf Coast Claims Facility (GCCF) began accepting and adjudicating claims on behalf of BP.

CLAIM AND CLAIMANT

On 15 November 2010, [REDACTED] (Claimant) presented an Oil Spill Liability Trust Fund (OSLTF) claim form for \$12,200.00 in lost profits and earning capacity to the National Pollution Fund Center (NPFC) alleging damages resulting from the Deepwater Horizon incident.

Claimant has worked for [REDACTED] from January 2010 to the present. [REDACTED] is a used car dealership that caters to a variety of customers.¹

Claimant states that [REDACTED] business declined after the Deepwater Horizon incident. The majority of the customers are tourists or residents who own property in the area. Claimant provided a letter from his employer that stated his earnings were reduced following the Deepwater Horizon incident. Aside from this letter, the Claimant did not provide additional information to verify reduction in his earnings after the Deepwater Horizon incident.

APPLICABLE LAW

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a). Damages include the loss of profits or impairment of earning capacity due to the injury, destruction or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant. 33 U.S.C. § 2702(b)(2)(E).

The OSLTF, which is administered by the NPFC, 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. With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person

¹ See undated letter from the Sales Manager at [REDACTED]

by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

Pursuant to the claims regulations, 33 C.F.R. § 136.233, a claimant must establish the following to prove loss of profits or impairment of earning capacity:

- (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.
- (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.

DETERMINATION OF LOSS

Claimant's Submission

To support his claim, Claimant submitted the NPFC OSLTF Claim Form dated 15 November 2010, a letter from his employer, 2008 and 2009 Income Tax Returns, paystubs with [REDACTED] and [REDACTED] during 2010.

NPFC sent a letter to the Claimant dated 23 December 2010 requesting addition information in order to evaluate his claim. The letter was sent Certified Mail Return Receipt Requested. USPS Tracking shows the letter was unclaimed and was returned to NPFC on 22 January 2011. The NPFC claims adjuster telephoned the Claimant on 25 January 2011 to follow up on the letter. A voice message was left. The Claimant did not return the call.

Claimant alleges that he lost earnings in the amount of \$12,200.00 as a result of the Deepwater Horizon incident. He asserts that most of his customers at [REDACTED] were mainly tourists and residents who owned property in the area. According to Claimant, due

to the Deepwater Horizon incident, many of his customers did not visit the area after the incident.

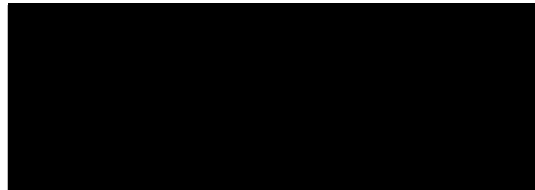
Claimant presented an Emergency Advance Payment claim to the GCCF and was issued GCCF Claimant ID [REDACTED] and Claim [REDACTED]. On 03 November 2010 the GCCF denied his claim. This information was verified by the NPFC.

NPFC Determination

This claim is denied. Under 33 U.S.C. § 2702(b)(2)(E) and 33 C.F.R. Part 136, a claimant must prove that his loss of income was due to the injury or destruction or loss of real or personal property or 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 to the NPFC, all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim. The NPFC considered all of the documentation submitted by the Claimant.

The claim is denied because the evidence presented by the Claimant does not prove that his alleged loss is the result of the Deepwater Horizon incident. For example, Claimant did not provide sufficient employment information that would allow the NPFC to compare his 2010 earnings to his prior earnings at [REDACTED] before the Deepwater Horizon incident. The NPFC sent a letter to the Claimant requesting additional information but the Claimant did not respond. As a result, the Claimant has not established that his alleged loss of income resulted from the Deepwater Horizon incident and his claim is denied.

Claim Supervisor:



Date of Review:

2/3/11

Supervisor's Actions:

Denial Allowed

Supervisor's Comments:

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: [REDACTED]
E-mail: [REDACTED]
Fax: [REDACTED]
5890
12/28/2010

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]

[REDACTED]
Mobile, AL 36606

RE: Claim Number: N10036-0062

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number N10036-0062 involving Deepwater Horizon. Please see the attached Claim Summary / Determination Form for the rationale regarding this denial.

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 N10036-0062.

Mail reconsideration requests to:

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

[REDACTED]
U.S. Coast Guard

Encl: Claim Summary / Determination Form

09/13/11

FOIA2011-3380-00000274

CLAIM SUMMARY / DETERMINATION FORM

Date	: 12/28/2010
Claim Number	: N10036-0062
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$6,300.00

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 was discharged from an offshore facility associated with the Deepwater Horizon and located on the Mississippi Canyon, Block 252 (the Deepwater Horizon incident). This area was leased by BP Exploration and Production, Inc. (BP). The Coast Guard designated the offshore facility as the source of the discharge and BP as the responsible party (RP) for the discharge. BP accepted the designation, advertised its OPA claims process, and compensated claimants. On 23 August 2010, the Gulf Coast Claims Facility (GCCF) began accepting and adjudicating claims on behalf of BP.

CLAIM AND CLAIMANT:

On 12 November 2010, [REDACTED] (Claimant), presented a lost profits & earnings claim in the amount of \$6,300.00 to the National Pollution Funds Center (NPFC) for reimbursement. [REDACTED] is asserting that he ran a landscaping business that made approximately \$1,500.00 per month since June 2005 until May 12, 2010, when he decided to work as a response contractor performing clean up with various companies that were employed on the Deepwater Horizon oil-spill incident. The Claimant states he went to work on the oil-spill because in late April 2010, his income dropped from \$1,500.00 a month to approximately \$600.00 a month. Ultimately, the Claimant was laid off on or about September 12, 2010 from his employment with [REDACTED]. The Claimant states he was unable to go back to landscaping because the clientele he did have found alternate means for their landscaping needs since the Claimant was working on spill response therefore leaving him unemployed.

APPLICABLE LAW:

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a). Damages include the loss of profits or impairment of earning capacity due to the injury, destruction or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant. 33 U.S.C. § 2702(b)(2)(E).

The OSLTF, which is administered by the NPFC, 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. With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person

by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

Pursuant to the claims regulations, 33 C.F.R. § 136.233, a claimant must establish the following to prove loss of profits or impairment of earning capacity:

- (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.
- (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.

DETERMINATION OF LOSS:

Claimant's Submission

To support his claim, the Claimant submitted the NPFC OSLTF Claim Form dated November 12, 2010, a copy of the denial letter from the Gulf Coast Claims Facility (GCCF) dated November 2, 2010, a copy of a letter from the claimant dated November 12, 2010 which explains his circumstances related to his unemployment, a copy of his 2008 Tax Return, a copy of pay stubs from May 2010 until September 2010 when his employment ended, a copy of his driver's license and social security card, a copy of his response contractor identification cards, and a copy of his filing for unemployment benefits with the State of Alabama. The GCCF assigned claim identification [REDACTED] claim submission.

NPFC Determination

Under 33 CFR 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 CFR § 136.233, a claimant must establish loss of profits or impairment of earning capacity. The NPFC considered all the documentation submitted by the Claimant. The Claimant has failed to establish by way of tax records or other supporting documentation that he in fact made \$1,500.00 per month through his landscaping business as alleged.

Additionally, the claim is denied because the alleged loss in the amount of \$6,300.00 is not due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil. Claimant's termination and alleged financial losses are the result of business decisions made by his employer, and not the result of the Deepwater Horizon incident. Such a loss as the one claimed in this case, is not a damage that may be compensated from the OSLTF.

Claim Supervisor: [REDACTED]

Date of Supervisor's review: 12/29/10

Supervisor Action: *Denial Approved*

Supervisor's Comments: [REDACTED]

U.S. Department
of Homeland
Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937

VIA MAIL AND EMAIL: [REDACTED]

5890/DWHZ
Claim # N10036-0063
07 January 2011

Re: Claim Number: N10036-0063

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number N10036-0063 involving Deepwater Horizon. Please see the attached Claim Summary / Determination Form for the rationale regarding this denial.

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 N10036-0063.

Mail reconsideration requests to:

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

Sincerely,

[REDACTED]
U. S. Coast Guard
Claims Manager

Attachment: (1) Claim Summary/Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Date	06 January 2011
Claim Number	N10036-0063
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
Claim Manager	[REDACTED]
Amount Requested	\$24,600.00

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 was discharged from an offshore facility associated with the Deepwater Horizon and located on the Mississippi Canyon, Block 252 (the Deepwater Horizon incident). This area was leased by BP Exploration and Production, Inc. (BP). The Coast Guard designated the offshore facility as the source of the discharge and BP as the responsible party (RP) for the discharge. BP accepted the designation, advertised its OPA claims process, and compensated claimants. On 23 August 2010, the Gulf Coast Claims Facility (GCCF) began accepting and adjudicating claims on behalf of BP.

On May 28, 2010, The U.S. Department of the Interior (DOI) issued a six-month moratorium on deepwater drilling, citing concerns over the safety of deepwater drilling and directing lessees and operators to cease drilling all new deepwater wells and related activities effective May 30, 2010¹. Lessees and operators conducting current drilling operations were directed to secure the wells and to take all necessary steps to cease operations and temporarily abandon or close the wells. On August 23, 2010 the Gulf Coast Claims Facility (GCCF) began accepting and adjudicating claims on behalf of BP. BP subsequently established a \$100 million Rig Workers Assistance Fund to help compensate rig workers impacted by the moratorium on deepwater well activities. The Assistance Fund is administered by the Gulf Coast Restoration and Protection Foundation (GCRPF).

On 12 July 2010 the Department of the Interior issued a new decision to suspend deepwater drilling activities. Applicability of this suspension order is based on drilling configuration and technology, not depth of water. As such, it applied to both deepwater and shallow water drilling. This suspension order was lifted on 12 October 2010 for those operators who certified compliance with all existing rules and regulations, including those that recently went into effect, and demonstrated the availability of adequate blowout containment resources. DOI's verification of new permit applications and equipment testing for applicants continue.

¹ U.S. Department of the Interior, MINERALS MANAGEMENT SERVICE, MORATORIUM NOTICE TO LESSEES AND OPERATORS, NTL No. 2010-N04, Effective 30 May 2010. See, Decision Memo dated 12 July 2010, From Secretary of the Interior To Director, Bureau of Ocean Energy Management, Regulation and Enforcement, Subject Decision Memorandum regarding the suspension of certain offshore permitting and drilling activities on the Outer Continental Shelf. See also, U.S. Department of the Interior, Minerals Management Service, NATIONAL NOTICE TO LESSEES AND OPERATORS OF FEDERAL OIL AND GAS LEASES, OUTER CONTINENTAL SHELF (OCS) NOTICE TO LESSEES AND OPERATORS, NTL No. 2010-N05, Effective 08 June 2010.

CLAIM AND CLAIMANT

On 28 October 2010 [REDACTED] (Claimant) presented a claim to the NPFC seeking \$24,600.00 in lost profits and earning capacity resulting from the Deepwater Horizon oil spill. Claimant is an offshore anchor handler/rigger for [REDACTED] and is claiming reduced earnings as a result of the moratorium.

Claimant was employed by [REDACTED] and has provided documentation indicating that he has been with the company since at least 2008. Claimant is an offshore winch operator and works aboard Anchor Handling Vessels (AHV) to provide anchoring support services for Mobile Offshore Drilling Units (MODUs) in the Gulf of Mexico. Claimant asserts that his work hours were reduced and he has also experienced a decrease in the amounts of his bonuses.

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 navigable waters and adjoining shorelines, as described in Section 2702(b) of OPA.

The OSLTF which is administered by the NPFC, is available, pursuant to 33 U.S.C. §§ 2712(a)(4) and 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136, to pay claims for uncompensated damages. 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.

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.
- (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.

DETERMINATION OF LOSS

Claimant's Submission

To support his claim, Claimant provided various letters and email correspondence demonstrating his financial situation and his interaction with the GCCF and the GCRPF.

Claimant did not submit an Optional OSLTF Claim Form to the NPFC. Claimant's initial claim with the GCCF was assigned identification number [REDACTED]. On 23 September 2010, GCCF sent a letter to Claimant redirecting his claim to the Gulf Coast Restoration and Protection Foundation (GCRPF). Claimant was denied by the GCCF in a letter dated 23 October 2010. Claimant indicates that the GCRPF denied his claim because he was not a rig worker. Delmar Systems Inc. also produced a flyer which explicitly details the perceived negative impacts of the drilling moratorium as it relates to the company's ability to continue operations⁶.

NPFC Determination

Under 33 U.S.C. § 2702(b) and 33 C.F.R. Part 136, a claimant must prove that his loss of income resulted from injury to or destruction of a natural resource. No evidence provided by the Claimant indicated that the loss of wages was due to the oil spill. Subsequent conversations and correspondence from representatives of [REDACTED] indicate that the drilling moratorium and the subsequent modifications in the permitting process are responsible for a decrease in work hours available. Claimant's loss, therefore, did not occur because there was an oil spill in the Gulf of Mexico, but because a determination was made and a directive issued by the Department of the Interior to enact a six month moratorium to implement new safety requirements.² As a result, the claimant's claim of \$24,600.00 is considered a consequence of the moratorium, not the oil spill, and is not compensable under OPA.

Claim Supervisor [REDACTED]

Date of Review: 1/7/11

Supervisor's Comment: *Denial approved*

² U.S. Department of the Interior, MINERALS MANAGEMENT SERVICE, MORATORIUM NOTICE TO LESSEES AND OPERATORS, NTL No. 2010-N04, Effective 30 May 2010. See, Decision Memo dated 12 July 2010, From Secretary of the Interior To Director, Bureau of Ocean Energy Management, Regulation and Enforcement, Subject *Decision Memorandum regarding the suspension of certain offshore permitting and drilling activities on the Outer Continental Shelf*. See also, U.S. Department of the Interior, Minerals Management Service, NATIONAL NOTICE TO LESSEES AND OPERATORS OF FEDERAL OIL AND GAS LEASES, OUTER CONTINENTAL SHELF (OCS) NOTICE TO LESSEES AND OPERATORS, NTL No. 2010-N05, Effective 08 June 2010.

See, flyer titled "Mr. Obama You Should Not Eliminate Our Jobs"

U.S. Department
of Homeland
Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd., Suite 1000
Arlington, VA 20598-7100
Staff Symbol: (CA)
Phone: 1-800-280-7118

Fax: 202-493-6937

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim # N10036-0065
19 January 2011

Re: Claim Number: N10036-0065

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with 33 C.F.R. Part 136, denies payment on the claim number N10036-0065 involving the Deepwater Horizon incident. Please see the enclosed 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 N10036-0065.

Mail reconsideration requests to:

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

Sincerely,

[REDACTED]
U. S. Coast Guard
Claims Manager

Enclosure: (1) Claim Summary/Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Date	19 January 2011
Claim Number	N10036-0065
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
Claim Manager	[REDACTED]
Amount Requested	\$7,000.00

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 was discharged from an offshore facility associated with the Deepwater Horizon and located on the Mississippi Canyon, Block 252 (the Deepwater Horizon incident). This area was leased by BP Exploration and Production, Inc. (BP). The Coast Guard designated the offshore facility as the source of the discharge and BP as the responsible party (RP) for the discharge. BP accepted the designation, advertised its OPA claims process, and compensated claimants. On 23 August 2010, the Gulf Coast Claims Facility (GCCF) began accepting and adjudicating claims on behalf of BP.

CLAIM AND CLAIMANT

On 09 November 2010, [REDACTED] (Claimant) presented an Oil Spill Liability Trust Fund (OSLTF) claim form for lost profits & earnings in the amount of \$7,000.00 to the National Pollution Funds Center (NPFC) for reimbursement. Claimant asserts she earned reduced wages as a food service worker due to the Deepwater Horizon incident.

Claimant is employed by the [REDACTED] located adjacent to the [REDACTED] in New Orleans, Louisiana. Claimant has been employed at the [REDACTED] since at least 2008. Claimant indicated on her OSLTF Claim Form that she works for the "seafood restaurant" as a room service attendant. Earnings statements provided by Claimant show her job title as a "server" for room service.¹

APPLICABLE LAW

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a). Damages include the loss of profits or impairment of earning capacity due to the injury, destruction or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant. 33 U.S.C. § 2702(b)(2)(E).

The OSLTF, which is administered by the NPFC, is available to pay claims for uncompensated damages pursuant to 33 USC § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136. With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

Under 33 C.F.R. § 136.113, a claimant must include an accounting, including the source and value, of all other compensation received, applied for, or potentially available as a consequence of the incident out of which the claim arises including, but not limited to, monetary payments, goods or services, or other benefits.

¹ See, Claimant's earnings statements from employment with [REDACTED]

Pursuant to 33 U.S.C. § 2715(a), any person, including the Fund, who pays compensation pursuant to OPA to any claimant for removal costs or damages shall be subrogated to all rights, claims, and causes of action that the claimant has under any other laws.

DETERMINATION OF LOSS

Claimant's Submission

To support her claim, the Claimant submitted the NPFC OSLTF Claim Form dated 09 November 2010, earnings statements from 2010 and W-2's from the prior two years. Claimant asserts that her employer experienced reduced business which resulted in a reduction to her earnings.

The Claimant submitted a claim to GCCF and was issued Claimant ID [REDACTED] and Claim [REDACTED]. Claimant received an Emergency Advance Payment on 30 October 2010 in the amount of \$1,800.00 and a Quick (final) Payment of \$5,000.00 on claim [REDACTED]. The total received from GCCF is \$6,800.00. The information was independently verified by NPFC. Claimant's settlement of her Quick Pay claim was independently verified by the NPFC.

NPFC Determination

This claim is denied. The OSLTF is available to pay certain uncompensated damages pursuant to 33 U.S.C. § 2712(a)(4). Further, under 33 U.S.C. § 2751(a), any person, including the Fund, who pays compensation pursuant to OPA to any claimant for removal costs or damages shall be subrogated to all rights, claims, and causes of action that the claimant has under any other laws.

The claim is denied because the Claimant has accepted full compensation from the responsible party under the GCCF Quick Payment Settlement process. By doing so, Claimant signed a release and covenant not to sue and has, therefore, waived his rights to seek compensation from the OSLTF.

Claim Supervisor:

Date of Review:

1/14/11

Supervisor's Actions:

1 = 2122 11/1202-7

Supervisor's Comments:

U.S. Department
of Homeland
Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd., Suite 1000
Arlington, VA 20598-7100
Staff Symbol: (CA)
Phone: 1-800-280-7118
E-mail: [REDACTED]
Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7010 0780 0001 7083 1652



Pearl River, LA 70452

5890/DWHZ
Claim # N10036-0066
13 December 2010

Email: [REDACTED]

Re: Claim Number: N10036-0066

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies your claim. The NPFC is unable to establish that the loss of profits and earnings real or personal property damages you presented in your claim were a result of the Deepwater Horizon oil spill. Please see the attached claim summary for further explanation.

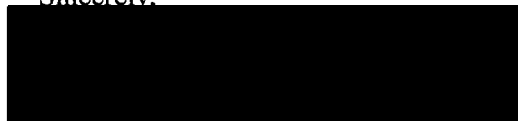
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-0066.

Mail reconsideration requests to:

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

Sincerely,



U. S. Coast Guard
Claims Manager

Attachment: (1) Claim Summary/Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Date	13 December 2010
Claim Number	N10036-0066
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
Claim Manager	[REDACTED]
Amount Requested	\$93,000.00

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 was discharged from an offshore facility associated with the Deepwater Horizon and located on the Mississippi Canyon, Block 252 (the Deepwater Horizon incident). This area was leased by BP Exploration and Production, Inc. (BP). The Coast Guard designated the offshore facility as the source of the discharge and BP as the responsible party (RP) for the discharge. BP accepted the designation, advertised its OPA claims process, and compensated claimants. On 23 August 2010, the Gulf Coast Claims Facility (GCCF) began accepting and adjudicating claims on behalf of BP.

CLAIM AND CLAIMANT

On 07 November 2010 [REDACTED] (Claimant), submitted a lost profits & earnings claim in the amount of \$93,000.00 to the National Pollution Funds Center (NPFC) for reimbursement. [REDACTED] is asserting that she was terminated from her paralegal position because of the Deepwater Horizon incident.

The Claimant worked at a law office in Slidell, Louisiana previous to the Deepwater Horizon incident.¹ She asserts that she was terminated because her employer, [REDACTED] LLC, anticipated that he would gain business from the Deepwater Horizon incident from people seeking legal representation. Her employer committed time, money and additional resources to prepare for the Deepwater Horizon incident related business that did not materialize. Claimant maintains that her employer was forced to release her due to a lack of financial resources.

APPLICABLE LAW

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a). Damages include the loss of profits or impairment of earning capacity due to the injury, destruction or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant. 33 U.S.C. § 2702(b)(2)(E).

The OSLTF, which is administered by the NPFC, 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. With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person

by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

Pursuant to the claims regulations, 33 C.F.R. § 136.233, a claimant must establish the following to prove loss of profits or impairment of earning capacity:

- (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.
- (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.

DETERMINATION OF LOSS

Claimant's Submission

To support her claim, the Claimant submitted the NPFC OSLTF Claim Form dated November 7, 2010, a copy of the denial letter from the Gulf Coast Claims Facility (GCCF) dated November 4, 2010, and miscellaneous supporting documents. The GCCF assigned claimant identification # [REDACTED] to [REDACTED] claim submission. On November 4, 2010, the GCCF issued a denial to [REDACTED] stating that she has not demonstrated a loss of profits or income as a direct result of the oil-spill.²

B. NPFC Determination

Under 33 CFR 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 CFR § 136.233, a claimant must establish loss of profits or

impairment of earning capacity. The NPFC considered all the documentation submitted by the Claimant.

The claim is denied because the alleged loss in the amount of \$93,000 is not due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil. Claimant's alleged loss of profits is the result of her employer's business decision to terminate her employment.

Claim Supervisor:

Date of Review: 12/13/10

Supervisor's Comments: DENIAL AFFIDAVIT

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:

[REDACTED]
Fax: 202-493-6937
5890
1/13/2011

BY MAIL AND EMAIL [REDACTED]
[REDACTED]

RE: Claim Number: N10036-0067

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number N10036-0067 involving Deepwater Horizon. Please see the attached Claim Summary / Determination Form for an explanation regarding this denial.

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 N10036-0067.

Mail reconsideration requests to:

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

[REDACTED]
Claims Manager
U.S. Coast Guard

Encl: Claim Summary / Determination Form

09/13/11

FOIA2011-3380-00000289

CLAIM SUMMARY / DETERMINATION FORM

Date	January 13, 2011
Claim Number	N10036-0067
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
Claim Manager	[REDACTED]
Amount Requested	\$7,970.00

FACTS

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 of the explosion and sinking, oil was discharged from an offshore facility associated with the Deepwater Horizon and located on the Mississippi Canyon, Block 252 (Deepwater Horizon incident). This area was leased by BP Exploration and Production, Inc. (BP). The Coast Guard designated the offshore facility as the source of the discharge and BP as the responsible party (RP) for the discharge. BP accepted the designation, advertised its OPA claims process, and compensated claimants. On August 23, 2010, the Gulf Coast Claims Facility (GCCF) began accepting adjudicating claims on behalf of BP.

CLAIM AND CLAIMANT

On November 10, 2010, the NPFC received an Oil Spill Liability Trust Fund (OSLTF) claim form from [REDACTED] (Claimant). The Claimant is presenting a loss of profits & earnings claim in the amount of \$7,970.00 to the National Pollution Funds Center (NPFC) for reimbursement of lost wages.

Claimant provided documentation showing that she had been employed by [REDACTED] in Bay St. Louis, Mississippi as a table games dealer. She asserts that her position as a table games dealer was impacted as a result of the Deepwater Horizon incident.

The GCCF assigned Claimant identification [REDACTED]. The Claimant indicates on her OSLTF claim form that she has been denied by the GCCF although no denial letter has been provided in her claim submission.

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 waters or adjoining shorelines or the exclusive economic zone, as described in § 2702(b) of OPA.

The OSLTF which is administered by the NPFC, is available, pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136, to pay claims for uncompensated damages. 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.

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.
- (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 undertake, 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.

DETERMINATION OF LOSS

Claimant's Submission

To support her claim, Claimant submitted the following documentation:

- OSLTF claim form dated 3 November 2010
- Copy of the Claimant's 2008 and 2009 W-2 Wage and Tax Statements
- Photocopy of Mississippi driver's license and Social Security Card
- Hardship letter dated October 14, 2010
- Payroll stubs from April 18, 2010 to May 16, 2010
- Copy of 2008 and 2009 Tax Return Transcripts
- Unsigned letter from [REDACTED] confirming the Claimants reduction in hours
- Answers to 13 questions asked by the NPFC Claim Manager
- Earnings statements from [REDACTED] dated September 4, 2010 to October 2, 2010

NPFC Determination

The claim is denied. 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. § 136.233, a Claimant must establish loss of profits or impairment of earning capacity. The NPFC considered all the documentation submitted by the Claimant.

The Claimant's one page statement does not demonstrate, nor do the other records provided demonstrate, that the Claimant's employment as table games dealer was impacted by the Deepwater Horizon incident.

The claim is denied because the evidence provided by Claimant, as described above, does not establish either that she has incurred a loss or that the alleged loss (if one had occurred) was due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil.

Claim Supervisor:

Date of Supervisor's Review: *1/13/11*

Supervisor's Action: *Denial approved*

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: [REDACTED]
Fax: [REDACTED]
5890
December 20, 2010

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number [REDACTED]

[REDACTED]
Houma, AL 70364-1170

RE: Claim Number: N10036-0068

Dear [REDACTED]:

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number N10036-0068 involving Deepwater Horizon. Please see the enclosed Claim Summary / Determination 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 N10036-0068.

Mail reconsideration requests to:

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

[REDACTED]
U.S. Coast Guard
Claims Manager

Enclosure: Claim Summary/Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Date	: 12/16/2010
Claim Number	: N10036-0068
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$97,500.00

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 was discharged from an offshore facility associated with the Deepwater Horizon and located on the Mississippi Canyon, Block 252 (the Deepwater Horizon incident). This area was leased by BP Exploration and Production, Inc. (BP). The Coast Guard designated the offshore facility as the source of the discharge and BP as the responsible party (RP) for the discharge. BP accepted the designation, advertised its OPA claims process, and compensated claimants. On 23 August 2010, the Gulf Coast Claims Facility (GCCF) began accepting and adjudicating claims on behalf of BP.

On 28 May 2010, The U.S. Department of the Interior (DOI) issued a six-month moratorium on deepwater drilling, citing concerns over the safety of deepwater drilling and directing lessees and operators to cease drilling all new deepwater wells and related activities effective 30 May 2010. Lessees and operators conducting current drilling operations were directed to secure the wells and to take all necessary steps to cease operations and temporarily abandon or close the wells. BP subsequently established a \$100 million Rig Workers Assistance Fund to help compensate rig workers impacted by the moratorium on deepwater well activities. The Assistance Fund is administered by the Gulf Coast Restoration and Protection Foundation (GCRF).¹

CLAIM AND CLAIMANT

On 03 November 2010, Claimant [REDACTED] presented an Optional Oil Spill Trust Fund (OSLTF) claim form seeking \$97,500.00 in lost profits and earnings capacity resulting from the Deepwater Horizon incident. [REDACTED] provides support to the offshore industry. [REDACTED] worked for [REDACTED] on a "7&7" schedule or "'14 & 7 schedule, and was "paid a daily rate when working."² According to a letter from his employer, [REDACTED] provides shore based dispatchers for offshore operations pertaining to the oil and gas industry.³ The letter asserts that scheduled projects were either placed on hold or cancelled as a result of non issuance or cancellations of permits by the [REDACTED]

¹ U.S. Department of the Interior, MINERALS MANAGEMENT SERVICE, MORATORIUM NOTICE TO LESSEES AND OPERATORS, NTL No. 2010-N04, Effective 30 May 2010. See, Decision Memo dated 12 July 2010, From Secretary of the Interior To Director [REDACTED]

[REDACTED] Subject Decision Memorandum regarding the suspension of certain offshore permitting and drilling activities on the Outer Continental Shelf. See also, U.S. Department of the Interior, Minerals Management Service, NATIONAL NOTICE TO LESSEES AND OPERATORS OF FEDERAL OIL AND GAS LEASES, OUTER CONTINENTAL SHELF (OCS) NOTICE TO LESSEES AND OPERATORS, NTL No. 2010-N05, Effective 08 June 2010.

² Letter from [REDACTED] Specialist to [REDACTED] NPFC, dated 07 December 2010.

³ Letter from [REDACTED] Specialist to [REDACTED] NPFC, dated 07 December 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 waters or adjoining shorelines or the exclusive economic zone, as described in § 2702(b) of OPA.

The OSLTF which is administered by the NPFC, is available, pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136, to pay claims for uncompensated damages. 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.

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.
- (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.

DETERMINATION OF LOSS

Claimant's Submission

To support his claim, Claimant originally presented an OSLTF claim form on 10 November 2010 for \$97,500.00 and the following documentation: [REDACTED] invoice for services rendered dated 30 September 2009 documenting daily rate, per diem, & mileage rate, his pay history from 2009 to 2010, an undated letter from [REDACTED] Oklahoma documenting lack of work available, five unlabeled Pay Stubs, two [REDACTED] pay stubs dated 15 June 2010 and 31 May 2010, his 2008 Form 1040 Federal Tax Return, and a [REDACTED] letter dated 16 July 2010 documenting that they were "not hiring at this time due to the down turn in the oilfield." As a follow up to a phone conversation and email exchange with his NPFC claims adjuster, Claimant provided a letter dated 07 December 2010 from his employee [REDACTED]

Claimant filed with the GCCF on 23 August 2010 and received GCCF Claimant ID [REDACTED] and GCCF Claim [REDACTED]. Claimant was denied by the GCCF on 23 October 2010. The GCCF confirmed denial of his claim for the NPFC on 30 November 2010.

Claimant asserts that he has attempted to find work but has been unsuccessful due to a lack of work resulting from the Deepwater Horizon incident.

NPFC Determination

The claim is denied. Under 33 U.S.C. § 2702(b) and 33 C.F.R. Part 136, a claimant must prove that his loss of income resulted from injury to or destruction of a natural resource. The documentary evidence presented by the Claimant indicates that his loss resulted from the six month deepwater drilling moratorium. The claim is denied because the alleged loss in the amount of \$97,500.00 is not 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, but because a determination was made and a directive issued by the Department of the Interior to enact a six month moratorium to implement new safety requirements.

Claim Supervisor: [REDACTED]

Date of Supervisor's Review: 12/20/10

Supervisor's Actions: DENIAL APPROVED

Supervisor's Comments:

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: [REDACTED]
E-mail: [REDACTED]
Fax: [REDACTED]

5890
12/14/2010

VIA MAIL and EMAIL [REDACTED]

[REDACTED]
Mobile, AL 36605

RE: Claim Number: N10036-0069

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number N10036-0069 involving Deepwater Horizon. Please see the attached Claim Summary / Determination Form for the rationale regarding this denial.

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 N10036-0069.

Attachment

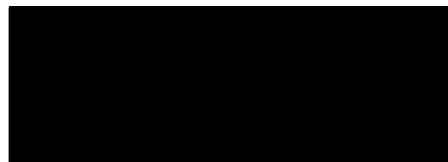
Page 4 of 5

09/13/11

FOIA2011-3380-00000297

Mail reconsideration requests to:

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



Claims Manager
U.S. Coast Guard

Encl: Claim Summary / Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Date	13 December 2010
Claim Number	N10036-0069
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
Claim Manager	[REDACTED]
Amount Requested	\$5,500.00

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 was discharged from an offshore facility associated with the Deepwater Horizon and located on the Mississippi Canyon, Block 252 (the Deepwater Horizon incident). This area was leased by BP Exploration and Production, Inc. (BP). The Coast Guard designated the offshore facility as the source of the discharge and BP as the responsible party (RP) for the discharge. BP accepted the designation, advertised its OPA claims process, and compensated claimants. On 23 August 2010, the Gulf Coast Claims Facility (GCCF) began accepting and adjudicating claims on behalf of BP.

CLAIM AND CLAIMANT

On 09 November 2010, [REDACTED] (Claimant), submitted a lost profits & earnings claim in the amount of \$5,500.00 to the National Pollution Funds Center (NPFC) for reimbursement. [REDACTED] is asserting that he was dismissed from his temporary oil-spill response work only two and a half months after beginning his temporary employment when he alleges that he was guaranteed six months of employment. [REDACTED] willingly left his primary employment at [REDACTED] in Theodore, AL in order to pursue better paying employment arising from the Deepwater Horizon incident. Since the Claimant was only employed for two and a half months performing oil-spill response related work, he is claiming lost earnings related to the balance of the six months of work that he was expecting.

APPLICABLE LAW

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a). Damages include the loss of profits or impairment of earning capacity due to the injury, destruction or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant. 33 U.S.C. § 2702(b)(2)(E).

The OSLTF, which is administered by the NPFC, 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. With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

Pursuant to the claims regulations, 33 C.F.R. § 136.233, a claimant must establish the following to prove loss of profits or impairment of earning capacity:

- (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.
- (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.

DETERMINATION OF LOSS:

Claimant's Submission

To support his claim, the Claimant submitted the NPFC OSLTF Claim Form dated November 9, 2010, a copy of the denial letter from the Gulf Coast Claims Facility (GCCF) dated October 29, 2010, a copy of a letter from the claimant to the GCCF dated November 4, 2010 which explains his circumstances related to his unemployment, and 2009 1040A Income Tax Return. The GCCF assigned claim identification [REDACTED] to [REDACTED] claim submission. On October 29, 2010, the GCCF issued a denial to [REDACTED] stating that individual wages related to oil-spill clean up efforts or business contracts involved in clean up or remediation efforts in response to the oil-spill are not compensable by the GCCF.¹

B. NPFC Determination

Under 33 CFR 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 CFR § 136.233, a claimant must establish loss of profits or impairment of earning capacity. The NPFC considered all the documentation submitted by the Claimant.

The claim is denied because the alleged loss in the amount of \$5,500 is not due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil. Claimant's alleged loss of profits is the result of his employer's business decision to terminate his employment.

Claim Supervisor [REDACTED]

Date of Review: 12/14/10

Supervisor's Comments: Denial Allowed

¹ See, GCCF denial letter dated October 29, 2010.

U.S. Department of
Homeland Security

United States
Coast Guard

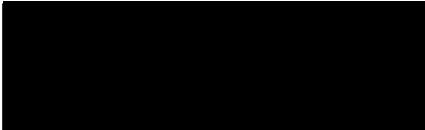


Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd. Suite 1000
Arlington, VA 20598-7100
Staff Symbol: (CA)
Phone: 202-493-1201
E-mail:

Fax: 202-493-6937
5890
1/24/2011

BY MAIL AND EMAIL [REDACTED]



RE: Claim Number: N10036-0070

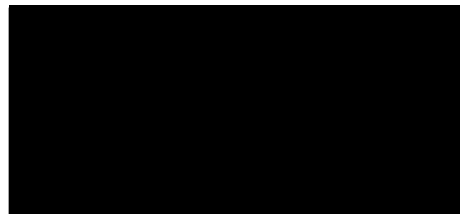
Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number N10036-0070 involving Deepwater Horizon. Please see the attached Claim Summary / Determination Form for an explanation regarding this denial.

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 N10036-0070.

Mail reconsideration requests to:

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



Claims Manager
U.S. Coast Guard

Encl: Claim Summary / Determination Form

09/13/11

FOIA2011-3380-00000302

CLAIM SUMMARY / DETERMINATION FORM

Date	January 24, 2011
Claim Number	N10036-0070
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
Claim Manager	[REDACTED]
Amount Requested	\$20,000.00

FACTS

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 of the explosion and sinking, oil was discharged from an offshore facility associated with the Deepwater Horizon and located on the Mississippi Canyon, Block 252 (the Deepwater Horizon incident). This area was leased by BP Exploration and Production, Inc. (BP). The Coast Guard designated the offshore facility as the source of the discharge and BP as the responsible party (RP) for the discharge. BP accepted the designation, advertised its OPA claims process, and compensated claimants. On August 23, 2010, the Gulf Coast Claims Facility (GCCF) began accepting and adjudicating claims on behalf of BP.

CLAIM AND CLAIMANT

On November 10, 2010, [REDACTED] (Claimant) presented an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form for lost profits & earnings and personal property damage totaling \$20,000.00 to the National Pollution Funds Center (NPFC) for reimbursement. The Claimant asserted that the Deepwater Horizon incident caused cancellations at two rental units in Gulf Shores, Alabama.

The Claimant owns two townhomes in Gulf Shores, Alabama. The Claimant provided mortgage statements to prove ownership of the rental properties. The Claimant stated in a response to the NPFC that this is the first year that they have rented fulltime and all rental income would be used to maintain and operate the properties.

The Claimant submitted a claim with the GCCF and was provided Claimant Identification # [REDACTED]. The Claimant received an emergency advance payment of \$1,300.00 from the GCCF. The claimant received a second payment from the GCCF for \$5,600.00. Collectively the Claimant received payments of \$6,900.00 through the GCCF.

APPLICABLE LAW

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a). Damages include the loss of profits or impairment of earning capacity due to the injury, destruction or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant. 33 U.S.C. § 2702(b)(2)(E).

The OSLTF, which is administered by the NPFC, 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. With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

Pursuant to the claims regulations, 33 C.F.R. § 136.233, a claimant must establish the following to prove loss of profits or impairment of earning capacity:

- (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.
- (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.

DETERMINATION OF LOSS

Claimant's Submission

To support his claim, the Claimant submitted the following documentation:

- NPFC OSLTF Claim Form dated November 10, 2010
- 13 Condominium rental agreement forms
- Copy of email between Claimant and GCCF
- 2009 Income Tax Return
- Email from Claimant to NPFC stating she was not able to reimburse any cancellations except one
- Hardship letter
- Mortgage statements for both properties

NPFC Determination

Under 33 CFR 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 CFR § 136.233, a claimant must establish loss of profits or impairment of earning capacity. The NPFC considered all the documentation submitted by the Claimant.

The Claimant is making a claim totaling \$20,000.00 for lost profits and personal property damage. The Claimant has received payments totaling \$6,900.00 from the RP. The Claimant asserted that her claim for lost profits and earnings capacity is based on actual cancellations and prospective cancellations.

The Claimant provided cancellations from 13 tenants due to the oil-spill. Based on documentation provided by the Claimant, the NPFC determines that there was an actual loss as follows:

<u>Total Potential Lost Rents</u>		\$4,825.00 (not including deposits kept by the Claimant)
<u>Less: Non-Continuing Expenses</u>		
Cleaning and Maintenance		\$697.00
Utilities	+	<u>\$955.00</u>
<u>Total Non-Continuing Expenses</u>	=	\$1,652.00

TOTAL POTENTIAL LOST RENTAL INCOME - \$3,173.00

Based on the documentation provided, the Claimant has been compensated \$6,900.00 by the RP. The NPFC has determined that the RP has compensated the Claimant more than the NPFC would have paid based on the documented losses therefore this claim is denied.

Claim Supervisor:

Date of Review: 1/24/11

Supervisor's Comments: *Denial approved*

U.S. Department
of Homeland
Security

**United States
Coast Guard**



Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd., Suite 1000
Arlington, VA 20598-7100
Staff Symbol: (CA)
Phone: 1-800-280-7118
E-mail: [REDACTED]
Fax: [REDACTED]

VIA MAIL AND EMAIL: [REDACTED]

[REDACTED]
Marrero, LA 70072

5890/DWHZ
Claim # N10036-0071
05 January 2011

Re: Claim Number: N10036-0071

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number N10036-0071 involving Deepwater Horizon. Please see the attached Claim Summary / Determination Form for the rationale regarding this denial.

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 N10036-0071.

Mail reconsideration requests to:

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

[REDACTED]
U. S. Coast Guard
Claims Manager

Enclosure: Claim Summary/Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Date	05 January 2011
Claim Number	N10036-0071
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
Claim Manager	[REDACTED]
Amount Requested	\$26,040.00

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 was discharged from an offshore facility associated with the Deepwater Horizon and located on the Mississippi Canyon, Block 252 (the Deepwater Horizon incident). This area was leased by BP Exploration and Production, Inc. (BP). The Coast Guard designated the offshore facility as the source of the discharge and BP as the responsible party (RP) for the discharge. BP accepted the designation, advertised its OPA claims process, and compensated claimants. On 23 August 2010, the Gulf Coast Claims Facility (GCCF) began accepting and adjudicating claims on behalf of BP.

On May 28, 2010, The U.S. Department of the Interior (DOI) issued a six-month moratorium on deepwater drilling, citing concerns over the safety of deepwater drilling and directing lessees and operators to cease drilling all new deepwater wells and related activities effective May 30, 2010¹. Lessees and operators conducting current drilling operations were directed to secure the wells and to take all necessary steps to cease operations and temporarily abandon or close the wells. On August 23, 2010 the Gulf Coast Claims Facility (GCCF) began accepting and adjudicating claims on behalf of BP. BP subsequently established a \$100 million Rig Workers Assistance Fund to help compensate rig workers impacted by the moratorium on deepwater well activities. The Assistance Fund is administered by the Gulf Coast Restoration and Protection Foundation (GCRF).

On 12 July 2010 the Department of the Interior issued a new decision to suspend deepwater drilling activities. Applicability of this suspension order is based on drilling configuration and technology, not depth of water. As such, it applied to both deepwater and shallow water drilling. This suspension order was lifted on 12 October 2010 for those operators who certified compliance with all existing rules and regulations, including those that recently went into effect, and demonstrated the availability of adequate blowout containment resources. DOI's verification of new permit applications and equipment testing for applicants continue.

CLAIM AND CLAIMANT

¹ U.S. Department of the Interior, MINERALS MANAGEMENT SERVICE, MORATORIUM NOTICE TO LESSEES AND OPERATORS, NTL No. 2010-N04, Effective 30 May 2010. See, Decision Memo dated 12 July 2010, From Secretary of the Interior To Director, Bureau of Ocean Energy Management, Regulation and Enforcement, Subject Decision Memorandum regarding the suspension of certain offshore permitting and drilling activities on the Outer Continental Shelf. See also, U.S. Department of the Interior, Minerals Management Service, NATIONAL NOTICE TO LESSEES AND OPERATORS OF FEDERAL OIL AND GAS LEASES, OUTER CONTINENTAL SHELF (OCS) NOTICE TO LESSEES AND OPERATORS, NTL No. 2010-N05, Effective 08 June 2010.

On 11 November 2010 [REDACTED] (Claimant) presented a claim to the NPFC seeking \$24,040.00 in lost profits and earnings capacity resulting from the Deepwater Horizon incident. The Claimant is a Deckhand for [REDACTED] and is claiming reduced earnings as a result of the moratorium.

Claimant was employed by [REDACTED] and has provided documentation indicating that he has been with the company since at least 2007. Claimant is a Deckhand and works for a marine transportation group responsible for supplying oil rigs with deck cargo, water, fuel and other operationally necessary items. The Claimant asserts that as a result of the Deepwater Horizon incident, his work hours were reduced by approximately half, though he was never furloughed or terminated from his position. Claimant is requesting compensation for lost earnings capacity as a result of the moratorium.

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 navigable waters and adjoining shorelines, as described in Section 2702(b) of OPA.

The OSLTF which is administered by the NPFC, is available, pursuant to 33 U.S.C. §§ 2712(a)(4) and 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136, to pay claims for uncompensated damages. 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.

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.
- (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.

DETERMINATION OF LOSS

Claimant's Submission

To support his claim, Claimant presented an Optional OSLTF Claim Form on 11 November 2010. Claimant provided various earnings statements from 2009-2010, reported earnings from the tax years 2008 through 2009 and his claim submission to the GCCF. Claimant's initial claim with the GCCF was assigned identification number [REDACTED]. On 12 October 2010, the GCCF sent a letter to Claimant redirecting his claim to the Gulf Coast Restoration and Protection Foundation (GCRPF). Claimant indicates that the GCRPF denied his claim because he was not a rig worker². Claimant also presents a letter from the GCCF dated 23 October 2010 denying his claim.

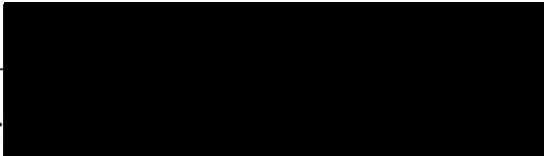
B. NPFC Determination

Under 33 U.S.C. § 2702(b) and 33 C.F.R. Part 136, a claimant must prove that his loss of income resulted from injury to or destruction of a natural resource. The Claimant's employer was contacted on 07 December 2010. [REDACTED] Director of Human Resources for [REDACTED] advised that the decision to "cut back" hours on every vessel began in January 2010 because there were no drilling jobs. That reduction in hours from twenty-eight (28) days on/fourteen (14) days off to fourteen (14) days on/fourteen (14) days off was intended to last until June 2010 when four new boats would be brought on-line and additional crews would be required.⁶ The moratorium changed that and their charters with companies such as [REDACTED] were postponed, still awaiting [REDACTED] permits.⁶ This cut back allowed [REDACTED] to keep trained people on staff while giving [REDACTED] the ability to respond quickly, when necessary. All documentary evidence provided, in conjunction with the reasons provided by [REDACTED] indicates that Claimant's loss of hours occurred initially due to a business decision, and has continued subsequently due to the six month deepwater drilling moratorium.⁶ The Claimant's loss, therefore, did not occur because there was an oil spill in the Gulf of Mexico, but because a determination was made by the employer and a directive issued by the Department of the Interior to enact a six month moratorium to implement new safety requirements.³ As a result, the Claimant's claim is considered a consequence of a business decision and the moratorium, not the oil spill, and is not compensable under OPA.

² See, letter from Claimant dated 26 October 2010.

³ U.S. Department of the Interior, MINERALS MANAGEMENT SERVICE, MORATORIUM NOTICE TO LESSEES AND OPERATORS, NTL No. 2010-N04, Effective 30 May 2010. See, Decision Memo dated 12 July 2010, From Secretary of the Interior To Director, Bureau of Ocean Energy Management, Regulation and Enforcement, Subject *Decision Memorandum regarding the suspension of certain offshore permitting and drilling activities on the Outer Continental Shelf*. See also, U.S. Department of the Interior, Minerals Management Service, NATIONAL NOTICE TO LESSEES AND OPERATORS OF FEDERAL OIL AND GAS LEASES, OUTER CONTINENTAL SHELF (OCS) NOTICE TO LESSEES AND OPERATORS, NTL No. 2010-N05, Effective 08 June 2010.

⁶ See, Telephone Summary from conversation which occurred between [REDACTED] and [REDACTED] on 07 December 2010 at 1130.

Claim Supervisor 

Date of Review: 1/5/11

Supervisor's Comments: *Denial approved*

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

Fax: 202-493-6937

5890

Claim # N10036-0072

24 January 2011

VIA MAIL and EMAIL [REDACTED]

RE: Claim Number: N10036-0072

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with 33 C.F.R. Part 136, denies payment on the claim number N10036-0072 involving the Deepwater Horizon Incident. Please see the enclosed 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 N10036-0072.

Mail reconsideration requests to:

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

[REDACTED]
U.S. Coast Guard
Claims Adjuster

Enclosure: Claim Summary / Determination Form

09/13/11

FOIA2011-3380-00000311

CLAIM SUMMARY / DETERMINATION FORM

Date	: 20 January 2011
Claim Number	: N10036-0072
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$29,631.00

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 was discharged from an offshore facility associated with the Deepwater Horizon and located on the Mississippi Canyon, Block 252 (the Deepwater Horizon incident). This area was leased by BP Exploration and Production, Inc. (BP). The Coast Guard designated the offshore facility as the source of the discharge and BP as the responsible party (RP) for the discharge. BP accepted the designation, advertised its OPA claims process, and compensated claimants. On 23 August 2010, the Gulf Coast Claims Facility (GCCF) began accepting and adjudicating claims on behalf of BP.

CLAIM AND CLAIMANT

On 10 November 2010 [REDACTED] (Claimant) presented an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form seeking \$29,631.00 in lost profits and earning capacity resulting from the Deepwater Horizon incident.¹

Claimant asserted that as a private contractor he undertakes various jobs and stated "98%" of his workload is located in and around Perdido Beach, Orange Beach, and Gulf Shores, Alabama. He claimed that he has sustained a significant decrease in earnings and profits due to cancellations from clients subsequent to the Deepwater Horizon oil spill.²

APPLICABLE LAW

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a). Damages include the loss of profits or impairment of earning capacity due to the injury, destruction or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant. 33 U.S.C. § 2702(b)(2)(E).

The OSLTF, which is administered by the NPFC, is available to pay claims for uncompensated damages pursuant to 33 USC § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136. With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

¹ Claimant's Optional OSLTF Claim Form dated 10 November 2010.

² Claimant's Optional OSLTF Claim Form dated 10 November 2010.

Pursuant to 33 U.S.C. § 2715(a), any person, including the Fund, who pays compensation pursuant to OPA to any claimant for removal costs or damages shall be subrogated to all rights, claims, and causes of action that the claimant has under any other laws.

DETERMINATION OF LOSS

Claimant's Submission

To support his claim, Claimant presented the following:

1. NPFC Optional OSLTF Claim Form dated November 8, 2010
2. Federal Income Tax Return filings from 2007, 2008 and 2009
3. Letter from BP dated August 18, 2010 regarding monthly payment approval accompanied by checks dated August 19, 2010.
4. Letter from GCCF dated August 31, 2010 regarding receipt of claim
5. Letter from GCCF dated September 27, 2010 regarding approval for approval for advance payment.
6. Email correspondence from GCCF dated September 30, 2010 regarding increases to advanced payment amount.
7. Executed work proposals from January through May 2010 and executed proposals since May 2010.
8. Cancelled work proposals since May 2010.

On 18 June 2010, Claimant presented BP with a claim and received a payment in the amount of \$5,802.00. Claimant filed an Emergency Six Month Payment Request through GCCF for \$11,604.00 on 31 August 2010 and received \$2,000.00. Claimant subsequently received a Quick Pay Final payment in the amount of \$25,000.00 on 17 January 2011. Total compensation by the responsible party amounts to \$32,802.00. Claimant's GCCF Identification Number is [REDACTED] with GCCF Claim Numbers [REDACTED] and [REDACTED] respectively.

NPFC Determination

This claim is denied. The OSLTF is available to pay certain uncompensated damages pursuant to 33 U.S.C. § 2712(a)(4). Further, under 33 U.S.C. § 2751(a), any person, including the Fund, who pays compensation pursuant to OPA to any claimant for removal costs or damages shall be subrogated to all rights, claims, and causes of action that the claimant has under any other laws.

The claim is denied because the Claimant has accepted full compensation from the responsible party under the Quick Payment Final Claim process. By doing so, Claimant signed a release and has, therefore, waived his rights to seek compensation from the OSLTF.

Claim Supervisor [REDACTED]

Date of Supervisor's Review: *1/24/11*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

U.S. Department
of Homeland
Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd., Suite 1000
Arlington, VA 20598-7100
Staff Symbol: (CA)
Phone: 1-800-280-7118

Fax: 202-493-6937

VIA CERTIFIED MAIL AND EMAIL:

5890/DWHZ
Claim # N10036-0073
19 January 2011

Re: Claim Number: N10036-0073

Email:

Dear

The National Pollution Funds Center (NPFC), in accordance with 33 C.F.R. Part 136, denies your claim. The NPFC is unable to establish that the loss of earnings you presented in your claim was a result of the Deepwater Horizon incident. 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 N10036-0073.

Mail reconsideration requests to:

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

Sincerely,

U. S. Coast Guard
Claims Manager

Enclosure: Claim Summary/Determination Form

09/13/11

FOIA2011-3380-00000314

CLAIM SUMMARY / DETERMINATION FORM

Date	19 January 2011
Claim Number	N10036-0073
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
Claim Manager	[REDACTED]
Amount Requested	\$40,000.00

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 was discharged from an offshore facility associated with the Deepwater Horizon and located on the Mississippi Canyon, Block 252 (the Deepwater Horizon incident). This area was leased by BP Exploration and Production, Inc. (BP). The Coast Guard designated the offshore facility as the source of the discharge and BP as the responsible party (RP) for the discharge. BP accepted the designation, advertised its OPA claims process, and compensated claimants. On 23 August 2010, the Gulf Coast Claims Facility (GCCF) began accepting and adjudicating claims on behalf of BP.

CLAIM AND CLAIMANT

On 10 November 2010 [REDACTED] (Claimant), submitted a lost profits and earnings claim in the amount of \$40,000.00 to the National Pollution Funds Center (NPFC) for reimbursement. Claimant is asserting that he was unable to open a planned restaurant and retail store because of the Deepwater Horizon incident, and as a result, suffered economic losses.

Previous to the Deepwater Horizon incident,¹ the Claimant owned and operated a restaurant called [REDACTED] in Cumberland, Maryland from May 2009 through December 2009. The claimant contends that operating the restaurant for a partial year was pre-planned, with the intent to build up capital to open a planned restaurant and retail store in Pensacola, Florida. Claimant maintains that he was unable to open the restaurant in Florida due to the economic conditions caused by the Deepwater Horizon incident.

APPLICABLE LAW

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a). Damages include the loss of profits or impairment of earning capacity due to the injury, destruction or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant. 33 U.S.C. § 2702(b)(2)(E).

The OSLTF, which is administered by the NPFC, 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. With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person

¹ Letter from Claimant to BP dated 07 November 2010.

09/13/11

ENCLOSURE

FOIA2011-3380-00000315

by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

Pursuant to the claims regulations, 33 C.F.R. § 136.233, a claimant must establish the following to prove loss of profits or impairment of earning capacity:

- (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.
- (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.

DETERMINATION OF LOSS

Claimant's Submission

To support his claim, the Claimant submitted the NPFC OSLTF Claim Form dated 10 November 2010, and numerous documents including a tax return for the [REDACTED] business plans and financial projections for the planned restaurant and retail store in Florida, real estate listings for commercial spaces in Florida, a "Non-binding Intent to Lease" for a business location at [REDACTED] in Pensacola, Florida.

The Claimant's explanation for the claimed lost profit \$40,000 is that his "expected" annual salary he would have drawn from the new business would have been \$48,000.00, compared to a \$24,000.00 annual salary he drew from his prior business [REDACTED]. Although the claimant's explanation suggests the claim is for "lost wages," it is a claim for lost profits, as salaries paid to owners of a business are in effect, "draws" from the business. The claimant contends that the higher salary (compared to his salary from [REDACTED]) would have been probable and supportable due to the higher "expected" annual sales of \$500,000.00 for the new restaurant and \$1,200,000.00 for the retail store.

The Claimant submitted an Emergency Advanced Payment claim to the Gulf Coast Claims Facility (GCCF) in his Individual capacity and was issued Claimant ID [REDACTED] and Claim # [REDACTED]. On 02 November 2010, the GCCF denied his claim.

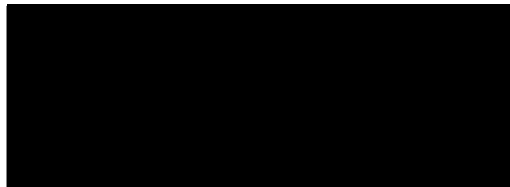
NPFC Determination

This claim is denied. 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. § 136.233, a claimant must establish a loss of profits or impairment of earning capacity. The NPFC considered all the documentation submitted by the Claimant.

The claim is denied because the evidence presented does not prove that he has incurred a loss of profits as a result of the Deepwater Horizon incident. The claimed loss is based on three assumptions which are speculative: that the planned restaurant/retail store would have opened for business in the early summer of 2010, that the business would have survived its first year and, that the business would have been profitable.

The evidence presented by the Claimant does not fully support any of these three factors. For example, regarding the proposed profitability of the new restaurant in Florida based on the prior performance of the restaurant in Maryland, the 2009 income tax return for [REDACTED] shows a net operating loss of \$58,678.00. Since the Claimant's only prior restaurant was not profitable, the assumption that the new business would have been profitable is speculative. Since the future success of the Florida restaurant and retail business are speculative in nature and remain unproved by the evidence presented, any claimed economic loss is, likewise, speculative in nature. Accordingly, claim is denied.

Claim Supervisor:



Date of Review:

1/21/11

Supervisor's Actions: *Denial A / 11/20/10*

Supervisor's Comments:

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: [REDACTED]
E-mail: [REDACTED]
Fax: 202-493-6937
5890

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number [REDACTED]

03 December 2010

Email: [REDACTED]

Claim Number: N10036-0074

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies your claim. The NPFC is unable to establish that the loss of profits you presented in your claim were a result of the Deepwater Horizon oil spill. Please see the attached claim summary 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 N10036-0074.

Mail reconsideration requests to:

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

Sincerely,

[REDACTED]
U.S. Coast Guard
Claims Manager

Attachment: (1) Claim Summary/Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Date 03 December 2010
Claim Number N10036-0074
Claimant [REDACTED] - Oil Rig Roustabout
Type of Claimant Private (US)
Type of Claim Loss of Profits and Earning Capacity
Claim Manager [REDACTED]
Amount Requested \$24,000.00

FACTS

On or about April 20, 2010, the Mobile Offshore Drilling Unit Deepwater Horizon exploded and sank in the Gulf of Mexico. As a result of the explosion and sinking, oil was discharged from an offshore facility, located on the Mississippi Canyon, Block 252 (the Deepwater Horizon oil spill). This area was leased by BP Exploration and Production, Inc. (BP). The Coast Guard designated the offshore facility as the source of the discharge and BP as the responsible party for the discharge. BP accepted the designation, advertised its OPA claims process and compensated claimants. On May 28, 2010, The U.S. Department of the Interior (DOI) issued a six-month moratorium on deepwater drilling, citing concerns over the safety of deepwater drilling and directing lessees and operators to cease drilling all new deepwater wells and related activities effective May 30, 2010¹. Lessees and operators conducting current drilling operations were directed to secure the wells and to take all necessary steps to cease operations and temporarily abandon or close the wells. On August 23, 2010 the Gulf Coast Claims Facility (GCCF) began accepting and adjudicating claims on behalf of BP. BP subsequently established a \$100 million Rig Workers Assistance Fund (RWF) to help compensate rig workers impacted by the moratorium on deepwater well activities. The Assistance Fund is administered by the Gulf Coast Restoration and Protection Foundation (GCRF).

CLAIM AND CLAIMANT

On 10 November 2010 Claimant [REDACTED] submitted an Optional Oil Spill Liability Trust Fund (OSLTF) claim form seeking \$24,000.00 in lost profits and earning capacity resulting from the Deepwater Horizon oil spill. [REDACTED] is an offshore roustabout who worked on a shallow water rig for [REDACTED] Drilling and is claiming lost earnings and wages due to losing his job on 09 June 2010 as a result of the moratorium.

[REDACTED] filed a 6 month emergency advance payment claim with BP "sometime in May 2010" and then went on to file a claim with the GCCF on 23 August 2010. GCCF issued him claimant ID # [REDACTED]. He waited, "about one month" and was then informed by the GCCF that he needed to file a claim with the GCRF that assisted deep water rig workers affected by the moratorium. He was told by the GCRF that he did not qualify to file a claim with them because

¹ U.S. Department of the Interior, MINERALS MANAGEMENT SERVICE, MORATORIUM NOTICE TO LESSEES AND OPERATORS, NTL No. 2010-N04, Effective 30 May 2010. See, Decision Memo dated 12 July 2010, From Secretary of the Interior To Director, Bureau of Ocean Energy Management, Regulation and Enforcement, Subject *Decision Memorandum regarding the suspension of certain offshore permitting and drilling activities on the Outer Continental Shelf*. See also, U.S. Department of the Interior, Minerals Management Service, NATIONAL NOTICE TO LESSEES AND OPERATORS OF FEDERAL OIL AND GAS LEASES, OUTER CONTINENTAL SHELF (OCS) NOTICE TO LESSEES AND OPERATORS, NTL No. 2010-N05, Effective 08 June 2010.

he was not employed by any of the 33 deep water rigs affected by the moratorium. [REDACTED] was also denied by the GCCF.

[REDACTED] provided a letter dated 14 July 2010 where [REDACTED] of [REDACTED] Drilling's Human Resource Department confirmed [REDACTED] was "furloughed without pay due to repercussions from the BP oil spill in the Gulf of Mexico"². On 28 October 2010 [REDACTED] of [REDACTED] Drilling sent [REDACTED] a letter stating that he would be removed from furlough status and officially laid off on 01 November 2010 due to a "Reduction in Force"³.

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 navigable waters and adjoining shorelines, as described in Section 2702(b) of OPA.

The OSLTF which is administered by the NPFC, is available, pursuant to 33 U.S.C. §§ 2712(a)(4) and 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136, to pay claims for uncompensated damages. 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.

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.
- (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;

² [REDACTED] Drilling Letter Dated 14 July 2010.

³ [REDACTED] Drilling Letter Dated 28 October 2010

- (b) All income from alternative employment or business undertaken;
- (c) Potential income from alternative employment or business not undertake, 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.

DETERMINATION OF LOSS

A. Overview

██████████ submitted the following list of documentation:

- Optional OSLTF Claim Form Submission dated 08 November 2010.
- Personal Narrative (Not Dated)
- Letter from ██████████ of ██████████ Drilling dated 28 October 10 confirming ██████████ separation from ██████████ Drilling and the cancellation of benefits.
- Letter from ██████████ of ██████████ Drilling dated 14 July 10 explaining that ██████████ was furloughed without pay due to the oil spill.
- 2008 IRS Form 8879 (IRS e-file Signature Authorization).
- 2008 W-2 and Earnings Summary. Gross Pay of 66,895.06.
- 2009 IRS Form 8879 (IRS e-file Signature Authorization).
- 2009 W-2 and Earnings Summary. Gross Pay of 17,069.77.
- Pay Stub for Pay Date 18 June 2010 in the amount of \$1,561.32.
- Pay Stub for Pay Date 11 June 2010 in the amount of \$1,561.32.

B. Claimants Analysis of Claim

██████████ has been denied by both the RWAf and the GCCF and has submitted a claim for lost earnings and profits to the OSLTF. On his OSLTF claim form, ██████████ reported that he was placed on stand-by and subsequently laid off by his employer due to the moratorium. Thus, ██████████ has submitted a claim to the Fund for lost profits and earnings resulting from the moratorium.

C. NPFC Analysis of Claim

The NPFC reviewed the documentation submitted by ██████████ and made the following observations.

1. In block 2 of his claim form ██████████ states that he was laid off as a result of the moratorium.
2. The letters provided by ██████████ from ██████████ Drilling all assert that the work ██████████ would have engaged in was placed on hold due to the moratorium.
3. The NPFC Claims Manager contacted ██████████ Drilling's Human Resource Manager, ██████████ it was confirmed that ██████████ Drilling's release of ██████████ was due to the new permitting process set forth in the deepwater drilling moratorium⁴.

⁴ PHONCON between ██████████ NPFC and ██████████ of 18NOV10: See also, U.S. Department of the Interior, MINERALS MANAGEMENT SERVICE, MORATORIUM NOTICE TO LESSEES AND OPERATORS, NTL No. 2010-N04, Effective 30 May 2010. See, Decision Memo dated 12 July 2010, From Secretary of the Interior To Director, Bureau of Ocean Energy Management, Regulation and Enforcement, Subject *Decision Memorandum*

D. Determination

Under 33 U.S.C. § 2702(b) and 33 C.F.R. Part 136, a claimant must prove that his loss of income resulted from injury to or destruction of a natural resource. All documentary evidence submitted by [REDACTED] indicates that his loss resulted from the six month deepwater drilling moratorium. [REDACTED] loss, therefore, did not occur because there was an oil spill in the Gulf of Mexico, but because a determination was made and a directive issued by the Department of the Interior to enact a six month moratorium to implement new safety requirements.⁵ As a result, [REDACTED] claim is considered a consequence of the moratorium, not the oil spill, and is not compensable under OPA.

AMOUNT \$0.00

DETERMINATION [REDACTED] s claim for \$24,000.00 to the OSLTF is denied.

Claim Supervisor: [REDACTED]

Date:

12/3/10

Supervisor's Actions:

DENIED APPROVED

Supervisor's Comments:

regarding the suspension of certain offshore permitting and drilling activities on the Outer Continental Shelf. See also, U.S. Department of the Interior, Minerals Management Service, NATIONAL NOTICE TO LESSEES AND OPERATORS OF FEDERAL OIL AND GAS LEASES, OUTER CONTINENTAL SHELF (OCS) NOTICE TO LESSEES AND OPERATORS, NTL No. 2010-N05, Effective 08 June 2010.

⁵ U.S. Department of the Interior, MINERALS MANAGEMENT SERVICE, MORATORIUM NOTICE TO LESSEES AND OPERATORS, NTL No. 2010-N04, Effective 30 May 2010. See, Decision Memo dated 12 July 2010, From Secretary of the Interior To Director, Bureau of Ocean Energy Management, Regulation and Enforcement, Subject *Decision Memorandum regarding the suspension of certain offshore permitting and drilling activities on the Outer Continental Shelf. See also, U.S. Department of the Interior, Minerals Management Service, NATIONAL NOTICE TO LESSEES AND OPERATORS OF FEDERAL OIL AND GAS LEASES, OUTER CONTINENTAL SHELF (OCS) NOTICE TO LESSEES AND OPERATORS, NTL No. 2010-N05, Effective 08 June 2010.*

Attachment

09/13/11

Page 4 of 4

FOIA2011-3380-00000322

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: [REDACTED]

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim# N10036-0075
21 January 2011

[REDACTED]
Mobile, AL 36695

RE: Claim Number: N10036-0075

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with 33 C.F.R. Part 136, denies payment on claim number N10036-0075 involving the Deepwater Horizon incident. Please see the enclosed 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 N10036-0075.

Mail reconsideration requests to:

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

[REDACTED]
U. S. Coast Guard
Claims Manager

Enclosure: Claim Summary/Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Date	21 January 2011
Claim Number	N10036-0075
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
Claim Manager	[REDACTED]
Amount Requested	\$10,000.00

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 was discharged from an offshore facility associated with the Deepwater Horizon and located on the Mississippi Canyon, Block 252 (the Deepwater Horizon incident). This area was leased by BP Exploration and Production, Inc. (BP). The Coast Guard designated the offshore facility as the source of the discharge and BP as the responsible party (RP) for the discharge. BP accepted the designation, advertised its OPA claims process, and compensated claimants. On 23 August 2010, the Gulf Coast Claims Facility (GCCF) began accepting and adjudicating claims on behalf of BP.

CLAIM AND CLAIMANT

On 08 November 2010, [REDACTED] (Claimant) presented an Oil Spill Liability Trust Fund (OSLTF) claim form seeking \$10,000 in lost profits and earning capacity to the National Pollution Fund Center (NPFC) alleging damages resulting from the Deepwater Horizon incident.

Claimant was unemployed during 2008 and 2009. The only employment information provided was in regards to the oil spill clean-up work in 2010.¹ Claimant was unemployed prior to the Deepwater Horizon Incident.

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 waters or adjoining shorelines or the exclusive economic zone, as described in Section 2702(b) of OPA.

The OSLTF which is administered by the NPFC, is available, pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136, to pay claims for uncompensated damages. 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.

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.

¹ Correspondence provided by Claimant on 28 December 2010.

- (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.
- (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 undertake, 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.

DETERMINATION OF LOSS

Claimant's Submission

To support his claim, Claimant submitted the NPFC OSLTF claim form dated 8 November 2010, and pay stubs from [REDACTED] Claimant provided a copy of his ID, Social Security card, and proof of "not paid" unemployment benefits for 13 October 2010.²

Claimant is claiming lost earnings and wages solely due to getting laid off as a responder for oil spill clean-up. Claimant states that he was unemployed in 2008 and 2009. His employment in 2010 was limited to oil spill clean-up and he was unemployed prior to the Deepwater Horizon Incident. Claimant states his job with BP was supposed to be contracted for 5 years, and by accepting the job his disability payments were reduced from \$426 to \$64 a month. After being laid off from his employment, his disability payments continued to be \$64 a month.

Claimant presented an Emergency Advance Payment claim to the GCCF and was issued GCCF [REDACTED] and [REDACTED] On 28 October 2010 the GCCF denied his claim. This information was verified by the NPFC.

² See Alabama Department of Industrial Relations Letter dated 24 November 2010.

NPFC Determination

This claim is denied. Under 33 U.S.C. § 2702(b)(2)(E) and 33 C.F.R. Part 136, a claimant must prove that his loss of income was due to the injury or destruction or loss of real or personal property or 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 to the NPFC, all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim. The NPFC considered all of the documentation submitted by the Claimant.

The claim is denied because the evidence presented by the Claimant does not prove that his alleged loss is due to the Deepwater Horizon incident. The Claimant was unemployed before the incident and actually received work, albeit temporarily, as an oil-spill response worker. Regarding the decrease in disability, Claimant has presented no evidence to explain the subject other than his own assertions. In any event, such damage is not the result of the incident if the decrease was implemented pursuant to an action by a state or federal agency based upon the Claimant's decision to seek employment. Claimant has not established that his alleged loss of income resulted from the Deepwater Horizon incident and his claim is denied.

Claim Supervisor:



Date of Supervisor's Review: 1/24/11

Supervisor's Actions:



Supervisor's Comments:

U.S. Department of
Homeland Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

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: [REDACTED]
Fax: [REDACTED]

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim # N10036-0076
22 December 2010

[REDACTED]
Alexandria, LA 71306

Re: Claim Number: N10036-0076

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with 33 C.F.R. Part 136, denies your claim. Please see the enclosed Claim Summary / Determination 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 N10036-0076.

Mail reconsideration requests to:

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

[REDACTED]
U.S. Coast Guard
Claims Manager

Enclosure: Claim Summary/Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Date 22 December 2010
Claim Number N10036-0076
Claimant [REDACTED]
Type of Claimant Private (US)
Type of Claim Loss of Profits or Earnings
Claim Manager [REDACTED]
Amount Requested \$5,002.18

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 was discharged from an offshore facility associated with the Deepwater Horizon and located on the Mississippi Canyon, Block 252 (the Deepwater Horizon incident). This area was leased by BP Exploration and Production, Inc. (BP). The Coast Guard designated the offshore facility as the source of the discharge and BP as the responsible party (RP) for the discharge. BP accepted the designation, advertised its OPA claims process, and compensated claimants.

On 28 May 2010, The U.S. Department of the Interior (DOI) issued a directive to implement a six-month moratorium on deepwater drilling (water depth greater than 500 feet), citing concerns over the safety of deepwater drilling and directing lessees and operators to cease drilling all new deepwater wells and related activities effective 30 May 2010.¹ Lessees and operators conducting current drilling operations were directed to secure the wells and to take all necessary steps to cease operations and temporarily abandon or close the wells. On 22 June 2010, the District Court, Eastern District of Louisiana, issued a preliminary injunction prohibiting the enforcement of the DOI directive.²

On 12 July 2010 the DOI issued a new decision to suspend deepwater drilling activities.³ Applicability of this suspension order is based on drilling configuration and technology, not depth of water. As such, it applied to both deepwater and shallow water drilling. This suspension order was lifted on 12 October 2010 for those operators who certified compliance with all existing rules and regulations, including those that recently went into effect, and demonstrated the availability of adequate blowout containment resources. DOI's verification of new permit applications and equipment testing for applicants continue.

¹ U.S. Department of the Interior, MINERALS MANAGEMENT SERVICE, MORATORIUM NOTICE TO LESSEES AND OPERATORS, NTL No. 2010-N04, Effective 30 May 2010. See also, U.S. Department of the Interior, Minerals Management Service, NATIONAL NOTICE TO LESSEES AND OPERATORS OF FEDERAL OIL AND GAS LEASES, OUTER CONTINENTAL SHELF (OCS) NOTICE TO LESSEES AND OPERATORS, NTL No. 2010-N05, Effective 08 June 2010.

² United States District Court, Eastern District of Louisiana Order dated 22 June 2010 by the Honorable [REDACTED]

³ Decision Memo dated 12 July 2010, From Secretary of the Interior To Director, Bureau of Ocean Energy Management, Regulation and Enforcement, Subject Decision Memorandum regarding the suspension of certain offshore permitting and drilling activities on the Outer Continental Shelf.

09/13/11 **ENCLOSURE**

FOIA2011-3380-00000328

On 23 August 2010 the Gulf Coast Claims Facility (GCCF) began accepting and adjudicating claims on behalf of BP. BP subsequently established a \$100 million Rig Workers Assistance Fund to help compensate rig workers impacted by the moratorium on deepwater well activities. The Assistance Fund is administered by the Gulf Coast Restoration and Protection Foundation (GCRPF).

CLAIM AND CLAIMANT

On 17 November 2010 [REDACTED] (Claimant) presented a claim to the NPFC seeking \$5,002.18 in lost profits and earning capacity resulting from the Deepwater Horizon incident. Claimant is a Floorhand who worked on a shallow water drilling rig for [REDACTED] and is claiming lost earnings and wages due to losing his job on 21 July 2010

APPLICABLE LAW

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a). Damages include the loss of profits or impairment of earning capacity due to the injury, destruction or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant. 33 U.S.C. § 2702(b)(2)(E).

The OSLTF, which is administered by the NPFC, is available to pay claims for uncompensated damages pursuant to 33 USC § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136. With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

Pursuant to the claims regulations, 33 C.F.R. § 136.233, a claimant must establish the following to prove loss of profits or impairment of earning capacity:

- (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 oil spill also must be established.
- (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 oil spill must be clearly indicated and any saved overhead and other normal expenses not incurred as a result of the oil spill 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 oil spill;
- (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 oil spill; and
- (e) State, local, and Federal taxes.

DETERMINATION OF LOSS

Claimant's Submission

To support his claim, Claimant submitted the following documentation:

1. Claim submitted via email correspondence dated 17 November 2010
2. Photocopy of letter from [REDACTED] Human Resources Generalist [REDACTED] briefly addressing Claimant's previous employment, schedule and factors impacting his furlough, dated 22 July 2010
3. Partial claim form submission (page 6) indicating Claimant's occupation, employment location, date that claimed lost earnings and profits began accruing, and amount of lost earnings and profits
4. Photocopy of Claimant's Louisiana state Personal Driver's License
5. Photocopy of Claimant's United States Social Security Administration card
6. Pay Statements from [REDACTED]
 - a. Pay period: 13-26 June 2010
 - b. Pay period: 11-17 July 2010
7. 2008 e-file W-2 and Earnings Summary
8. 2009 e-file W-2 and Earnings Summary

Claimant asserts that his claim is being made for \$5,002.18 to compensate for lost profits and earnings due to a loss of employment resulting from the Deepwater Horizon oil spill. According to the claim, Claimant presented a claim to BP on 20 July 2010 for which he received a denial. Claimant proceeded to present a claim to the GCCF on 24 August 2010 and was issued Claim [REDACTED] This claim was subsequently denied. On 06 December 2010, the GCCF confirmed to NPFC Claimant's date of submission and that the claim had been denied. Claimant subsequently filed for re-evaluation with GCCF on two other occasions and asserts that these also resulted in denials. Claimant also filed with the GCRPF and reports that he was also denied.

NPFC Determination

The claim is denied. Under 33 U.S.C. 33 § 2702(b)(2)(E) and C.F.R. Part 136, a claimant must prove that his loss of income was due to injury or destruction or loss of real or personal property or a natural resources 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 to the NPFC all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim.

Correspondence from Claimant's employer indicated that his furlough was due to "repercussions" from the Deepwater Horizon incident [REDACTED] dated 22 July 2010. Conversation 09 December 2010 with [REDACTED] Human Resources Generalist for [REDACTED] indicated that the repercussions specified in previous correspondence referred to delays established by newly instituted regulations following the Deepwater Horizon incident. [REDACTED] a shallow water drilling company, was affected due to, and inclusive of, these new regulations and ensuing delays in the issuance of necessary permits, which resulted from the 12 July suspension order by the DOI.

In the present claim, the NPFC reviewed the evidence presented by Claimant and interviewed a representative at [REDACTED] his former employer. The [REDACTED] representative explained that their furloughs of personnel resulted from new regulations and delays in the government's issuing new drilling permits to the companies that engage [REDACTED] for shallow water drilling. As a result, the Claimant's loss is the result of the repercussions relating to the DOI mandated moratorium and subsequent regulatory and permitting requirements required by that agency and not the Deepwater Horizon incident. Claimant has failed to meet his burden and his claim is denied.

Claim Supervisor:

Date:

12/22/10

Supervisor's Actions:

Denial Approved

Supervisor's Comments:

U.S. Department
of Homeland
Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd., Suite 1000
Arlington, VA 20598-7100
Staff Symbol: (CA)
Phone: 1-800-280-7118
E-mail: [REDACTED]
Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim # N10036-0077
22 December 2010

[REDACTED]
Patterson, LA 70392

Email: [REDACTED]

Claim Number: N10036-0077
[REDACTED]

The National Pollution Funds Center (NPFC), in accordance with 33 C.F.R. Part 136, denies your claim. Please see the enclosed Claim Summary / Determination 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 N10036-0077.

Mail reconsideration requests to:

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

Sincerely,

[REDACTED]
U. S. Coast Guard
Claims Manager

Enclosure: Claim Summary / Determination

CLAIM SUMMARY / DETERMINATION FORM

Date 22 December 2010
Claim Number N10036-0077
Claimant [REDACTED] President/CEO
Type of Claimant Private (US)
Type of Claim Loss of Profits and Earning Capacity
Claim Manager [REDACTED] USCGR
Amount Requested \$500,000.00

FACTS

On or about 20 April 2010, the Mobile Offshore Drilling Unit Deepwater Horizon exploded and sank in the Gulf of Mexico. As a result of the explosion and sinking, oil was discharged from an offshore facility, located on the Mississippi Canyon, Block 252 (the Deepwater Horizon incident). This area was leased by BP Exploration and Production, Inc. (BP). The Coast Guard designated the offshore facility as the source of the discharge and BP as the responsible party for the discharge. BP accepted the designation, advertised its OPA claims process and compensated claimants.

On 28 May 2010, The U.S. Department of the Interior (DOI) issued a six-month moratorium on deepwater drilling, citing concerns over the safety of deepwater drilling and directing lessees and operators to cease drilling all new deepwater wells and related activities effective 30 May 2010¹. Lessees and operators conducting current drilling operations were directed to secure the wells and to take all necessary steps to cease operations and temporarily abandon or close the wells. On 23 August 2010 the Gulf Coast Claims Facility (GCCF) began accepting and adjudicating claims on behalf of BP. BP subsequently established a \$100 million Rig Workers Assistance Fund to help compensate rig workers impacted by the moratorium on deepwater well activities. The Assistance Fund is administered by the Gulf Coast Restoration and Protection Foundation (GCRPF).

CLAIM AND CLAIMANT

On 05 November 2010, [REDACTED] (Claimant) submitted an Oil Spill Liability Trust Fund (OSLTF) claim form seeking \$500,000.00 in lost profits and earning capacity resulting from the Deepwater Horizon incident.

Claimant provides products to the oil industry, specifically designed for offshore drilling. Claimant's product line includes vacuum dryer cuttings systems, cuttings boxes, vacuum systems and other products used to collect drilling cuttings on offshore drilling operations.

¹ U.S. Department of the Interior, MINERALS MANAGEMENT SERVICE, MORATORIUM NOTICE TO LESSEES AND OPERATORS, NTL No. 2010-N04, Effective 30 May 2010. See, Decision Memo dated 12 July 2010, From Secretary of the Interior To Director, Bureau of Ocean Energy Management, Regulation and Enforcement, Subject *Decision Memorandum regarding the suspension of certain offshore permitting and drilling activities on the Outer Continental Shelf*. See also, U.S. Department of the Interior, Minerals Management Service, NATIONAL NOTICE TO LESSEES AND OPERATORS OF FEDERAL OIL AND GAS LEASES, OUTER CONTINENTAL SHELF (OCS) NOTICE TO LESSEES AND OPERATORS, NTL No. 2010-N05, Effective 08 June 2010.

09/13/11

ENCLOSURE

FOIA2011-3380-00000333

On 14 September 2010, following his receipt of a GCCF letter, Claimant sent the GCCF additional documentation to substantiate his claim. Claimant subsequently sent a letter to the GCCF dated 15 October 2010 to explain the business and its operations². Claimant explained that 65% of its business is related to deepwater activities while 35% is related to shelf activities. Claimant states in the letter that, "[d]ue to the government mandated deepwater moratorium; our revenues have been drastically reduced."

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 navigable waters and adjoining shorelines, as described in § 2702(b) of OPA.

The OSLTF which is administered by the NPFC, is available, pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136, to pay claims for uncompensated damages. 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.

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.
- (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;

² See letter from [REDACTED] to GCCF dated 15 October 2010. Letter provides an explanation of the business and its operational background.

- (c) Potential income from alternative employment or business not undertake, 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.

DETERMINATION OF LOSS

A. Overview

To support his claim, Claimant submitted the following list of documentation:

- Optional OSLTF Claim Form Submission dated 05 November 2010.
- Louisiana State Driver's License
- Letter from GCCF to Claimant dated 02 November 2010 regarding claim denial.
- Letter from Claimant to GCCF dated 15 October 2010 explaining the background of the business and its operations.
- Letter from Claimant to GCCF dated 14 September 2010 listing the documents provided.
- Letter from Claimant to BP dated 16 July 2010 explaining reasoning for claimed loss.
- Letter from GCCF to Claimant dated 04 September 2010 requesting additional documentation and reminder of excluded types of claims.
- U.S. Income Tax Return for S Corporation from 2007 and 2008. Gross sales total \$7,088,682 and \$5,886,146 for 2007 and 2008 respectively.
- Profit and Loss Statements from 2009 (annual) and 01 January 2010 through 13 August 2010.
- Monthly Sales Ledger for January through July 2010.
- Payroll Ledger from 01 March 2010 through 11 August 2010.
- Employee timesheets from 2009 and 2010.
- Employee mileage reports.
- Copies of service contracts with oil companies such as BP, BHP, Chevron Texaco and Anadarko. Service contracts are mainly for the rental of cuttings boxes, liquid tanks and vacuum units.

B. Claimants Analysis of Claim

Claimant has been denied by GCCF and has submitted a claim for lost earnings and profits to the OSLTF. Through various letters Claimant has indicated that the business's claimed losses are attributable to the moratorium for offshore drilling. Claimant stated in a letter to BP that the company was providing products to five deepwater rigs and was waiting for four additional rigs. In a second letter to the GCCF, Claimant states that the moratorium was the cause for the claimed reductions in revenue.³ Thus, as a result of the moratorium on offshore drilling, Claimant is claiming lost profits or earnings totaling \$500,000.

Previously, Claimant filed for an emergency advance payment claim with GCCF sometime before 04 September 2010. GCCF issued Claimant [REDACTED] On 04 September 2010,

³ See letter from Claimant to BP dated 16 July 2010.
09/13/11

GCCF sent Claimant a letter indicating further documentation would be necessary and included a reminder that claims related to the moratorium were not eligible.⁴ On 02 November 2010, the GCCF denied Claimant's claim.

C. NPFC Analysis of Claim

The NPFC has reviewed the documentation submitted by Claimant and makes the following observations.

1. Claimant has indicated that the business provides equipment and machinery to deepwater oil drilling rigs and relies on their operations. In correspondence provided by Claimant, he has made it clear that his business is dependent upon the deepwater drilling operations and that the moratorium was the primary cause of the claimed losses.
2. Claimant provides various service contracts with oil companies to support existing business activities. The subject matter of the service contracts is consistent with the Claimant's description of its product line and confirms its business relationship with offshore drilling operations.
3. Aside from the claim being related to the moratorium, there are indications that the business did not sustain a loss of profits. Based on tax return filings and historical sales data provided by the Claimant there is evidence of a downward trend in its overall sales. Total sales declined from \$7,088,682 in 2007 to \$5,886,146 in 2008 and down to \$4,624,462 in 2009. The annual sales trends show declines of 17% from 2007 to 2008 and declines of 21% from 2008 to 2009.
4. When comparing the actual sales from 2010 to 2009, before consideration of the downward sales trends, there does not appear to be a reduction in sales through July 2010. Based on annual sales from 2009 totaling \$4,624,462, average monthly sales are equal to \$385,372. Based on the average monthly sales from 2009, total sales from January 2010 through July 2010 would equal \$2,697,605. Actual sales from January through July 2010 were \$2,821,895, \$124,190 higher compared to the prior year's averages. This analysis is limited to the data provided by the Claimant. Monthly data was only provided for January through July 2010 (no data after July 2010), while sales data from prior years were limited to annual totals.

D. Determination

The Claim is denied. Under 33 U.S.C. § 2702(b) and 33 C.F.R. Part 136, a claimant must prove that his loss of income resulted from injury to or destruction of a natural resource. The documentary evidence submitted by Claimant indicates that his loss resulted from the six month deepwater drilling moratorium. Therefore, Claimant's loss, if any, did not result from the Deepwater Horizon incident but because a determination was made and a directive issued by the Department of the Interior to enact a six month moratorium to implement new safety

⁴See GCCF letter dated 4 September 2010 to Claimant - Claim [REDACTED]
09/13/11

requirements.⁵ As a result, Claimant's claim is considered a consequence of the moratorium, not the Deepwater Horizon incident, and is not compensable under OPA.

Claim Supervisor:



Date:

12/22/10

Supervisor's Actions:

Denial allowed

Supervisor's Comments:

⁵ U.S. Department of the Interior, MINERALS MANAGEMENT SERVICE, MORATORIUM NOTICE TO LESSEES AND OPERATORS, NTL No. 2010-N04, Effective 30 May 2010. See, Decision Memo dated 12 July 2010, From Secretary of the Interior To Director, Bureau of Ocean Energy Management, Regulation and Enforcement, Subject *Decision Memorandum regarding the suspension of certain offshore permitting and drilling activities on the Outer Continental Shelf*. See also, U.S. Department of the Interior, Minerals Management Service, NATIONAL NOTICE TO LESSEES AND OPERATORS OF FEDERAL OIL AND GAS LEASES, OUTER CONTINENTAL SHELF (OCS) NOTICE TO LESSEES AND OPERATORS, NTL No. 2010-N05, Effective 08 June 2010.

U.S. Department
of Homeland
Security

United States
Coast Guard



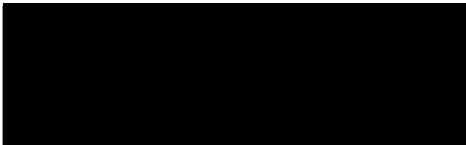
Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD



CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Numb [REDACTED]



5890/DWHZ
Claim # N10036-0078
14 February 2011

Re: Claim Number: N10036-0078

De [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with 33 C.F.R. Part 136, denies your claim relating to the Deepwater Horizon incident. Please see the enclosed Claim Summary/Determination Form for further explanation.

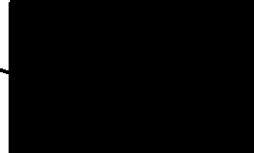
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-0078.

Mail reconsideration requests to:

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

Sincerely,



Lieutenant Commander
U. S. Coast Guard
Claims Manager

Enclosures: (1) Claim Summary/Determination Form
(2) Summary of Documentation Provided by Claimant

CLAIM SUMMARY / DETERMINATION FORM

Date	14 February 2011
Claim Number	N10036-0078
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
Claim Manager	[REDACTED]
Amount Requested	\$528,953.00

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 was discharged from an offshore facility associated with the Deepwater Horizon and located on the Mississippi Canyon, Block 252 (the Deepwater Horizon incident). This area was leased by BP Exploration and Production, Inc. (BP). The Coast Guard designated the offshore facility as the source of the discharge and BP as the responsible party (RP) for the discharge. BP accepted the designation, advertised its OPA claims process, and compensated claimants. On 23 August 2010, the Gulf Coast Claims Facility (GCCF) began accepting and adjudicating claims on behalf of BP.

CLAIM AND CLAIMANT

On 16 November 2010, [REDACTED], on behalf of [REDACTED] (Claimant), presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Funds Center (NPFC) seeking \$528,953.00 in lost profits & earnings resulting from the Deepwater Horizon incident.

Claimant operates a restaurant on [REDACTED] in Lee County, Florida under the DBA [REDACTED]. Claimant has been operating the subject business since at least 2006. The restaurant was previously located at [REDACTED] Florida, in association with the [REDACTED]. During 2009, Claimant decided to move to a new location due to the lease renewal terms at the [REDACTED].

As of August 2009, Claimant relocated from the [REDACTED] to a new location at [REDACTED] [REDACTED] also on [REDACTED]. The new location was previously occupied by another restaurant named [REDACTED] which was incorporated under [REDACTED]. Claimant entered into a lease and purchase agreement with the owners of [REDACTED] to lease the restaurant property with an option to purchase the property based on certain contractually stipulated terms. At the time the Claimant entered into the lease and purchase agreement, the seller of the property was facing foreclosure and filed for Chapter 11 Bankruptcy to put a stay on the foreclosure proceedings. The bankruptcy plan was filed under the stipulation that Claimant's lease payments would be used to pay for the seller's outstanding debts. As such, Claimant was

obligated to make lease payments to the receiver appointed by the bankruptcy court on behalf of [REDACTED]¹

Through the lease and purchase agreement, Claimant acquired the trade name license from [REDACTED], which stipulated that the buyer would continue to operate the restaurant as [REDACTED].² There are no indications that Claimant operated the restaurant at the new location under the [REDACTED] trade name. Claimant began operating [REDACTED] and Restaurant at the new location beginning in August of 2009. Claimant states that the new location offered a larger venue for guests who were visiting the establishment for the live jazz music, with an increased area for performances as well as increased capacity for seating and amenities.

Claimant asserts that as a result of the Deepwater Horizon incident, the business sustained a reduction in customers, causing various economic losses totaling \$578,553.00 less prior payments from the RP (BP) of \$49,600.00. Claimant asserts that as revenue decreased, the business was not able to meet obligations to pay the monthly lease, payments related to the building purchase and other operating expenses. Of the total claimed amount, Claimant asserts a loss of \$160,213.00 related to a down payment placed on the building purchase option, \$35,020.00 for lost security deposit made on the property lease and \$383,320.00 in lost profits from the business.³

APPLICABLE LAW

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a). Damages include the loss of profits or impairment of earning capacity due to the injury, destruction or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant. 33 U.S.C. § 2702(b)(2)(E).

The OSLTF, which is administered by the NPFC, 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. With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

Pursuant to the claims regulations, 33 C.F.R. § 136.233, a claimant must establish the following to prove loss of profits or impairment of earning capacity:

- (a) That real or personal property or natural resources have been injured, destroyed, or lost.

¹ Conference call, held on 27 December 2010, Claimant, and the NPFC present

² Trade Name License Agreement, dated July 2009, between [REDACTED] and [REDACTED].

³ Summation note; *Breakdown of economic losses incurred from the BP Oil Spill*.

- (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.
- (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.

DETERMINATION OF LOSS

Claimant's Submission

To support the claim, Claimant provided various documents which Claimant indicated, were previously requested by the GCCF.⁴ At the time of the initial claim submission to the NPFC, limited information and explanation was provided to support the actual financial history of [REDACTED] and Restaurant versus [REDACTED] and [REDACTED] Inn.⁵ Subsequent to the initial submission, the NPFC requested additional financial information specific to Claimant's actual business history including locations, business identification and other financially relevant data. Claimant responded by providing various tax returns and sales data specific to their business. All of the documentation presented by Claimant is listed in Enclosure (2).

On 11 June 2010, the Claimant filed an initial claim with the RP (BP) and was issued Claim [REDACTED]. In total, Claimant received payments from the RP (BP) totaling \$49,600.00.

⁴ Enclosure (2)

⁵ Enclosure (2)

On 24 August 2010, the Claimant filed a 6-month Emergency Advance Payment (EAP) claim for \$419,115.78 in lost profits and earnings with the GCCF. On the same day, Claimant also filed an Interim Payment claim for lost profits and earnings with the GCCF. The Claimant was assigned Claimant ID [REDACTED] and Claim [REDACTED] to the EAP claim and [REDACTED] to the Interim Payment claim. The GCCF denied the EAP Claim [REDACTED] but paid \$188,900.00 on the Interim Payment, Claim [REDACTED]

NPFC Determination

This claim is denied. 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. § 136.233, a claimant must establish loss of profits or impairment of earning capacity. The NPFC considered all the documentation submitted by the Claimant.

The claim is denied because, based upon the evidence provided, Claimant has already been fully compensated by the RP (BP and the GCCF) for all potential losses sustained and she has no outstanding balance compensable under OPA. Based on the documentation presented to substantiate Claimant's claimed loss of profits resulting from the Deepwater Horizon incident, the NPFC calculates that there was a reduction in earnings of approximately \$18,969.00 for the period May through August 2010. The period coincides with the documented downturn in tourism reported in the following paragraph. The actual calculation starts with the reported lost projected revenue for May through August 2010 totaling \$376,134.00, which is based on a combination of the average actual historical revenues from 2008 and 2009. This revenue projection is then reduced by of actual revenue for the period of \$248,321.00 and yields the actual lost revenue of \$127,813.00. To calculate lost profits, adjustments for the saved costs of sales totaling \$34,343.00 and saved operating costs, including unpaid lease payments, totaling \$74,501.00, were deducted from total lost revenue.⁶ On 27 January 2011, the GCCF issued an interim payment in the amount totaling \$188,900.00, bringing the total amount of compensation from the RP (BP) to \$238,500.00 to-date.⁷ Claimant asserts that this interim payment "was to cover the time from May, 2010 through December 31, 2010, less the two payments BP gave us early on."⁸

⁶ Saved operating expenses include employee wages and monthly lease expenses. Per Claimant's claim submission, Claimant has not made any lease payments since June 2010.⁶ Per the lease agreement provided by Claimant, rent payments are due on the 1st of each month. Therefore, June 2010 lease payments would have been due on 01 June 2010. Claimant asserts that revenue declined following the Deepwater Horizon incident, hindering the ability to pay rent starting in June 2010. Presumably, Claimant's earnings from May 2010 would have been applied towards the payment of the June 2010 rent. Actual revenue from May 2010 does not reflect a decline significant enough to impact Claimant's ability to pay monthly rent for the month of June. This is an indicator that factors other than the Deepwater Horizon incident rendered Claimant unable to meet the lease agreement obligations.

⁷ Email from Claimant [REDACTED] NPFC, dated 03 February 2011

⁸ Email from Claimant [REDACTED] NPFC, dated 09 February 2011

Potential Lost Revenue Calculation:

Projected Lost Revenue:	376,134.00
- Actual Revenue	<u>248,321.00</u>
=	127,813.00

Lost Profits Calculation:

Saved Cost of Sales	34,343.00
+ Saved Operating Costs	<u>74,501.00</u>
	108,844.00

Reduction in Earnings:

Potential Lost Revenue	127,813.00
- Lost Profits	<u>108,844.00</u>
=	18,969.00

Amount Paid by the RP:	\$238,500.00
Amount Calculated by NPFC as being potentially compensable:	\$18,969.00

Additionally, Lee County Convention and Visitor's Bureau statistics indicate that the number of tourists was lower only in the months of May through August 2010.⁹ The county statistics provided for 2010 indicate that the number of paid visitors to the county during the months of May through August was generally lower during 2010 compared to 2009. Although there appears to be some declines in tourism, NPFC has not identified these declines as being exclusively a result of the Deepwater Horizon incident. Given reductions in tourism through August 2010, tourism/visitors for the months of September, October and November 2010 appear to be consistent with, if not higher than they were in 2009.¹⁰ Claimant's sales data is not consistent with the trends shown in Lee County. [REDACTED] and Restaurant shows revenue declines of at least 40% to 66% during September through November 2010, compared to the prior year.¹¹ This is contrary to the Lee County statistics that show tourist activity returned to 2009 levels beginning September 2010. Tourism tax revenues also followed trends set forth since 2007, and as of December 2010 "the U.S. economy and the Southwest Florida economy in


⁹ Reports retrieved from [REDACTED]

¹⁰ Reports retrieved from [REDACTED]

¹¹ Analysis of documentation provided by Claimant compared to the Lee County Convention and Visitor's Bureau statistics.

particular continue[d] to work through the systematic problems related to the housing bubble and banking crisis” though overall improvements were being measured by the fourth quarter of 2010.¹² Claimant’s differing sales trends do not correlate with the published tourism statistics for the affected area, which is an indicator that underlying factors may be affecting the business, beyond the Deepwater Horizon incident.¹³

Claim Supervisor:


Thomas S. Morrison

Date of Review:


2/16/11

Supervisor’s Actions:

Review Allowed

Supervisor’s Comments:

¹² Southwest Florida Regional Economic Indicators, produced in December 2010 by the Regional Economic Research Institute at the Lutgert College of Business located at Florida Gulf Coast University.

¹³ Comparison of Claimant’s presented documentation and reports retrieved from 

Summary of Documentation Provided by Claimant N10036-0078

1. NPFC OSLTF Claim form, dated 05 Nov 2010, received 16 Nov 2010
2. Letter on letterhead dated 13 Nov 2010 with claim number notifying of submission of revised income statements for the months of September and October 2010 as well as description of a record setting cold winter 2009-2010.
3. Unaudited income statement 01-30 Sep 2010
4. Unaudited income statement 01-31 Oct 2010
5. Article print-outs dated 20 November 2010 providing news on oil impact in Florida
6. Letter to the NPFC requesting increase claim sum dated 08 December 2010
7. Letter dated 12 Oct 2010 presenting claim to NPFC for adjudication subsequent to claim denial by GCCF
8. Summation note; *Breakdown of economic losses incurred from the BP Oil Spill*
9. [REDACTED] letter from BP advising of \$24,800.00 compensation dated 27 July 2010.
10. [REDACTED] Sales Consolidated for May 2009
11. [REDACTED] Sales Consolidated for May 2010
12. [REDACTED] Sales Consolidated for June 2009
13. [REDACTED] Sales Consolidated for June 2010
14. [REDACTED] Sales Consolidated for July 2009
15. [REDACTED] Sales Consolidated for July 2010
16. [REDACTED] Sales Consolidated for Aug 2009
17. [REDACTED] Sales Consolidated for Aug 2010
18. [REDACTED] Sales Consolidated for Sept 2009
19. [REDACTED] Sales Consolidated for Sept 2010
20. [REDACTED] Sales Consolidated for Oct 2009
21. [REDACTED] Sales Consolidated for Oct 2010
22. Email correspondence with Subject: [REDACTED]
23. Email correspondence with Subject [REDACTED] - *EVICTION NOTICE ATTACHED*
24. Email correspondence with Subject: [REDACTED]
25. Email correspondence with Subject [REDACTED]
26. Email correspondence with Subject: *Claims for [REDACTED] Emergency Situation*
27. Email correspondence with Subject: *Monday*
28. Email correspondence with Subject [REDACTED]
29. Unaudited income statement 01-31 Oct 2010
30. Unaudited income statement 01-30 Sept 2010
31. Unaudited income statement 01-31 Aug 2010
32. Unaudited (-Corrected-) income statement 01-31 Aug 2010
33. Unaudited (-Corrected-) income statement 01-31 July 2010
34. Unaudited (-Corrected-) income statement 01-30 June 2010
35. Unaudited income statement 01-31 May 2010
36. Unaudited income statement 01-30 April 2010
37. Unaudited income statement 01-31 March 2010

Summary of Documentation Provided by Claimant N10036-0078

38. Unaudited (-Corrected-) income statement 01-31 March 2010
39. Income statement 01-28 Feb 2010
40. Income statement 01-31 Jan 2010
41. Unaudited income statement 01-30 Nov/01-31 Dec 2009
42. Unaudited income statement 01-31 Oct 2009
43. Unaudited income statement 01-30 Sept 2009
44. Unaudited income statement 01-31 Aug 2009
45. Unaudited income statement 01-30 November 2010
46. Unaudited income statement 01-31 December 2010
47. Lease Agreement between [REDACTED]
and [REDACTED]
48. Letter to Intent to Lease and Purchase between [REDACTED]
V [REDACTED] and [REDACTED]
49. Cashier's check for \$25,00.00 as earnest money for purchase agreement
50. Contract for Purchase and Sale of Real and Personal Property between [REDACTED]
Properties, [REDACTED]
51. Trade Name License Agreement, dated July 2009, between [REDACTED]
Inc. and [REDACTED]
52. Lease Addendum
53. Claimant's 2006, 2007, 2008 & 2009 IRS Form 1065 with Schedules and Attachments
54. Lee County Clerk of Court *Civil/Small Claims Detail Information*
55. Circuit Court *Summons* for Charles PT Phoenix, court-appointed receiver for [REDACTED]
[REDACTED]
56. Photocopies of various checks
57. U.S. Income Tax Return *Form 1120S*, [REDACTED] 2009
58. Rental Real Estate Income *Form 8825*, [REDACTED] 2009
59. Various Federal Statements with addendums
60. Letter on letterhead dated 24 Sept 2010 addressed to The President of the United States
explaining hardship status.
61. Various news outlet articles in an effort to demonstrate the impact on the particular
geographic area.
62. Total sales statements from 2000-July 2009, received 02 Dec 2010
63. [REDACTED] *Sales Consolidated* for 01-30 Nov 2009
64. [REDACTED] *Sales Consolidated* for 01-30 Nov 2010
65. Four (4) internet articles via email, received 06 Dec 2010
66. Check No [REDACTED] for \$24,800.00 for Claimant
67. Claimant deposit account print-out dated 31 July 2009
68. Copies of various checks drawn on Claimant's deposit account (7 pages
69. Cashier's checks dated 22 February 2010, 22 March 2010, and 10 May 2010 to Dolce
[REDACTED]
70. Advice of charge dated 22 February 2010
71. Exhibit D from eviction filing
72. Copy of Claimant alcohol license

Enclosure (2)

Page 3

Summary of Documentation Provided by Claimant N10036-0078

- 73. Copy of Claimant food service license
- 74. Consolidated tax report for [REDACTED] from August 2009-November 2010
- 75. Claimant's sales summary at former location from January 2007-June 2009
- 76. For your tax advisor detachable summary sheet, fax dated 03 January 2011
- 77. General ledger from 31 March 2008-30 June 2010
- 78. Order to pay rent into court registry, dated 12 January 2011, with exhibits A-C
- 79. GGCF claim application

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: [REDACTED]
Fax: 202-493-6937
5890
12/16/2010

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number [REDACTED]

[REDACTED]
Houma, LA 70364

RE: Claim Number: N10036-0079
[REDACTED]

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number N10036-0079 involving Deepwater Horizon. Please see the enclosed Claim Summary / Determination 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 N10036-0079.

Mail reconsideration requests to:

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

Sincerely,

[REDACTED]

U.S. Coast Guard
Claims Manager

Enclosure: Claim Summary/Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Date	: 12/16/2010
Claim Number	: N10036-0079
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED] USCGR
Amount Requested	: \$15,000.00

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 was discharged from an offshore facility associated with the Deepwater Horizon and located on the Mississippi Canyon, Block 252 (the Deepwater Horizon incident). This area was leased by BP Exploration and Production, Inc. (BP). The Coast Guard designated the offshore facility as the source of the discharge and BP as the responsible party (RP) for the discharge. BP accepted the designation, advertised its OPA claims process, and compensated claimants. On 23 August 2010, the Gulf Coast Claims Facility (GCCF) began accepting and adjudicating claims on behalf of BP.

On 28 May 2010, The U.S. Department of the Interior (DOI) issued a six-month moratorium on deepwater drilling, citing concerns over the safety of deepwater drilling and directing lessees and operators to cease drilling all new deepwater wells and related activities effective 30 May 2010. Lessees and operators conducting current drilling operations were directed to secure the wells and to take all necessary steps to cease operations and temporarily abandon or close the wells. On 23 August 2010 the GCCF began accepting and adjudicating claims on behalf of BP. BP subsequently established a \$100 million Rig Workers Assistance Fund to help compensate rig workers impacted by the moratorium on deepwater well activities. The Assistance Fund is administered by the Gulf Coast Restoration and Protection Foundation (GCRF).¹

CLAIM AND CLAIMANT

On 11 November 2010, Claimant [REDACTED] (Claimant) presented an Optional Oil Spill Trust Fund (OSLTF) claim form seeking \$15,000.00 in lost profits and earnings capacity resulting from the Deepwater Horizon incident. Claimant was employed by [REDACTED] at the time of the Deepwater Horizon Incident. According to the Claimant, [REDACTED] specializes in plugging and abandonment of oil rigs.² After the spill, Claimant's hours were cut and, after a period of time, he had to look for another job in order to pay his bills.³

¹ U.S. Department of the Interior, MINERALS MANAGEMENT SERVICE, MORATORIUM NOTICE TO LESSEES AND OPERATORS, NTL No. 2010-N04, Effective 30 May 2010. See, Decision Memo dated 12 July 2010, From Secretary of the Interior To Director, Bureau of Ocean Energy Management, Regulation and Enforcement, Subject Decision Memorandum regarding the suspension of certain offshore permitting and drilling activities on the Outer Continental Shelf. See also, U.S. Department of the Interior, Minerals Management Service, NATIONAL NOTICE TO LESSEES AND OPERATORS OF FEDERAL OIL AND GAS LEASES, OUTER CONTINENTAL SHELF (OCS) NOTICE TO LESSEES AND OPERATORS, NTL No. 2010-N05, Effective 08 June 2010.

² Letter from Claimant to Whom It May Concern dated 11 November 2010.

³ Letter from Claimant to Whom It May Concern dated 11 November 2010. See also, witness statement of [REDACTED]

Claimant describes the nature and extent of damages claimed as a "loss of income due to the moratorium in oil field."⁴

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 waters or adjoining shorelines or the exclusive economic zone, as described in § 2702(b) of OPA.

The OSLTF which is administered by the NPFC, is available, pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136, to pay claims for uncompensated damages. 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.

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.
- (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.

DETERMINATION OF LOSS

Claimant's Submission

To support his claim, the Claimant presented an OSLTF claim form that was received by the NPFC on 16 November 2010. Additionally, the Claimant submitted the following documentation: GCCF Receipt Acknowledgement Letter dated 14 October 2010 and Denial Letter dated 23 October 2010, a letter from Claimant to "Whom It May Concern" dated 11

⁴ [REDACTED] OSLTF Claim Submission & included letter to Whom It May Concern of 11 November 2010

November 2010, a witness statement from Ms. [REDACTED], payroll and paystub information from his employers, and 2008 and 2009 Federal and State tax information.

NPFC Determination

The claim is denied. Under 33 U.S.C. § 2702(b) and 33 C.F.R. Part 136, a claimant must prove that his loss of income resulted from injury to or destruction of a natural resource. The documentary evidence submitted by the Claimant indicates that his loss resulted from the six month deepwater drilling moratorium. The claim is denied because the alleged loss in the amount of \$15,000.00 is not 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, but because a determination was made and a directive issued by the Department of the Interior to enact a six month moratorium to implement new safety requirements.

Claim Supervisor:



Date:

12/17/10

Supervisor's Actions:

Denial approved

Supervisor's Comments:

U.S. Department
of Homeland
Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd., Suite 1000
Arlington, VA 20598-7100
Staff Symbol: (CA)
Phone: 1-800-280-7118
E-mail: [REDACTED]
Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim # N10036-0080
19 January 2011

[REDACTED]
Ocean Springs, MS 39564

Re: Claim Number: N10036-0080
[REDACTED]

The National Pollution Funds Center (NPFC), in accordance with 33 C.F.R. Part 136, denies your claim. Please see the enclosed claim summary for further explanation.

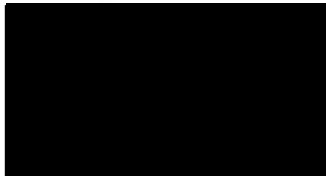
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-0080.

Mail reconsideration requests to:

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

Sincerely,



U. S. Coast Guard
Claims Manager

Enclosure: Claim Summary/Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Date	19 January 2011
Claim Number	N10036-0080
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
Claim Manager	[REDACTED]
Amount Requested	\$38,500.00

FACTS

On or about 20 April 2010, the Mobile Offshore Drilling Unit Deepwater Horizon exploded and sank in the Gulf of Mexico. As a result of the explosion and sinking, oil was discharged from an offshore facility, located on the Mississippi Canyon, Block 252 (the Deepwater Horizon incident). This area was leased by BP Exploration and Production, Inc. (BP). The Coast Guard designated the offshore facility as the source of the discharge and BP as the responsible party for the discharge. BP accepted the designation, advertised its OPA claims process and compensated claimants.

On 28 May 2010, The U.S. Department of the Interior (DOI) issued a six-month moratorium on deepwater drilling, citing concerns over the safety of deepwater drilling and directing lessees and operators to cease drilling all new deepwater wells and related activities effective 30 May 2010. Lessees and operators conducting current drilling operations were directed to secure the wells and to take all necessary steps to cease operations and temporarily abandon or close the wells.

On 12 July 2010 the Department of the Interior issued a new decision to suspend deepwater drilling activities. Applicability of this suspension order is based on drilling configuration and technology, not depth of water. As such, it applied to both deepwater and shallow water drilling. This suspension order was lifted on 12 October 2010 for those operators who certified compliance with all existing rules and regulations, including those that recently went into effect, and demonstrated the availability of adequate blowout containment resources. DOI's verification of new permit applications and equipment testing for applicants through the Bureau of Ocean Energy Management, Regulation, and Enforcement (BOEMRE) continues.¹

On 23 August 2010 the Gulf Coast Claims Facility (GCCF) began accepting and adjudicating claims on behalf of BP. BP subsequently established a \$100 million Rig Workers Assistance Fund to help compensate rig workers impacted by the moratorium on deepwater well activities. The Assistance Fund is administered by the Gulf Coast Restoration and Protection Foundation (GCRPF).

CLAIM AND CLAIMANT

On 05 November 2010 [REDACTED] (Claimant), presented an Oil Spill Liability Trust Fund (OSLTF) claim form for lost earnings in the amount of \$38,500.00 to the National Pollution Funds Center (NPFC) for reimbursement. Claimant asserts that he has been unable to find employment due to the Deepwater Horizon incident. Claimant is also making a claim for public services and real or personal property. Claimant did not explain the basis for his claims submitted under these categories.

¹ U.S. Department of the Interior, MINERALS MANAGEMENT SERVICE, MORATORIUM NOTICE TO LESSEES AND OPERATORS, NTL No. 2010-N04, Effective 30 May 2010. See Decision Memo dated 12 July 2010, From Secretary of the Interior To Director, Bureau of Ocean Energy Management, Regulation and Enforcement, Subject Decision Memorandum regarding the suspension of certain offshore permitting and drilling activities on the Outer Continental Shelf. See also U.S. Department of the Interior, Minerals Management Service, NATIONAL NOTICE TO LESSEES AND OPERATORS OF FEDERAL OIL AND GAS LEASES, OUTER CONTINENTAL SHELF (OCS) NOTICE TO LESSEES AND OPERATORS, NTL No. 2010-N05, Effective 08 June 2010 (US DOI MMS MORATORIUM).

09/13/11

ENCLOSURE

FOIA2011-3380-00000353

Claimant is a United States Merchant Mariner usually employed in the capacity of an Able Bodied Seaman. Claimant stated in a letter that his work duties include working aboard supply vessels for rigging and loading and unloading services.² Claimant asserts that he typically works offshore during the months of April through October and works as a fishermen during the winter months. Claimant did not describe his most recent employment or the last date worked. Claimant indicated that he worked various jobs after the Deepwater Horizon incident, but each assignment lasted less than one week. Claimant asserts that he has not been able to find the type of employment that he typically receives.

APPLICABLE LAW

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a). Damages include the loss of profits or impairment of earning capacity due to the injury, destruction or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant. 33 U.S.C. § 2702(b)(2)(E).

The OSLTF, which is administered by the NPFC, 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. With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

Pursuant to the claims regulations, 33 C.F.R. § 136.233, a claimant must establish the following to prove loss of profits or impairment of earning capacity:

- (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.
- (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;

² See hand-written letter from Claimant dated 05 November 2010.
09/13/11

- (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.

DETERMINATION OF LOSS

Claimant's Submission

To support his claim, the Claimant submitted the NPFC OSLTF Claim Form on 05 November 2010, various letters explaining the claims he submitted, copies of various licensing and certificates related to his profession and tax return excerpts.

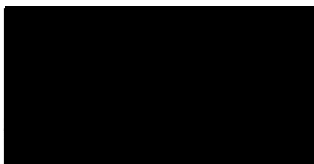
Claimant submitted an Emergency Advance Payment claim to the GCCF on 04 October 2010 and was issued GCCF Claimant ID [REDACTED] and Claim [REDACTED]. On 25 October 2010 the GCCF denied his claim. This information was verified by the NPFC.

NPFC Determination

The claim is denied. 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 CFR § 136.233, a claimant must establish loss of profits or impairment of earning capacity. The NPFC considered all the documentation submitted by the Claimant.

The claim is denied because the documentary evidence presented indicates that his lost earnings resulted from the six-month deepwater drilling moratorium and subsequent permitting delays associated with the BOEMRE permitting process. Claimant's loss, therefore, did not occur because of the Deepwater Horizon incident, but because a determination was made and a directive issued by the Department of the Interior to enact a six-month moratorium to implement new safety requirements and because of the follow on permitting activities required by that agency.

Claims Supervisor:



Date of Review:

1/21/11

Supervisor's Actions:

Denial Approved

Supervisor's Comments:

U.S. Department
of Homeland
Security

**United States
Coast Guard**



Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd., Suite 1000
Arlington, VA 20598-7100
Staff Symbol: (CA)
Phone: 1-800-280-7118
E-mail: [REDACTED]
Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number [REDACTED]

5890/DWHZ
Claim # N10036-0081
04 February 2011

[REDACTED]
New Orleans, LA 70130

Re: Claim Number: N10036-0081

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with 33 C.F.R. Part 136, denies your claim. Please see the enclosed claim summary 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 N10036-0081.

Mail reconsideration requests to:

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

Sincerely,

A large black rectangular redaction box covering the signature of the Claims Manager.

U. S. Coast Guard
Claims Manager

Enclosure: Claim Summary / Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Date	04 February 2011
Claim Number	N10036-0081
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
Claim Manager	[REDACTED]
Amount Requested	\$15,000.00

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 was discharged from an offshore facility associated with the Deepwater Horizon and located on the Mississippi Canyon, Block 252 (the Deepwater Horizon incident). This area was leased by BP Exploration and Production, Inc. (BP). The Coast Guard designated the offshore facility as the source of the discharge and BP as the responsible party (RP) for the discharge. BP accepted the designation, advertised its OPA claims process, and compensated claimants. On 23 August 2010, the Gulf Coast Claims Facility (GCCF) began accepting and adjudicating claims on behalf of BP.

CLAIM AND CLAIMANT

On 16 November 2010, Ms. [REDACTED] (Claimant) contacted the National Pollution Funds Center (NPFC) to present a claim for lost profits and reduced earnings capacity in the amount of \$15,000.00. The Claimant asserts that her wages were reduced due to the Deepwater Horizon incident.

At the time of the Deepwater Horizon incident, Claimant was working for [REDACTED]. The Claimant started working for [REDACTED] on 01 March 2010.¹ The Claimant asserts that her employer's business declined following the Deepwater Horizon incident. The Claimant is claiming lost earnings and wages due to reduced work hours as a result of Deepwater Horizon incident.

APPLICABLE LAW

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a). Damages include the loss of profits or impairment of earning capacity due to the injury, destruction or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant. 33 U.S.C. § 2702(b)(2)(E).

The OSLTF, which is administered by the NPFC, 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. With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

¹ See, letter provided from [REDACTED] dated 30 November 2010.

09/13/11

ENCLOSURE

FOIA2011-3380-00000357

Pursuant to the claims regulations, 33 C.F.R. § 136.233, a claimant must establish the following to prove loss of profits or impairment of earning capacity:

- (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.
- (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.

DETERMINATION OF LOSS

Claimant's Submission

To support her claim, Claimant submitted:

NPFC OSLTF Claim Form dated 16 November 2010,

- Letter from Claimant to GCCF dated 04 November 2010,
- Undated email from Claimant to GCCF with "Subject: gulf claims denial".
- Claimant's earnings statements for employment during December 2009 and September 2010.
- Letter from [REDACTED] dated 30 November 2010
- 1040 Individual Income Tax Return filing from 2009,
- Claimant's IRS Form W-2s for 2007, 2008, and 2009.
- GCCF denial of emergency advance payment to Claim [REDACTED] dated 9 November 2010.

The Claimant asserts that her employer's business declined following the Deepwater Horizon incident due to the increased prices of seafood and the seafood scare. Claimant believes that as a

result of her employer's decline in business, her scheduled work hours were reduced which led to a reduction in wages.

The Claimant's employer indicated that Claimant's work hours following the Deepwater Horizon incident were reduced from 15 hours a day to 5 or 7 hours a day. The employer maintains that the business declined due to increased prices of seafood and the seafood scare amongst the tourists.²

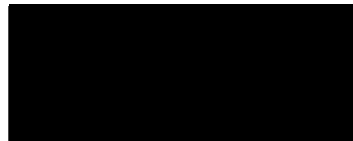
Claimant stated that she had submitted an Emergency Advance Payment claim to the GCCF on 09 October 2010 and received Claimant ID [REDACTED] and Claim [REDACTED]. On 09 November 2010, GCCF denied Claimant's Emergency Advance Payment claim.³

NPFC Determination

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. § 136.233, a claimant must establish loss of profits or impairment of earning capacity. The NPFC considered all the documentation submitted by the Claimant.

The claim is denied because the evidence presented does not prove that Claimant's alleged loss, in the amount of \$15,000.00, is due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil. For example, the evidence presented by the Claimant does not prove that her work hours and earnings were reduced or impacted as a result of the Deepwater Horizon incident. Accordingly, her claim is denied.

Claim Supervisor:



Date of Review: 2/7/11

Supervisor's Actions: DENIAL APPROVED

Supervisor's Comments:

² See, letter provided from employer dated, 30 November 2010.

³ GCCF denial of emergency advance payment to Claim ID [REDACTED] dated 9 November 2010.

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: [REDACTED]
E-mail: [REDACTED]

Fax: 202-493-6937
5890
12/13/2010

[REDACTED]
[REDACTED]

Dear [REDACTED]:

RE: Claim Number: N10036-0082

The National Pollution Funds Center (NPFC), in accordance with 33 CFR 136, denies payment on claim number N10036-0082 involving Deepwater Horizon. Compensation is denied for the reasons stated in the enclosed Claim Summary / Determination Form. Please see the attached summary for the details and rationale associated with this denial.

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 N08075-001.

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 Manager
U.S. Coast Guard

Encl: Claim Summary / Determination Form

Attachment

09/13/11

Page 3 of 3

FOIA2011-3380-0000360

CLAIM SUMMARY / DETERMINATION FORM

Date	10 December 2010
Claim Number	N10036-0082
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
Claim Manager	[REDACTED]
Amount Requested	\$2,295.39

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

CLAIM AND CLAIMANT:

Claimant presented a claim of \$2,295.39 to the NPFC for lost earnings. [REDACTED] is claiming a lost deposit that was placed on a vacation rental located in Destin, Florida near Miramar Beach. [REDACTED] who resides in Carbondale, Illinois, had a reservation to rent a vacation property from 24 July 2010 through 31 July 2010. A deposit equal to the full rental amount was placed on or about 15 April 2010.¹ Subsequent to the Deepwater Horizon incident, [REDACTED] decided to cancel her reservations due to uncertainties about the impacts of the incident to the Destin, Florida area. The terms of the rental agreement state that refunds will only be provided if reservations are cancelled within 7 days of the execution of the rental agreement². [REDACTED] did not provide the date in which she cancelled the reservation, but was not able to receive a refund of her deposit due to the terms of the rental agreement.

APPLICABLE LAW:

Damages that may be paid from the OSLTF are those that are described by the Oil Pollution Act of 1990 (OPA) and that result from a discharge or substantial threat of discharge of oil into or upon the navigable waters, adjoining shorelines or the exclusive economic zone. 33 USC 2702. The NPFC may pay a claim for OPA damages from the Oil Spill Liability Trust Fund (OSLTF) if the claim has been presented first to the responsible party and that claim is denied or not settled after 90 days. 33 USC 2713.

OPA damages that may be paid include "damages equal to the loss of profits or impairment of earning capacity due to the injury, destruction, or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant" 33 USC 2702(b)(2)(E).

¹ See, undated Oil Spill Cancellation Notice provided by the Claimant.

² See, [REDACTED] rental policy obtained from [http://www.\[REDACTED\].com/destin-rental-policies](http://www.[REDACTED].com/destin-rental-policies).

Pursuant to the implementing OSLTF claims regulations, 33 CFR § 136.233, a claimant must establish the following to prove loss of profits or impairment of earning capacity:

- (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.
- (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.

DETERMINATION OF LOSS:

Claimant's Submission

To support her claim, the Claimant submitted the NPFC OSLTF Claim Form dated November 2, 2010, a copy of the denial letter from the Gulf Coast Claims Facility (GCCF) dated October 20, 2010, a copy of cancellation letter from [REDACTED] and a copy of the claimant's drivers license. The GCCF assigned claimant identification # [REDACTED] to [REDACTED]'s claim submission. On October 20, 2010, the GCCF issued a denial to [REDACTED] stating that a claim for lost deposits due to cancellation of vacation plans is not compensable by the GCCF.³

NPFC Determination

The claim is denied because the alleged loss is not due to injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of discharge of oil. The alleged loss is due to personal decisions made by the Claimant. Such a loss as the one claimed in this case, is not a damage that may be compensated from the OSLTF.

Claim Supervisor:	[REDACTED]
Date of Review:	12/13/10
Supervisor's Comments:	DENIAL APPROVED

³ See, GCCF denial letter dated October 20, 2010.

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

Fax: 202-493-6937

5890

11 January 2011

VIA MAIL and EMAIL: [REDACTED]

RE: Claim Number: N10036-0083

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number N10036-0083 involving Deepwater Horizon. Please see the enclosed Claim Summary / Determination 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 N10036-0083.

Mail reconsideration requests to:

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

Sincerely,

[REDACTED]
U. S. Coast Guard
Claims Manager

Encl: Claim Summary / Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Date	11 January 2011
Claim Number	N10036-0083
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
Claim Manager	[REDACTED]
Amount Requested	\$5,040.00

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 was discharged from an offshore facility associated with the Deepwater Horizon and located on the Mississippi Canyon, Block 252 (the Deepwater Horizon incident). This area was leased by BP Exploration and Production, Inc. (BP). The Coast Guard designated the offshore facility as the source of the discharge and BP as the responsible party (RP) for the discharge. BP accepted the designation, advertised its OPA claims process, and compensated claimants. On 23 August 2010, the Gulf Coast Claims Facility (GCCF) began accepting and adjudicating claims on behalf of BP.

CLAIM AND CLAIMANT

On November 16, 2010, [REDACTED] (Claimant) presented a claim to the National Pollution Funds Center (NPFC) Oil Spill Liability Trust Fund (OSLTF) seeking \$5,040.00 in lost profits and earning capacity resulting from the Deepwater Horizon incident. [REDACTED] asserts that she worked at a retirement home in Florida but due to the oil spill no one wants to retire there and she lost her employment as a result. She adds that she is still searching for employment.

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 waters or adjoining shorelines or the exclusive economic zone, as described in § 2702(b) of OPA.

The OSLTF which is administered by the NPFC, is available, pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136, to pay claims for uncompensated damages. 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.

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.

- (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 undertake, 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.

DETERMINATION OF LOSS

Claimant's Submission

To support her claim, Claimant presented the NPFC Optional OSLTE Claim Form dated 16 November 2010, pay stubs from [REDACTED] processed by [REDACTED] LLC, 2008-2009 income tax return forms as well as photocopies of certain identification and social security cards. Claimant presents no other data to support her claim.

NPFC Determination

The claim is denied. 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 U.S.C. § 2702(b)(2)(E) and 33 C.F.R. Part 136, a claimant must prove that his loss of income was due to injury or destruction or loss of real or personal property or a natural resource as a result of a discharge or substantial threat of a discharge of oil.

Claimant asserts that she lost employment because no one was retiring to Florida due to the oil spill, however, upon investigation and making contact with Claimant's former employer this was found to be false. [REDACTED] Administrator for the [REDACTED] retirement home and subject to this claim, advised the NPFC that Claimant did not lose her employment due to the oil spill but rather as a result of other circumstances. [REDACTED] advised that there had been no apparent influence of the Deepwater Horizon incident on her facility. As a result, the Claimant has not met her burden of proof by demonstrating that a loss of employment was as a direct result of the incident and her claim for \$5,040.00 is denied.

Claim Supervisor:

Date of Supervisors Review: *11 January 2011*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

U.S. Department
of Homeland
Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd., Suite 1000
Arlington, VA 20598-7100
Staff Symbol: (CA)
Phone: 1-800-280-7118

Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim # N10036-0084
07 January 2011

Re: Claim Number: N10036-0084

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies your claim. The NPFC is unable to establish that the loss of profits and earnings real or personal property damages you presented in your claim were a result of the Deepwater Horizon oil spill. Please see the attached claim summary 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 N10036-0084.

Mail reconsideration requests to:

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

Sincerely,

[REDACTED]
U. S. Coast Guard
Claims Manager

Attachment: (1) Claim Summary/Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Date	07 January 2011
Claim Number	N10036-0084
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
Claim Manager	[REDACTED]
Amount Requested	-\$17,000.00

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 was discharged from an offshore facility associated with the Deepwater Horizon and located on the Mississippi Canyon, Block 252 (the Deepwater Horizon incident). This area was leased by BP Exploration and Production, Inc. (BP). The Coast Guard designated the offshore facility as the source of the discharge and BP as the responsible party (RP) for the discharge. BP accepted the designation, advertised its OPA claims process, and compensated claimants. On 23 August 2010, the Gulf Coast Claims Facility (GCCF) began accepting and adjudicating claims on behalf of BP.

CLAIM AND CLAIMANT

On 16 November 2010 [REDACTED] (Claimant), presented a lost profits & earnings claim in the amount of \$17,000.00 to the National Pollution Funds Center (NPFC) for reimbursement. Claimant is asserting that she sustained a reduction in hours by her employer [REDACTED] because of the Deepwater Horizon incident. Claimant further asserts that due to a reduction in hours she sought a second job working for the oil spill cleanup contractor, [REDACTED] where she worked full-time hours for a short time while still working at her primary job.

APPLICABLE LAW

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a). Damages include the loss of profits or impairment of earning capacity due to the injury, destruction or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant. 33 U.S.C. § 2702(b)(2)(E).

The OSLTF, which is administered by the NPFC, 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. With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

Pursuant to the claims regulations, 33 C.F.R. § 136.233, a claimant must establish the following to prove loss of profits or impairment of earning capacity:

- (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.
- (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.

DETERMINATION OF LOSS

Claimant's Submission

To support her claim, the Claimant submitted the Optional NPFC OSLTF Claim Form on 16 November 2010, pay stubs from her job at both [REDACTED] and [REDACTED] 2008 and 2009 tax return Forms 1040, copies of cards and certificates gained for the purpose of employment with P2S and a personal letter explaining her situation.

Claimant previously submitted a claim with the GCCF with claimant identification number [REDACTED] in the amount of \$40,000.00 which was denied and currently has a claim under review with the GCCF in the amount of \$39,000.00.

B. NPFC Determination

Under 33 CFR 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 CFR § 136.233, a claimant must establish loss of profits or impairment of earning capacity. Claimant has not provided sufficient documentary evidence to support a loss of profits or earning capacity resulting from the Deepwater Horizon incident.

Claimant's alleged loss of profits is not calculable and a conversation with the Human Resources department of [REDACTED] revealed that Claimant is a food service worker that is contracted to work at [REDACTED] Pensacola and they have no indicators that her hours were decreased for any reason, inclusive of the Deepwater Horizon incident. Claimant

worked for an oil spill cleanup contractor concurrently along with her primary employment and subsequently sustained an increase in income, thereby benefiting from the Deepwater Horizon oil-spill. Claimant has not provided sufficient evidence to support that her claim for lost profits and earning capacity of \$17,000.00 was a direct result of the Deepwater Horizon incident and therefore this claim is denied.

Claim Supervisor 

Date of Review: *1/7/11*

Supervisor's Comments: *Denial approved*

U.S. Department of
Homeland Security

United States
Coast Guard

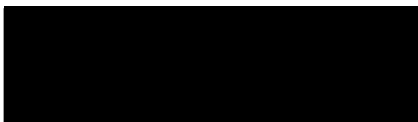


Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd., Suite 1000
Arlington, VA 20598-7100
Staff Symbol: (CA)
Phone: 1-800-280-7118

Fax: 202-493-6937
5890/DWHZ
Claim # N10036-0085
18 January 2011

VIA MAIL AND EMAIL: [REDACTED]



Re: Claim Number: N10036-0085

Dear [REDACTED]

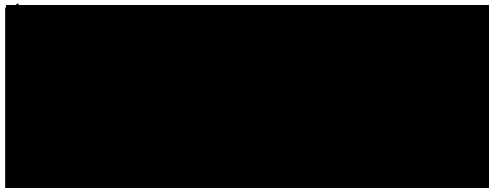
The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies your claim. The NPFC is unable to establish that the loss of profits and earnings real or personal property damages you presented in your claim were a result of the Deepwater Horizon oil spill. Please see the attached claim summary 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 N10036-0085.

Mail reconsideration requests to:

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



U. S. Coast Guard
Claims Manager

Attachment: (1) Claim Summary/Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Date	17 January 2011
Claim Number	N10036-0085
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
Claim Manager	[REDACTED]
Amount Requested	\$15,000.00

FACTS

On or about 20 April 2010, the Mobile Offshore Drilling Unit (MODU) Deepwater Horizon exploded and sank in the Gulf of Mexico. As a result of the explosion and sinking, oil was discharged from an offshore facility associated with the MODU and located on the Mississippi Canyon, Block 252 (the Deepwater Horizon incident or incident). This area was leased by BP Exploration and Production, Inc. (BP). The Coast Guard designated the offshore facility as the source of the discharge and BP as the responsible party for the discharge. BP accepted the designation, advertised its OPA claims process, and compensated claimants. On 23 August 2010 the Gulf Coast Claims Facility (GCCF) began accepting adjudicating claims on behalf of BP.

CLAIM AND CLAIMANT

On 16 November 2010, [REDACTED] (Claimant) presented an Optional OSLTF Claim Form to the NPFC claiming the sum certain amount of \$15,000.00. [REDACTED] asserts that she has been employed with [REDACTED] for over five years, the last three of which involved a 120 mile commute each day.¹ [REDACTED] informed [REDACTED] that they would be opening a branch near her home, so in an effort to "be ready to go when it opened" she "gave up" her fulltime position in early April 2010 and accepted an on-call position in the interim.² [REDACTED] asserts that following the Deepwater Horizon incident, "investors panicked [sic], pulled accts, closed IRA's-businesses went under that needed money from the lack of tourists, and investing came to a stand-still" and therefore, plans to "firm up and move forward" with the new office were postponed.³ [REDACTED] subsequently lost her on-call position due to a downturn in business which she claims was due to the Deepwater Horizon oil-spill.

APPLICABLE LAW

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a). Damages include the loss of profits or impairment of earning capacity due to the injury, destruction or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant. 33 U.S.C. § 2702(b)(2)(E).

The OSLTF, which is administered by the NPFC, 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. With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

Pursuant to the claims regulations, 33 C.F.R. § 136.233, a claimant must establish the following to prove loss of profits or impairment of earning capacity:

¹ See, undated handwritten letter provided by Claimant with initial claim presentation

² See, undated handwritten letter provided by Claimant with initial claim presentation

³ See, undated handwritten letter provided by Claimant with initial claim presentation

- (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.
- (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.

DETERMINATION OF LOSS

Claimant's Submission

To support her claim, [REDACTED] presented an Optional OSLTF Claim Form dated 16 November 2010, handwritten correspondence explaining her situation and the reasoning for her claim, various income tax return forms, earnings statements and pay stubs as well as a typed letter from a financial advisor colleague, [REDACTED] who reinforced [REDACTED] description of her claim and the events that resulted in her unemployment. [REDACTED] also provided a copy of the denial letter remitted by the GCCF dated 09 November 2010 with Claimant Identification Number: [REDACTED]

NPFC Determination

Under 33 CFR 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 CFR § 136.233, a claimant must establish loss of profits or impairment of earning capacity. The NPFC considered all the documentation presented by the Claimant.

The claim is denied because the alleged loss in the amount of \$15,000.00 is not due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil. [REDACTED] left fulltime employment with plans to accept a fulltime position with the same company in an office much closer to her home. Conversations with Mr. [REDACTED] revealed that, although he understood [REDACTED] intentions, if she had not left her fulltime position in April 2010, she would still be working fulltime hours. [REDACTED] made the personal decision to give up her fulltime position prior to the Deepwater Horizon incident therefore her loss is not a direct result of the Deepwater Horizon incident and is not compensable under OPA and is denied.

Claim Supervisor [REDACTED]

Date of Review: 1/18/11

Supervisor's Comments: *Denial approved*

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: 202-493-6839
E-mail: [REDACTED]

Fax: 202-493-6937
5890
12/21/2010

VIA MAIL and EMAIL: [REDACTED]

[REDACTED]
Seminole, FL 33772

RE: Claim Number: N10036-0086

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number N10036-0086 involving Deepwater Horizon. Please see the attached Claim Summary / Determination Form for the rationale regarding this denial.

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 N10036-0069.

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 Manager
U.S. Coast Guard

Encl: Claim Summary / Determination Form

09/13/11

FOIA2011-3380-00000375

CLAIM SUMMARY / DETERMINATION FORM

Date	: 12/14/2010
Claim Number	: N10036-0086
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$122,100.00

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 was discharged from an offshore facility associated with the Deepwater Horizon and located on the Mississippi Canyon, Block 252 (the Deepwater Horizon incident). This area was leased by BP Exploration and Production, Inc. (BP). The Coast Guard designated the offshore facility as the source of the discharge and BP as the responsible party (RP) for the discharge. BP accepted the designation, advertised its OPA claims process, and compensated claimants. On 23 August 2010, the Gulf Coast Claims Facility (GCCF) began accepting and adjudicating claims on behalf of BP.

CLAIM AND CLAIMANTS:

On 04 November 2010, Claimants, [REDACTED] presented a claim to the Oil Spill Liability Trust Fund (OSLTF or the Fund) claiming lost profits and earnings in the amount of \$122,100.00, representing the loss of a sales contract on their condominium which they allege resulted from the Deepwater Horizon oil-spill.

According to the NPFC Optional OSLTF Claim Form presented by the Claimants, they previously filed a claim with BP on 23 June 2010 and were issued claim # [REDACTED]. The Claimants wrote a letter to the RP (BP) on 23 June 2010, stating that they lost the sale of their condominium due to a foreign buyer backing out because of the Deepwater Horizon oil spill. The Claimant's claim was transferred from the RP (BP) to the GCCF on 23 August 2010 and assigned claim identification # [REDACTED]. The Claimants' Optional OSLTF Claim Form indicates that a claim is being submitted for real or personal property damages in field #3. However, in a letter dated 12 October 2010, the Claimants indicate that the claim was intended to be for lost profits and earnings¹. Per the Claimants' Optional OSLTF Claim Form, GCCF has neither denied nor accepted the claim. In a letter provided by the Claimant dated 04 November 2010, 120 days had passed without any resolution from GCCF².

Claimants own a condominium in Seminole, Florida, which is located in [REDACTED] Florida. On 13 March 2010, the Claimants entered into a residential sale and purchase agreement to sell the property to a European buyer. The named buyer paid a deposit in the amount of \$1,000.00, which was held by the title company with an intended closing date of 02 July 2010. Subsequent to the Deepwater Horizon oil spill, the buyer expressed apprehension about purchasing the property due to concern about the impacts to the local area resulting from the oil spill. Claimants assert that as a result of the Deepwater Horizon oil spill, the buyer ultimately cancelled the agreement on 07 June 2010. The Claimants did not provide historical data regarding either their primary form of income or their prior experience with buying and selling real estate.

¹ See, letter from Claimant to GCCF dated 12 October 2010.

² See, letter from Claimant to NPFC dated 4 November 2010.

Although the Claimants are claiming the selling price stated in the sales agreement, they mention in a letter to the GCCF that their property value decreased from \$119,500.00 to \$73,700.00, a difference of \$45,800.00, allegedly due to the Deepwater Horizon oil spill³. The Claimants have not made a claim for declines in property values.

The Claimants indicate that as a result of the cancelled sale of the property, they are incurring additional expenses related to the continued ownership. The expenses indicated by the Claimants include monthly maintenance fees, insurance fees, property taxes, electricity, mortgage interest and special assessments⁴. The Claimants have not explicitly stated if they are claiming these expenses, but the correspondence from the Claimants suggests that it is included in their total claimed amount.

APPLICABLE LAW:

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a). Damages include the loss of profits or impairment of earning capacity due to the injury, destruction or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant. 33 U.S.C. § 2702(b)(2)(E).

The OSLTF, which is administered by the NPFC, 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. With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

Pursuant to the claims regulations, 33 C.F.R. § 136.233, a claimant must establish the following to prove loss of profits or impairment of earning capacity:

- (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.
- (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.

³ See, letter from Claimant to GCCF dated 12 October 2010.

⁴ See, summary of monthly expenses (undated) listing monthly expenses comprised of monthly maintenance fees, insurance, property taxes, electricity, mortgage interest and special assessment costs from July, August, September and October 2010.

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.

DETERMINATION OF LOSS:

Claimant's Submission

To support their claim, the Claimants' presented the NPFC OSLTF Claim Form dated November 4, 2010, stating their claim is for damages to real or personal property in the amount of \$122,100.00, the value of the lost sales transaction for the property. The Claimants indicate that they lost the sale of their condominium as a result of the Deepwater Horizon oil spill. They maintain that the property was not sold and therefore they are incurring additional expenses to retain the property. They submitted a copy of the sales contract with the buyer, various e-mails between their realtor and the buyer and a printout of comparable sales prices for condominiums in the Seminole, Florida area. Previous correspondence from the Claimant indicates they are not claiming physical damages to the real property⁵. In addition, the Claimants assert that the property value has declined below the stated selling price from the sales agreement⁶.

NPFC Determination

It is not clear whether the basis of the claim is that the claimed loss of profits is for the canceled sales contract on the condominium, the alleged decline in value of the condominium, the increased costs and expenses associated with the condominium since the sales contract was cancelled or, as the Optional OSLTF Claim Form states, impairments to real or personal property. Claimants have not provided evidence that their real estate property sustained any physical damages as a result of the Deepwater Horizon oil spill.

They assert that they suffered a loss of profits or earning capacity in the total amount of \$122,100.00 related to the cancelled sale of their condominium. The Claimants have not sold the property and retain ownership of the property in the same manner as prior to the Deepwater Horizon oil spill. The Claimants have not indicated that they are real estate brokers, agents, developers or in the business of transacting real estate properties as a source of income. The Claimants' submission is not supported as a loss of profits or earning capacity. The Claimants' documentation does however indicate that the potential buyer placed a \$1,000.00 deposit at the time the contract was originally executed and when the contract was later cancelled, the title company issued a check to the Claimants in the amount of \$1,000.00. The Claimants then issued a check to the real estate company representing the potential buyer in the amount of \$500.00 which provided the Claimants with a \$500.00 profit that resulted from the cancellation of the sales contract.

Claimants also note in their claim that the property value for the condominium has diminished as a result of the Deepwater Horizon oil spill. Even assuming the property value has diminished, the Claimants have not yet sold the subject property for a sum less than the original purchase price. As a

⁵ See, letter from Claimant to GCCF dated 12 October 2010.

⁶ See, letter from Claimant to GCCF dated 12 October 2010.

result, any loss that they might experience remains prospective. It is also important to note that the Claimants listed their property at a much higher list price when compared to the comps provided by the Claimants in their claim submission.

The Claimants also assert that they have incurred additional expenses for maintenance and upkeep for condominium since the sales contract was cancelled. However, they note in their claims submissions that the condominium for sale is not their primary residence and they incurred and paid these expenses prior to the oil spill. These additional expenses were not the result of the oil spill.

Claimants have not indicated that they made subsequent attempts to sell the condominium after the sales agreement was cancelled. If the Claimants suggest that there is a decline in home buyers and interested parties, the NPFC's review of specific data and studies related to the Deepwater Horizon oil spill do not reveal any apparent declines in real estate sales volume in the Seminole, Florida area that can be specifically linked to the oil spill.⁷

Under 33 CFR §§ 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 CFR § 136.233, a claimant must establish loss of profits or impairment of earning capacity. As described above, the Claimants, [REDACTED] have failed to meet their burden and their claim is denied.

Claim Supervisor: [REDACTED]

Date of Supervisor's review: 12/21/10

Supervisor Action: No action necessary

Supervisor's Comments:

⁷ Memorandum dated 09 November 2010 from [REDACTED], [REDACTED] to [REDACTED], NPFC, Subj: Preliminary Property Value Assessment Results

U.S. Department of
Homeland Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd. Suite 1000
Arlington, VA 20598-7100
Staff Symbol: (CA)
Phone: [REDACTED]
E-mail: [REDACTED]
Donna [REDACTED]
Fax: 202-493-6937

5890
3/22/2011

VIA EMAIL: [REDACTED]@gmail.com

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]

[REDACTED]
Niceville, FL 32578

RE: Claim Number: N10036-0087

Dear [REDACTED]:

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 claim number N10036-0087 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination Form for further explanation.

Disposition of this reconsideration constitutes final agency action.

If you have any questions or would like to discuss the matter, you may contact me at the above address and phone number.

Sincerely,

[REDACTED]
Chief, Claims Adjudication Division
U.S. Coast Guard

Encl: Claim Summary / Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Date	: 3/11/2011
Claim Number	: N10036-0087
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$7,000.00

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

CLAIM AND CLAIMANT:

On 18 November 2010, [REDACTED] (Claimant) presented a loss of profits and impairment of earning capacity claim in the amount of \$7,000.00 to the National Pollution Funds Center (NPFC) for reimbursement.

Claimant asserted that at the time of the Deepwater Horizon oil-spill, the Claimant was employed at [REDACTED] in Niceville, FL. The Claimant is an independent hair stylist and rented a chair at [REDACTED] from January 2010 through early September 2010. The Claimant further indicated that [REDACTED] closed in September 2010 because of a lack of business caused by the Deepwater Horizon oil-spill. The Claimant stated that due to his employer closing down the business, he lost his clientele and was not able to find alternate employment until November 2010.¹ The NPFC denied the claim on March 8, 2011 on the grounds that Claimant did not establish that his alleged loss of profits was due to the injury or destruction of real or personal property or natural resources because he had not evidenced that the closure of [REDACTED] was due to the oil spill.

REQUEST FOR RECONSIDERATION:

On March 9, 2011, the Claimant sent an email request for reconsideration to [REDACTED] stating he would like the NPFC to reconsider his claim. The Claimant stated he is in a bad situation and desires to be paid. On March 14, 2011, the Claimant faxed the NPFC 25 pages of miscellaneous alleged sales receipts for what he contends supports his income.

RECONSIDERATION CLAIM ANALYSIS:

The claimant requested reconsideration via email on March 9, 2011. To support his request for reconsideration, the claimant provided sheets of sales receipts. The Claimant was an

¹ Letter of explanation from Claimant dated 14 December 2010.
09/13/11

independent hair stylist and rented a chair within his employer's business, [REDACTED] Claimant worked at the [REDACTED] from January 2010 through early September 2010 when the business closed down.

NPFC Determination on Reconsideration

Under 33 CFR 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 CFR § 136.233, a claimant must establish loss of profits or impairment of earning capacity. A request for reconsideration must be in writing and must state the factual or legal grounds for the request and must include any additional information to support the claim. 33 CFR 136.115(d). The NPFC considered all the documentation submitted by the Claimant.

The NPFC performed another analysis of the financial information the Claimant did provide in his original claim submission by way of bank statements. While it is not clear that the deposits associated with the bank statements were from clients, the Claimant did hand write on each providing a dollar amount he alleged was associated with income. Assuming the deposits were from clients as alleged by the Claimant, the NPFC created two tables itemizing pre-spill earnings and post-spill earnings.

TABLE 1: Pre-spill Earnings

<i>MONTH</i>	<i>GROSS EARNINGS</i>	<i>CHAIR RENTAL</i>	<i>NET EARNINGS</i>
January 2010	\$837	(\$500.00)	\$337
February 2010	\$690	(\$500.00)	\$190
March 2010	\$548	(\$500.00)	\$48
April 2010	\$908	(\$500.00)	\$408
TOTAL	\$2,983	(\$2,000)	\$983
AVERAGE	\$745.75	(\$500.00)	\$245.75

TABLE 2: Post-spill Earnings

<i>MONTH</i>	<i>GROSS EARNINGS</i>	<i>CHAIR RENTAL</i>	<i>NET EARNINGS</i>
May 2010	\$2,241	(\$500.00)	\$1,741
June 2010	\$1,331	(\$500.00)	\$831
July 2010	\$1,173	(\$500.00)	\$673
August 2010	\$1,409	(\$500.00)	\$909
TOTAL	\$6,154	(2,000.00)	\$4,154
AVERAGE	\$1,538.50	(\$500.00)	\$1,038.50

Based on the preceding tables, the NPFC has determined that the Claimant's earnings were overall better after the Deepwater Horizon incident than prior to the incident. While the information originally provided was minimal, the NPFC does not see how the Claimant has calculated a loss of profits and earning capacity as a result of the spill.

Additionally, on March 14, 2011, the Claimant faxed in some 15 pages of receipts that he again alleges is his reported sales pre-spill and post-spill. The receipts are not itemized by client name

identifying who the client(s) were/was nor do the receipts indicate that they were written contemporaneously. Furthermore, these receipts do not match what the Claimant alleged regarding income by way of previously presented bank statements that were marked and calculated by the Claimant through his submission. A good example is the Claimant's bank statement for October 2010, where he wrote a notation that stated he had an income amount of \$675.00 based on deposits made although in the Claimant's receipts that he faxed on March 14, 2011, his October 2010 receipts show zero income which contradicts previously submitted information.

Therefore, the NPFC again denies the claim because (1) the alleged loss is not due to injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of discharge of oil and (2) the Claimant has failed to demonstrate a loss of profits and earnings. This claim is denied upon reconsideration.

Claim Supervisor:

Date of Supervisor's review: 3/22/11

Supervisor Action: *Denial on reconsideration approved*

Supervisor's Comments:

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: [REDACTED]
Fax: 202-493-6937
5890
12 January 2011

VIA MAIL and EMAIL: [REDACTED]

RE: Claim Number: N10036-0088

[REDACTED]
Fort Walton Beach, FL 32548
[REDACTED]

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number N10036-0088 involving Deepwater Horizon. Please see the enclosed Claim Summary / Determination 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 N10036-0088.

Mail reconsideration requests to:

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

Sincerely,



U. S. Coast Guard
Claims Manager

Encl: Claim Summary / Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Date	12 January 2011
Claim Number	N10036-0088
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
Claim Manager	[REDACTED] USCG
Amount Requested	\$20,000.00

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 was discharged from an offshore facility associated with the Deepwater Horizon and located on the Mississippi Canyon, Block 252 (the Deepwater Horizon incident). This area was leased by BP Exploration and Production, Inc. (BP). The Coast Guard designated the offshore facility as the source of the discharge and BP as the responsible party (RP) for the discharge. BP accepted the designation, advertised its OPA claims process, and compensated claimants. On 23 August 2010, the Gulf Coast Claims Facility (GCCF) began accepting and adjudicating claims on behalf of BP.

CLAIM AND CLAIMANT

On November 16, 2010, Mr. [REDACTED] (Claimant) presented a claim to the National Pollution Funds Center (NPFC) Oil Spill Liability Trust Fund (OSLTF) seeking \$20,000.00 in lost profits and earning capacity resulting from the Deepwater Horizon incident. Claimant asserts that he works at [REDACTED] where his income is based wholly on commission and reliant upon the local economy. Claimant indicates that as a result of the downturn in the economy subsequent to the oil spill, he has sustained a decrease in available work hours and failed to receive a promised ten-year anniversary award from his employer in the amount of \$10,000.00.

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 waters or adjoining shorelines or the exclusive economic zone, as described in § 2702(b) of OPA.

The OSLTF which is administered by the NPFC, is available, pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136, to pay claims for uncompensated damages. 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.

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.
- (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 undertake, 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.

DETERMINATION OF LOSS

Claimant's Submission

To support his claim, Claimant presented the NPFC Optional OSLTF Claim Form dated 09 November 2010, pay stubs from [REDACTED], a copy of his previously submitted GCCF Claim Form, 2008-2009 W2 Forms and copies of valid identification. Claimant also presented an undated typed letter from the owner and CEO of [REDACTED] Mr. [REDACTED] detailing the Claimant's employment situation including the reported loss of hours and bonuses.

NPFC Determination

The claim is denied. 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 U.S.C. § 2702(b)(2)(E) and 33 C.F.R. Part 136, a claimant must prove that his loss of income was due to injury or destruction or loss of real or personal property or a natural resource as a result of a discharge or substantial threat of a discharge of oil.

Claimant asserts that he sustained a decrease in work hours due to the economic impacts of the Deepwater Horizon incident upon the auto brokers company for which he worked. He bases his sum certain amount on the wages lost due to hours cut as well as the potential for a \$10,000.00 bonus which he was supposed to receive this year as a result of his ten year anniversary with the company, which the company was unable to accommodate

Economic analysis reveals that there was a notable decrease in income from 2008 to 2009, which may indicate a preexisting economic downturn. Accordingly, the records presented for review indicate that 2010 income total trends fail to predict the financial loss reported by the Claimant, but rather, when compared to 2009 income totals, indicate an increase in income.

Claimant has failed to prove that a loss of income exists or that a potential loss of income was due to the oil spill, therefore the claim is denied. Additionally, the Claimant's failure to receive a ten year anniversary bonus is the result of his employer's business decision not to issue one.

Claim Supervisor:

Date of Supervisors Review: *12 January 2011*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

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)

202-493-6937

5890
1/18/2011

VIA CERTIFIED MAIL

Number: [REDACTED]



RE: Claim Number: N10036-0089

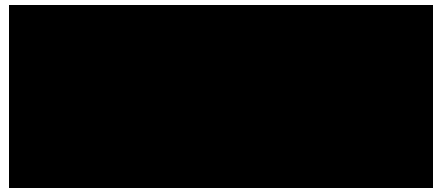
Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number N10036-0089 involving Deepwater Horizon. Please see the attached Claim Summary / Determination Form for the rationale regarding this denial.

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 N10036-0089.

Mail reconsideration requests to:

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



Claims Manager
U.S. Coast Guard

Encl: Claim Summary / Determination Form

09/13/11

FOIA2011-3380-00000388

CLAIM SUMMARY / DETERMINATION FORM

Date	10 January 2011
Claim Number	N10036-0089
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
Claim Manager	[REDACTED]
Amount Requested	\$8,000.00

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 was discharged from an offshore facility associated with the Deepwater Horizon and located on the Mississippi Canyon, Block 252 (the Deepwater Horizon incident). This area was leased by BP Exploration and Production, Inc. (BP). The Coast Guard designated the offshore facility as the source of the discharge and BP as the responsible party (RP) for the discharge. BP accepted the designation, advertised its OPA claims process, and compensated claimants. On 23 August 2010, the Gulf Coast Claims Facility (GCCF) began accepting and adjudicating claims on behalf of BP.

CLAIM AND CLAIMANT

On 16 November 2010 [REDACTED] (Claimant) presented a lost profits & earnings capacity claim in the amount of \$8,000.00 to the National Pollution Funds Center (NPFC) for reimbursement. [REDACTED] is asserting that due to a decline in babysitting business, she left to gain employment with the oil spill cleanup industry. [REDACTED] states that the company with which she sought employment with then "lost their contract" so she became unemployed.¹

APPLICABLE LAW

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a). Damages include the loss of profits or impairment of earning capacity due to the injury, destruction or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant. 33 U.S.C. § 2702(b)(2)(E).

The OSLTF, which is administered by the NPFC, 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. With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

Pursuant to the claims regulations, 33 C.F.R. § 136.233, a claimant must establish the following to prove loss of profits or impairment of earning capacity:

- (a) That real or personal property or natural resources have been injured, destroyed, or lost.

¹ See handwritten letter provided by Claimant.
09/13/11

- (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.
- (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.

DETERMINATION OF LOSS:

Claimant's Submission

To support her claim, the Claimant presented the NPFC Optional OSLTF Claim Form dated November 16, 2010, a copy of the denial letter from the Gulf Coast Claims Facility (GCCF) dated November 4, 2010, 2008 and 2009 tax return documents and two (2) separate typed letters referencing child care/babysitting jobs as per the witnesses signed dated October 16, 2010. A handwritten letter from the Claimant dated 16 November 2010 explaining her employment situation was also provided. The GCCF assigned claim identification [REDACTED] to Claimant's claim submission. On November 4, 2010, the GCCF issued a denial to Claimant stating that individual wages related to oil-spill clean up efforts or business contracts involved in clean up or remediation efforts in response to the oil-spill are not compensable by the GCCF.²

NPFC Determination

Under 33 CFR 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 CFR § 136.233, a claimant must establish loss of profits or impairment of earning capacity. The NPFC considered all the documentation submitted by the Claimant.

² See, GCCF denial letter dated November 4, 2010.
09/13/11

The claim is denied because the alleged loss in the amount of \$8,000.00 is not due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil. The Claimant's alleged loss is due to her employer's decision to terminate her employment. Additionally [REDACTED] has failed to meet her burden of proof demonstrating that the reduced day care business was a direct result of the Deepwater Horizon incident therefore this claim is denied.

Claim Supervisor: [REDACTED]

Date of Review: 1/14/11

Supervisor's Comments: *Denial approved*

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

Fax: 202-493-6937
5890
3/7/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]



RE: Claim Number: N10036-0090

Dear [REDACTED]

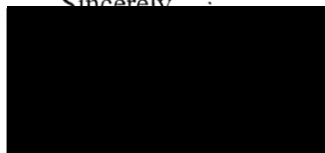
The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq. (OPA) and the associated regulations at 33 C.F.R. Part 136, denies your claim, Claim # N10036-0090, relating to the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination 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 N10036-0090.

Mail reconsideration requests to:

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

Sincerely,



Claims Manager
U.S. Coast Guard

Encl: Claim Summary / Determination Form
09/13/11

FOIA2011-3380-00000392

CLAIM SUMMARY / DETERMINATION FORM

Date	: March 2, 2011
Claim Number	: N10036-0090
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$28,975.00

FACTS:

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 of the explosion and sinking, oil was 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 August 23, 2010, the Gulf Coast Claims Facility (GCCF) began accepting and adjudicating claims for certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On November 18, 2010, [REDACTED] (Claimant) presented a lost profits & earnings claim in the amount of \$28,975.00 to the National Pollution Funds Center (NPFC) for reimbursement. The Claimant asserted that he lost wages from his business, [REDACTED] in Mary Esther, Florida due to the injury, destruction or loss of real property, personal property, or natural resources.

Claimant stated that [REDACTED] is a contractor/sole proprietor for [REDACTED]. He sells [REDACTED] products to customers such as supermarkets, fast-food chains, drug stores, and gas stations.

The Claimant was issued claim # [REDACTED] by the GCCF and provided a denial letter dated November 2, 2010.

APPLICABLE LAW:

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a). Damages include the loss of profits or impairment of earning capacity due to the injury, destruction or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant. 33 U.S.C. § 2702(b)(2)(E).

The OSLTF, which is administered by the NPFC, 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. With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

Pursuant to the claims regulations, 33 C.F.R. § 136.233, a claimant must establish the following to prove loss of profits or impairment of earning capacity:

- (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.
- (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.

DETERMINATION OF LOSS

Claimant's Submission

To support the claim, the Claimant submitted the following documentation:

- NPFC OSLTF Claim Form received November 18, 2010;
- Letter of explanation from Claimant;
- Letter of explanation by [REDACTED] dated November 5, 2010;
- Claim denial letter from GCCF, dated November 2, 2010;
- Statement of revenue and expense for 9 months ending September 2009 and September 2010;
- Semi Annual Business review for October 2008, 2009, and 2010;
- Income tax returns for 2007, 2008, and 2009;
- Monthly profit and loss statements for 2008, 2009, 2010;
- Answers to 7 questions submitted by the NPFC.

NPFC Determination

Under 33 CFR 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 CFR § 136.233, a claimant must establish loss of profits or impairment of earning capacity. The NPFC considered all the documentation submitted by the Claimant.

Although there appears to be a decline in earnings following the Deepwater Horizon incident, the documentation provided by the Claimant does not prove that it was related to the Deepwater Horizon incident.

Based on the list of customers provided by the Claimant for 2010, the NPFC could not determine whether they were directly affected by the Deepwater Horizon incident since the customer base seems to be grocery stores and fast food chains.

The "Territory 52 Wks Net Sales by Customer" documentation has only been provided for 2010 and not for 2009. Therefore the NPFC cannot identify if there were any changes in customer base from 2009 to 2010.

Based on the documentation and information presented, the Claimant has not demonstrated that his alleged loss of profits or earnings capacity occurred due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil therefore this claim is denied.

Claim Supervisor:

Date of Supervisor's review: 3/4/11

Supervisor Action: *Denial approved*

Supervisor's Comments:

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

Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim # N10036-0091
08 February 2011

Re: Claim Number: N10036-0091

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with 33 C.F.R. Part 136, denies payment on the claim number N10036-0091 involving the Deepwater Horizon incident. Please see the enclosed 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 N10036-0091.

Mail reconsideration requests to:

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

Sincerely,

[REDACTED]
U.S. Coast Guard
Claims Manager

Enclosure: (1) Claim Summary/Determination Form
(2) N10036-0091 List of Documentation Presented by Claimant

09/13/11

FOIA2011-3380-00000396

CLAIM SUMMARY / DETERMINATION FORM

Date	: 08 February 2011
Claim Number	: N10036-0091
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$12,193.54

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 was discharged from an offshore facility associated with the Deepwater Horizon and located on the Mississippi Canyon, Block 252 (the Deepwater Horizon incident). This area was leased by BP Exploration and Production, Inc. (BP). The Coast Guard designated the offshore facility as the source of the discharge and BP as the responsible party (RP) for the discharge. BP accepted the designation, advertised its OPA claims process, and compensated claimants. On 23 August 2010, the Gulf Coast Claims Facility (GCCF) began accepting and adjudicating claims on behalf of BP.

CLAIM AND CLAIMANT

On 18 November 2010, [REDACTED] (Claimant), presented an Optional Oil Spill Liability Trust Fund Claim Form to the National Pollution Funds Center (NPFC) seeking lost profits and earnings in the amount of \$12,193.54. Claimant asserts that he earned reduced wages and commissions as a result of the Deepwater Horizon incident.¹

Claimant is an independent distributor for the [REDACTED] and has been working with the company since 2003. [REDACTED] produces baked goods such as breads, buns, cakes and other items.² The Claimant has sales and distribution rights to service a specific area within Destin, Florida.

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 waters or adjoining shorelines or the exclusive economic zone, as described in § 2702(b) of OPA.

The OSLTF, which is administered by the NPFC, is available, pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136, to pay claims for uncompensated damages. 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.

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

¹ OSLTF Claim Form submitted on 10 November 2010.

² See, letter from [REDACTED] dated 08 November 2010.

09/13/11

ENCLOSURE

FOIA2011-3380-00000397

- (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;
- (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.

DETERMINATION OF LOSS

Claimant's Submission

To support his claim, the Claimant submitted the documentation listed in Enclosure (2).

The Claimant asserts that his customers include various supermarkets, convenience stores, gas stations and other retail establishments, and that his distribution territory is dependent upon the tourism industry. As a result of the Deepwater Horizon incident, Claimant asserts that tourism declined in his locality, causing his customers to reduce their orders for [REDACTED] products.

Claimant filed an Emergency Advance Payment claim with GCCF in the amount of \$5,060.55. GCCF assigned Claimant [REDACTED] and Claim [REDACTED]. This claim was denied on 02 November 2010. This information was confirmed by NPFC.

NPFC Determination

This claim is denied. Under 33 U.S.C. § 2702(b)(2)(E) and 33 C.F.R. Part 136, a claimant must prove that his loss of income was due to the injury or destruction or loss of real or personal property or 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 to the NPFC all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim. The NPFC considered all of the documentation presented by the Claimant.

Claimant has not provided sufficient documentation to prove that his earnings were directly impacted as a result of the Deepwater Horizon incident. Claimant presented a letter from [REDACTED] stating that distributorship profits in the Destin, Florida area, and hence Claimant's earnings are "heavily dependent" upon tourist activity in the area.³ Aside from his employers assertions, Claimant has not presented any documentation that shows how his earnings are contingent upon tourist activity in his specific delivery territory.

The Claimant did present sales reports to identify sales amounts by customer. The reports summarize sales during the prior 52 weeks, through the 43rd week of the year (fiscal year) for 2008, 2009 and 2010 for the seven customers in Claimant's territory. For six out of the seven customers listed, 2009 aggregate sales indicate a downward trend of 10.8% compared to 2008. Sales for these same customers continued to decline through the 2010 fiscal year by 4.75% compared to 2009. The sales reports suggest a pre-existing downward trend for these customers, exclusive of any potential impacts from the Deepwater Horizon incident, which actually alleviated during 2010 (see Figure 1 below).

<u>Customer</u>	<u>2008</u> <u>Sales</u>	<u>2009</u> <u>Sales</u>	<u>Trend</u>	<u>2010</u> <u>Sales</u>	<u>Trend</u>
[REDACTED]	\$29,381	\$27,073	-7.86%	\$25,359	-6.33%
[REDACTED]	\$5,769	\$3,515	-39.07%	\$2,566	-27.00%
[REDACTED]	\$18,763	\$19,552	4.21%	\$19,099	-2.32%
[REDACTED]	\$9,380	\$7,319	-21.97%	\$6,686	-8.65%
[REDACTED]	\$8,510	\$8,438	-0.85%	\$7,585	-10.11%
[REDACTED]	\$2,258	\$0	-100.00%	\$0	0.00%
[REDACTED]	\$0	\$164	100.00%	\$1,628	892.68%
TOTAL (W/O Wal-Mart)	\$74,061	\$66,061	-10.80%	\$62,923	-4.75

Figure 1

The remaining customer from the sales reports, [REDACTED] comprises the majority of Claimant's sales portfolio. For 2010, the Claimant's sales to [REDACTED] decreased by 12.92% compared to 2009. Although there is a decline in sales to this customer, Claimant has not provided documentation to substantiate that any reductions were specifically caused by the Deepwater Horizon incident and not other potential business or purchasing decisions. Based on Claimant's documentation and the overall sales figures provided by Claimant, showing a preexisting downward trend that was less overall in 2010 than in the previous year with the exception of

³ See, letter from [REDACTED] dated 04 January 2011 prepared by [REDACTED]
09/13/11

[REDACTED] there is no information to correlate his customers' decreased purchases to the tourist industry, or by extension, to the Deepwater Horizon incident.

The claim is denied because the Claimant has not proven his asserted economic loss of \$12,193.54 is due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil.

Claims Supervisor:

[REDACTED]

Date of Review:

2/4/11

Supervisor's Actions:

Denial placed

Supervisor's Comments:

Enclosure (2)
N10036-0091 List of Documentation Presented by Claimant

- NPFC Optional OSLTF Claim Form dated 10 November 2010;
- GCCF denial letter dated 02 November 2010;
- Letter to NPFC dated 10 November 2010 explaining submission and prior denial by GCCF;
- Letter from [REDACTED] date 08 November 2010 documenting that Claimant is an independent distributor for Flowers, and that his territory encompasses the Destin/San Destin, Florida area;
- Summary of weekly sales totals from May through October for 2008, 2009 and 2010;
- Thomasville ([REDACTED]) total sales by product group through week 43 of fiscal year (period not identified) for 2008, 2009 and 2010;
- "Semi-Annual Business Review" for Claimant, quarter ending 31 October, for 2008, 2009 and 2010. Amounts provide sales by product class;
- Distributor Summary Reports from May through November 2008, 2009 and 2010;
- Mapquest printout with delivery routes;
- Distributor Agreement dated 23 June 2003 between Claimant and Flowers Baking Co.;
- Letter from [REDACTED] Group dated 04 January 2011 explaining how an independent distributor earns their income and attesting that Claimant has been a distributor for Flowers since 23 June 2003;
- Distributor Summary Balance Sheet Reports for 21 June 2009 to 18 July 2009 and 20 June 2010 to 17 July 201;
- Distributor slides discussing equity advantage of distributorship;
- Territory 52 week net sales by customer group for Route No. 101-161-02803 for Fiscal Year 2010 week 27 with run date of 04 January 2011;
- Letter from John Shepard, Director of Distributor Relations for Flowers Foods dated 04 January 2011, describing Claimant's "territory" and asserting that his business was affected "due to people not coming to the coast to vacation."

ENCLOSURE (2)

09/13/11

FOIA2011-3380-00000401

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: [REDACTED]

E-mail: [REDACTED]

Fax: 202-493-6937

5890

12/22/2010

VIA MAIL & EMAIL: [REDACTED]

[REDACTED]
Lafitte, LA 70067

RE: Claim Number: N10036-0092

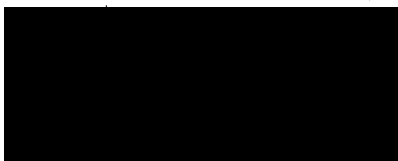
Dear Mr. [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number N10036-0092 involving Deepwater Horizon. Please see the attached Claim Summary / Determination Form for a detailed explanation of this denial.

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 A08003-003.

Mail reconsideration requests to:

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



U.S. Coast Guard

Encl: Claim Summary / Determination Form

09/13/11

FOIA2011-3380-00000402

CLAIM SUMMARY / DETERMINATION FORM

Date	: 12/22/2010
Claim Number	: N10036-0092
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$35,501.01

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 was discharged from an offshore facility associated with the Deepwater Horizon and located on the Mississippi Canyon, Block 252 (the Deepwater Horizon incident). This area was leased by BP Exploration and Production, Inc. (BP). The Coast Guard designated the offshore facility as the source of the discharge and BP as the responsible party (RP) for the discharge. BP accepted the designation, advertised its OPA claims process, and compensated claimants. On 23 August 2010, the Gulf Coast Claims Facility (GCCF) began accepting and adjudicating claims on behalf of BP.

CLAIM AND CLAIMANT

On 17 November 2010 Mr. [REDACTED] (Claimant), presented a lost profits & earnings claim in the amount of \$2,784.00 and a real or personal property damage claim component in the amount of \$29,157.01 for a total claim amount of \$35,501.01 to the National Pollution Funds Center (NPFC) for reimbursement. Mr. [REDACTED] is asserting that while working in the Vessel of Opportunity (VOO) program for the Deepwater Horizon oil-spill incident and while operating his vessel on or about August 10, 2010, he hit a piling in the water which damaged his boat causing it to sink. The Claimant alleges that the damage to his boat caused him to miss three days of work while his boat was inoperable and therefore requests compensation for those lost earnings as well as he is requesting replacement value of his boat in the amount of \$29,157.01 which he states was the value of his boat at the time of the incident.

APPLICABLE LAW:

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a). Damages include the loss of profits or impairment of earning capacity due to the injury, destruction or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant. 33 U.S.C. § 2702(b)(2)(E).

The OSLTF, which is administered by the NPFC, 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. With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person

by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

Pursuant to the claims regulations, 33 C.F.R. § 136.233, a claimant must establish the following to prove loss of profits or impairment of earning capacity:

- (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.
- (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.

Damages include damages for injury to natural resources, injury to or economic losses from the destruction of real or personal property, loss of subsistence use of natural resources, Government loss of revenues, loss of profits or earning capacity as a result of loss or destruction of real or personal property or natural resources, and costs of increased public services. 33 USC §2702(b).

Damages are further defined to include the costs of assessing the damages.

“(5) “damages” means damages specified in section 2702(b) of this title, and includes the cost of assessing these damages;” 33 USC §2701(5).

The provisions of 33 CFR 136.213 – 136.217 provide the details for claims for real or personal property damages

DETERMINATION OF LOSS

Claimant's Submission

To support his claim, the Claimant presented the NPFC OSLTF Claim Form dated November 17, 2010, a copy of the USCG accident report which identifies the Claimant vessel involved in an accident, a copy of a letter to GCCF dated November 12, 2010, miscellaneous repair and replacement estimates for boat, a copy of the boat registration certificate for the Claimant's boat, a copy of miscellaneous paystubs to Claimant during period in question, a copy of photos of Claimant's boat, and a copy of the Claimant's written statement of circumstances that was originally provided to the GCCF when claim was submitted. The GCCF assigned claimant identification # [REDACTED] to Mr. [REDACTED] claim submission.

NPFC Determination

Under 33 CFR 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 CFR § 136.233, a claimant must establish loss of profits or impairment of earning capacity. The NPFC considered all the documentation submitted by the Claimant.

The NPFC has determined that Mr. [REDACTED] has failed to meet his burden of proof by a preponderance of the evidence that his vessel sustained damage as a result of the Deepwater Horizon oil-spill incident. Based on the information provided by the Claimant, the NPFC has determined that Mr. [REDACTED] has not established that the damages to his vessel were not a result of his actions since the vessel was under his control. Additionally, the alleged loss of profits and earnings in the amount of \$2,784.00 is not due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil. Claimant's alleged loss of profits is the result of his operation of his vessel which resulted in the subsequent sinking of said vessel.

Claim Supervisor: [REDACTED]

Date of Supervisor's review: 12/22/10

Supervisor Action: DENIAL APPROVED

Supervisor's Comments:

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: [REDACTED]

E-mail: [REDACTED]

Fax: 202-493-6937

5890 DWHZ

Claim # N10036-0093

27 January 2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]

[REDACTED]
Mobile, AL 36608

RE: Claim Number: N10036-0093

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with 33 C.F.R. Part 136, denies payment on the claim number N10036-0194 involving the Deepwater Horizon incident. Please see the enclosed Claim Summary / Determination Form

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 N10036-0093.

Mail reconsideration requests to:

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

Sincerely

A large black rectangular redaction box covering the signature of the U.S. Coast Guard Claims Manager.

U.S. Coast Guard
Claims Manager

Enclosure: Claim Summary / Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Date : 27 January 2011
Claim Number : N10036-0093
Claimant : [REDACTED]
Type of Claimant : Private (US)
Type of Claim : Loss of Profits and Earning Capacity
Claim Manager : [REDACTED]
Amount Requested : \$2,125.00

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 was discharged from an offshore facility associated with the Deepwater Horizon and located on the Mississippi Canyon, Block 252 (the Deepwater Horizon incident). This area was leased by BP Exploration and Production, Inc. (BP). The Coast Guard designated the offshore facility as the source of the discharge and BP as the responsible party (RP) for the discharge. BP accepted the designation, advertised its OPA claims process, and compensated claimants. On 23 August 2010, the Gulf Coast Claims Facility (GCCF) began accepting and adjudicating claims on behalf of BP.

CLAIM AND CLAIMANT

On 09 November 2010, Ms. [REDACTED] (Claimant) submitted an Oil Spill Liability Trust Fund (OSLTF) claim form to the NPFC claiming lost profits and earnings the amount of \$2,125.00 as a result of the Deepwater Horizon incident.¹ Claimant had two food industry jobs; the first with the [REDACTED] and the second with [REDACTED]. The [REDACTED] where claimant worked was located in Bayou La Batre, Alabama and catered, in part, to commercial shrimp fisherman who would avail themselves of the lodging, means, and transportation provided by the owner of the [REDACTED].²

Claimant served as a cook at the [REDACTED], usually providing dinner.³ Following the closure of the shrimp fishery outside of the Bayou La Batre area, [REDACTED] closed the [REDACTED] stating that there were no visiting shrimp fishermen to cater too.⁴ Claimant was terminated when the [REDACTED] closed.⁵

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 waters or adjoining shorelines or the exclusive economic zone, as described in § 2702(b) of OPA.

The OSLTF which is administered by the NPFC, is available, pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136, to pay claims for uncompensated damages. 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.

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.

¹ Claimant's Optional OSLTF claim form submitted to NPFC on 09 November 2010.

² PHONECON between [REDACTED] (NPFC) and Mr. [REDACTED] of 15 December 2010.

³ PHONECON between [REDACTED] (NPFC) and Claimant of 15 December 2010.

⁴ PHONECON between [REDACTED] (NPFC) and Mr. [REDACTED] of 15 December 2010.

⁵ FAX from Mr. [REDACTED] to NPFC dated 15 December 2010 relating to Claimant.

09/15/11

ENCLOSURE

FOIA2011-3380-00000407

- (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.
- (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 undertake, 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.

DETERMINATION OF LOSS

Claimant's Submission

To support her claim, the claimant presented the following documentation:

- 1099-Misc Form and related letter from Mr. [REDACTED] of [REDACTED].
- [REDACTED] Pay and Earnings Statement for Claimant Pay Date 9/10/2010.
- [REDACTED] 2009 W-2 for Claimant.
- [REDACTED] Paystub Detail for period 2/12/2010 to 8/27/2010 for Claimant
- Letter from Ms. [REDACTED] [REDACTED] Alpharetta, GA 30004 with no date.
- Social Security Card and current Alabama Drivers License No. [REDACTED].
- Fax from Mr. [REDACTED] President of [REDACTED] fax dated 15 December 2010

On 09 November 2010, Claimant presented an OSLT claim form seeking \$2,125.00 in compensation from the Fund due to a reduction in hours at her food service jobs. She alleges that those reduced hours are the result of the Deepwater Horizon incident.

On 07 October 2010 the Claimant presented an Emergency Advance Payment (EAP) claim to GCCF in the amount of \$10,400.00 and was issued Claimant ID # [REDACTED] and Claim # [REDACTED]. The Claimant's EAP request was denied. The Claimant submitted an OSLTF claim form for lost Profits and Earning Capacity in the amount of \$2,125.00.

NPFC Analysis

This claim is denied. Under 33 C.F.R. § 136.105(a) and § 136.105(e)(6), the claimant bears the burden of proving to the NPFC all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim. Under 33 C.F.R. § 136.233, a claimant must establish loss of profits or impairment of earning capacity. The NPFC considered all the documentation submitted by the Claimant.

The claim is denied because the evidence presented does not show that Claimant's 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. On 27 December 2010 the NPFC requested that the Claimant provide additional information to better allow the NPFC to adjudicate her claim. This information was not forthcoming and the evidence provided by the Claimant does not establish that her alleged loss is the result of the Deepwater Horizon incident.

Claim Supervisor:



Date of Supervisor's Review:

1/27/11

Supervisor's Actions:

Denial of Claim

Supervisor's Comments:

U.S. Department
of Homeland
Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd., Suite 1000
Arlington, VA 20598-7100
Staff Symbol: (CA)
Phone: [REDACTED]
E-mail: [REDACTED]
Fax: 202-493-6937

BY MAIL AND EMAIL
[REDACTED]
[REDACTED]
New Iberia, LA 70560

5890/DWHZ
Claim # N10036-0094
18 January 2011

Re: Claim Number: N10036-0094

Dear Mr. [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies your claim. The NPFC is unable to establish that the loss of profits and earnings real or personal property damages you presented in your claim were a result of the Deepwater Horizon oil spill. Please see the attached claim summary 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 N10036-0094.

Mail reconsideration requests to:

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

Sincerely,

[REDACTED]

U. S. Coast Guard
Claims Manager

Attachment: (I) Claim Summary/Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Date	January 18, 2011
Claim Number	N10036-0094
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
Claim Manager	[REDACTED]
Amount Requested	\$120,000.00

FACTS

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 of the explosion and sinking, oil was discharged from an offshore facility associated with the Deepwater Horizon and located on the Mississippi Canyon, Block 252 (the Deepwater Horizon incident). This area was leased by BP Exploration and Production, Inc. (BP). The Coast Guard designated the offshore facility as the source of the discharge and BP as the responsible party (RP) for the discharge. BP accepted the designation, advertised its OPA claims process, and compensated claimants. On August 23, 2010, the Gulf Coast Claims Facility (GCCF) began accepting and adjudicating claims on behalf of BP.

CLAIM AND CLAIMANT

On November 11, 2010, Mr. [REDACTED] (Claimant), presented an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form for lost profits & earnings and personal property damage totaling \$120,000.00 to the National Pollution Funds Center (NPFC) for reimbursement. The Claimant is asserting that his income as a commercial fisherman was reduced due to the Deepwater Horizon incident. The Claimant also asserts that he lost \$15,100 in crab traps due to water closures.

The Claimant operates a 23-foot commercial fishing vessel in Louisiana. The Claimant provided licensing to catch crab through 31 December 2010.¹ The Claimant stated in a response to the NPFC, that he has been catching crab as a commercial fisherman since at least April 2008 and operated during 2009 through May 2010.² The Claimant indicates that he has not conducted any fishing activity since June 2010 due to the closure of fishing areas. By way of the OSLTF Claim Form, the Claimant implies that he had existing crab traps that were either lost or damaged as a result of Deepwater Horizon incident. The Claimant does not explain or elaborate why he is submitting a claim related to the crab traps.

The Claimant submitted an initial claim with BP and was provided two payments totaling \$16,070.³ The Claimant subsequently submitted a claim with the GCCF and was provided Claimant Identification # [REDACTED]. The Claimant received an emergency advance payment of \$29,500.00 from the GCCF on October 5, 2010.⁴ In total, the Claimant received payments of \$45,570.00 through BP and the GCCF.

¹ See, various licenses and vessel registration provided by Claimant.

² See, Claimant's response to NPFC on 06 January 2011.

³ See, [REDACTED] check # [REDACTED] dated 21 July 2010 for \$9,973.47 and [REDACTED] dated 18 July 2010 for \$6,097.50.

⁴ See, Notice of Determination from GCCF dated 05 October 2010 for emergency advance payment of \$29,500.

APPLICABLE LAW

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a). Damages include the loss of profits or impairment of earning capacity due to the injury, destruction or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant. 33 U.S.C. § 2702(b)(2)(E).

The OSLTF, which is administered by the NPFC, 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. With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

Pursuant to the claims regulations, 33 C.F.R. § 136.233, a claimant must establish the following to prove loss of profits or impairment of earning capacity:

- (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.
- (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.

DETERMINATION OF LOSS

Claimant's Submission

To support his claim, the Claimant submitted the following documentation:

- NPFC OSLTF Claim Form dated November 11, 2010
- Copy of his payments from the RP (BP) and GCCF
- Various fishing related licenses
- Tax returns
- Trip tickets

NPFC Determination

Under 33 CFR 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 CFR § 136.233, a claimant must establish loss of profits or impairment of earning capacity. The NPFC considered all the documentation submitted by the Claimant.

The Claimant is making a claim totaling \$120,000.00 for lost profits and personal property damage. The Claimant has received payments totaling \$45,570.00 from the RP. The Claimant asserts that his claim for lost profits and earnings capacity is based on his gross receipts minus bait and fuel expenses. Upon review of the Claimant's tax filing from 2009, it does not appear that the Claimant has estimated a loss based on lost net profits.

The Claimant provided trip tickets from 2009 totaling \$125,754.00.⁵ The Claimant reported on his 2009 tax return filing, a gross income of \$74,801.00.⁶ The difference in reported amounts from the trip tickets and gross receipts on the tax return is assumed to be for payments to deckhands as the tax returns do not show expenses for labor.⁷ When considering variable expenses as referenced on the Claimant's 2009 Income Tax Return Filing Schedule C such as repairs and maintenance, meals, bait and fuel, the Claimant's net profits during 2009 total \$31,575.00, or 25.11% of the gross trip ticket proceeds.

Using 2009 gross receipts from the trips tickets of \$125,754.00 and subtracting the actual gross receipts from January 1, 2010 through May 20, 2010 of 21,574.00, there is a difference of \$104,180.00. Based on the 2009 net profit percentage of 25.11%, the potential reduction in gross receipts of \$104,180.00 is reduced to potential lost net profits of \$26,160.00 for 2010.

In addition to lost profits and earning capacity, the total claim includes \$15,100.00 related to lost or damaged crab traps. Although no supporting documents have been provided to support the actual existence, quantity and specific damage or cause of loss to the traps, it would appear the Claimant has already been reimbursed by the RP, an amount sufficient to cover his lost profits and personal property damage.

Based on the documentation submitted, the Claimant has been fully compensated by the RP for all potential losses sustained therefore this claim is denied.

Claim Supervisor:	[REDACTED]
Date of Review:	1/18/11
Supervisor's Comments:	Denial approved

⁵ See, Louisiana Trip Ticket Landings Data.

⁶ See, Claimant's 2009 Form 1040 Income Tax Return Filing, Schedule C, Line 1.

⁷ See, Claimant's response to NPFC on 06 January 2011, question #7.

U.S. Department
of Homeland
Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd., Suite 1000
Arlington, VA 20598-7100
Staff Symbol: (CA)
Phone: 1-800-280-7118

Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: [REDACTED]

5890/DWHZ
Claim # N10036-0095
24 January 2011

Re: Claim Number: N10036-0095

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies your claim. The NPFC is unable to establish that the loss of profits and earnings real or personal property damages you presented in your claim were a result of the Deepwater Horizon oil spill. Please see the attached claim summary 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 N10036-0095.

Mail reconsideration requests to:

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

Sincerely,

[REDACTED]
U. S. Coast Guard
Claims Manager

Attachment: (1) Claim Summary/Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Date	21 January 2011
Claim Number	N10036-0095
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
Claim Manager	[REDACTED]
Amount Requested	\$15,000.00

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 was discharged from an offshore facility associated with the Deepwater Horizon and located on the Mississippi Canyon, Block 252 (the Deepwater Horizon incident). This area was leased by BP Exploration and Production, Inc. (BP). The Coast Guard designated the offshore facility as the source of the discharge and BP as the responsible party (RP) for the discharge. BP accepted the designation, advertised its OPA claims process, and compensated claimants. On 23 August 2010, the Gulf Coast Claims Facility (GCCF) began accepting and adjudicating claims on behalf of BP.

CLAIM AND CLAIMANT

On 17 November 2010, [REDACTED] (Claimant), presented a lost profits & earnings claim in the amount of \$15,000.00 to the National Pollution Funds Center (NPFC) for reimbursement. Claimant asserted that his earnings as an employee of a collection agency were reduced due to the Deepwater Horizon incident.

At the time of the Deepwater Horizon incident, Claimant was employed by [REDACTED] and was employed since at least 2008. [REDACTED] is described as a full service collection agency that provides commercial debt collection services. Claimant stated on his NPFC Optional OSLTF Claim Form that he was compensated based on his regular salary plus commissions. Claimant asserts that his commissions declined following the Deepwater Horizon incident because his clients in the fishing and restaurant industries stopped sending assignments. Claimant stated that he earned reduced commissions, which led his employer to reduce his salary on 01 May 2010. Claimant stated he voluntarily quit his employment with [REDACTED] on 24 May 2010 and began to seek alternative employment. Claimant was unemployed until 01 November 2010.

APPLICABLE LAW

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a). Damages include the loss of profits or impairment of earning capacity due to the injury, destruction or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant. 33 U.S.C. § 2702(b)(2)(E).

The OSLTF, which is administered by the NPFC, 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. With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

Pursuant to the claims regulations, 33 C.F.R. § 136.233, a claimant must establish the following to prove loss of profits or impairment of earning capacity:

- (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.
- (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.

DETERMINATION OF LOSS

Claimant's Submission

To support his claim, Claimant submitted the NPFC Optional OSLTF Claim Form dated 17 November 2010, various earnings statements and commissions reports from 2010 and income tax return filings. Claimant indicated that he filed an initial claim with GCCF sometime during October 2010. The GCCF assigned Claimant Identification [REDACTED] to his claim submission. His claim was subsequently denied by GCCF, stating his claim "was not eligible".¹

NPFC Determination

Under 33 CFR 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

¹ See NPFC Optional OSLTF Claim Form dated 17 November 2010, field # 6.

support the claim. Under 33 CFR § 136.233, a claimant must establish loss of profits or impairment of earning capacity. The NPFC considered all the documentation submitted by the Claimant.

Based on the information submitted, Claimant did not sustain a reduction in earnings as a result of the Deepwater Horizon incident. Claimant asserted that his regular salary was reduced by his employer because of reduced business resulting from the Deepwater Horizon incident. Based on the earning statements provided by Claimant, his regular earnings per pay period were reduced beginning 01 February 2010 from \$1,625 to \$1,375 each pay period. The claimed reduction in regular salary appears to have taken place prior to the Deepwater Horizon incident. In addition, the earning statements provided for 2010 do not provide any indication that Claimant's bonuses or commissions declined. Claimant has not provided evidence to substantiate any decline in earnings that was a direct result of the Deepwater Horizon incident.

Aside from the claimed reduction in earnings, Claimant voluntarily left his employment with [REDACTED] on 24 May 2010.² Claimant did not explain why he quit his job but stated he began to look for alternative employment immediately thereafter and was unemployed until 01 November 2010. There is no supporting evidence to suggest that Claimant left his job as a result of the Deepwater Horizon incident. Upon review of Claimant's earning statements, it appears that Claimant utilized his vacation time and sick time in every pay period from January through May 2010. During the pay period 01-15 May 2010, it appears that Claimant received the remaining balance of his vacation time to "cash out" his accrued paid time off. There are indications that Claimant had either been planning to quit his job irrespective of the Deepwater Horizon incident or that Claimant was terminated or released by his employer for unknown reasons.

The claim for lost profits and earning capacity in the amount of \$15,000 is denied. The claimed losses are due to Claimant's decision to voluntarily leave his employment and not the result of the Deepwater Horizon incident.

Claim Supervisor: [REDACTED]

Date of Review: 1/21/10

Supervisor's Comments: *Denial approved*

² See, Claimant's response dated 05 January 2011, to address the NPFC's request for information dated 22 December 2010.

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: [REDACTED]
E-mail: [REDACTED]
Fax: 202-493-6937
5890
06 January 2011

[REDACTED]
Pensacola, FL 32534

e-mail: [REDACTED]

RE: Claim Number: N10036-0096

Dear Mr. [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number N10036-0096 involving Deepwater Horizon. 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 N10036-0096.

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 Manager
U.S. Coast Guard

Enclosure: Claim Summary / Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Date	06 January 2010
Claim Number	N10036-0096
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
Claim Manager	[REDACTED]
Amount Requested	\$35,000

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 was discharged from an offshore facility associated with the Deepwater Horizon and located on the Mississippi Canyon, Block 252 (the Deepwater Horizon incident). This area was leased by BP Exploration and Production, Inc. (BP). The Coast Guard designated the offshore facility as the source of the discharge and BP as the responsible party (RP) for the discharge. BP accepted the designation, advertised its OPA claims process, and compensated claimants. On 23 August 2010, the Gulf Coast Claims Facility (GCCF) began accepting and adjudicating claims on behalf of BP.

CLAIM AND CLAIMANT

On 17 November 2010, Mr. [REDACTED] (Claimant) presented a lost profits & earnings claim in the amount of \$35,000.00 to the National Pollution Funds Center (NPFC) for reimbursement. Mr. [REDACTED] is asserting that he was dismissed from his temporary oil-spill response work with [REDACTED] after beginning his temporary employment. He alleges that he was guaranteed six months of employment. Mr. [REDACTED] stopped collecting unemployment compensation from Florida in order to pursue better paying employment arising from the Deepwater Horizon incident.

APPLICABLE LAW

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a). Damages include the loss of profits or impairment of earning capacity due to the injury, destruction or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant. 33 U.S.C. § 2702(b)(2)(E).

The OSLTF, which is administered by the NPFC, 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. With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

ENCLOSURE

09/13/11

FOIA2011-3380-00000419

Pursuant to the claims regulations, 33 C.F.R. § 136.233, a claimant must establish the following to prove loss of profits or impairment of earning capacity:

- (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.
- (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.

DETERMINATION OF LOSS

Claimant's Submission

To support his claim, Claimant submitted the NPFC OSLTF Claim Form dated 17 November 2010, a Redetermination for Extended Benefits from Florida Unemployment Compensation dated 24 May 2010, 2009 1040EZ Federal Income Tax Return (page 1 only), and 2008 1040A Federal Income Tax Return (pages 1 and 2). Claimant is seeking damages for lost earnings related to the balance of the six months of work that he was expecting through [REDACTED].

The GCCF assigned him Claimant Identification # [REDACTED] and Claim # [REDACTED]. On 20 October 2010, the GCCF denied his claim. This denial was verified by the NPFC on 06 January 2010.

NPFC Determination

This claim is denied. 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. § 136.233, a claimant must establish loss of profits or impairment of earning capacity. The NPFC considered all the documentation submitted by the Claimant.

The claim is denied because the alleged loss in the amount of \$35,000 is not due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil. Claimant's alleged loss of earnings is the result of his employer's business decision to terminate his employment.

Claim Supervisor:



Date of Review:

1/6/11

Supervisor's Actions: DENIAL APPROVED

Supervisor's Comments:

U.S. Department
of Homeland
Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd., Suite 1000
Arlington, VA 20598-7100
Staff Symbol: (CA)
Phone: 1-800-280-7118
E-mail: [REDACTED]
Fax: 202-493-6937

07 January 2011

VIA MAIL AND EMAIL: [REDACTED]

[REDACTED]
Franklinton, LA 70438

Re: Claim Number: N10036-0097

[REDACTED]
The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number N10036-0097 involving Deepwater Horizon. Please see the attached Claim Summary / Determination Form for the rationale regarding the denial.

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 N10036-0097.

Mail reconsideration requests to:

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

Sincerely,

[REDACTED]
U. S. Coast Guard
Claims Manager

Attachment: (1) Claim Summary/Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Date	06 January 2011
Claim Number	N10036-0097
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
Claim Manager	[REDACTED]
Amount Requested	\$10,987.44

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 was discharged from an offshore facility associated with the Deepwater Horizon and located on the Mississippi Canyon, Block 252 (the Deepwater Horizon incident). This area was leased by BP Exploration and Production, Inc. (BP). The Coast Guard designated the offshore facility as the source of the discharge and BP as the responsible party (RP) for the discharge. BP accepted the designation, advertised its OPA claims process, and compensated claimants. On 23 August 2010, the Gulf Coast Claims Facility (GCCF) began accepting and adjudicating claims on behalf of BP.

On May 28, 2010, The U.S. Department of the Interior (DOI) issued a six-month moratorium on deepwater drilling, citing concerns over the safety of deepwater drilling and directing lessees and operators to cease drilling all new deepwater wells and related activities effective May 30, 2010¹. Lessees and operators conducting current drilling operations were directed to secure the wells and to take all necessary steps to cease operations and temporarily abandon or close the wells. On August 23, 2010 the Gulf Coast Claims Facility (GCCF) began accepting and adjudicating claims on behalf of BP. BP subsequently established a \$100 million Rig Workers Assistance Fund to help compensate rig workers impacted by the moratorium on deepwater well activities. The Assistance Fund is administered by the Gulf Coast Restoration and Protection Foundation (GCRF).

On 12 July 2010 the Department of the Interior issued a new decision to suspend deepwater drilling activities. Applicability of this suspension order is based on drilling configuration and technology, not depth of water. As such, it applied to both deepwater and shallow water drilling. This suspension order was lifted on 12 October 2010 for those operators who certified compliance with all existing rules and regulations, including those that recently went into effect, and demonstrated the availability of adequate blowout containment resources. DOI's verification of new permit applications and equipment testing for applicants continue.

¹ U.S. Department of the Interior, MINERALS MANAGEMENT SERVICE, MORATORIUM NOTICE TO LESSEES AND OPERATORS, NTL No. 2010-N04, Effective 30 May 2010. See, Decision Memo dated 12 July 2010, From Secretary of the Interior To Director, Bureau of Ocean Energy Management, Regulation and Enforcement, Subject Decision Memorandum regarding the suspension of certain offshore permitting and drilling activities on the Outer Continental Shelf. See also, U.S. Department of the Interior, Minerals Management Service, NATIONAL NOTICE TO LESSEES AND OPERATORS OF FEDERAL OIL AND GAS LEASES, OUTER CONTINENTAL SHELF (OCS) NOTICE TO LESSEES AND OPERATORS, NTL No. 2010-N05, Effective 08 June 2010.

CLAIM AND CLAIMANT

On 11 November 2010, Claimant presented an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form seeking \$10,987.44 in lost profits and earning capacity resulting from the Deepwater Horizon incident. Claimant is a diver tender who works for [REDACTED] and is claiming lost profits and earnings due to reduced work hours.

Claimant was hired by [REDACTED] in July 2009 as a diver tender. Before working as a diver tender, Claimant was in dive school from January 2009 through July 2009. The Claimant asserts that his work load relies on the oil and gas business from the Gulf of Mexico and every job they have is from an oil company². The Claimant's duties include fixing pipes, laying new pipes, installing new oil platforms, abandoning old wells, and starting new wells. On Claimant's Optional OSLTF Claim Form he indicates he was unable to work due to "hazardous conditions during the spill"³.

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 navigable waters and adjoining shorelines, as described in Section 2702(b) of OPA.

The OSLTF which is administered by the NPFC, is available, pursuant to 33 U.S.C. §§ 2712(a)(4) and 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136, to pay claims for uncompensated damages. 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.

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.
- (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.

² See, email correspondence from Claimant to NPFC dated 13 December 2010.

³ See, field #10 of Claimant's NPFC OSLTF claim form 17 November 2010.

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 undertake, 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.

DETERMINATION OF LOSS

A. Claimant's Submission

To support his claim, Claimant submitted the NPFC Optional OSLTF Claim Form Dated 17 November 2010, 2009 Form W-2, paystubs with [REDACTED] for 2009 and 2010, and various email correspondence explaining his circumstances. Claimant filed an initial claim with the GCCF sometime during August 2010 and stated he was still waiting for a response as of 17 November 2010.

Claimant states that his employer's business and his work schedule are contingent upon the oil industries' operational activity in the Gulf of Mexico. Claimant asserts that his employer's business declined following the Deepwater Horizon incident and the enactment of the moratorium. Claimant believes that as a result of his employer's reduced business, he received less work assignments and earned reduced wages. Claimant indicated that he was unable to work from April 2010 through July 2010 due to a shoulder injury, sustained prior to the Deepwater Horizon incident. He was cleared by a dive doctor to return to work on 12 July 2010 and he received an increase in pay to \$17.00/hour in October 2010, working as a diver tender.

B. NPFC Determination

Under 33 U.S.C. § 2702(b) and 33 C.F.R. Part 136, a claimant must prove that his loss of income resulted from injury to or destruction of a natural resource. All documentary evidence submitted by the Claimant as well as a conversation the NPFC had with the Chief Operating Officer of [REDACTED], indicates that the Claimant's loss resulted from the six month deepwater drilling moratorium and subsequent changes in permitting processes. The Claimant's loss, therefore, did not occur because there was an oil spill in the Gulf of Mexico, but because a determination was made and a directive issued by the Department of the Interior to enact a six month moratorium to implement new safety requirements.⁴ As a result, the claim is considered a consequence of the moratorium, not the oil spill, and is not compensable under OPA.

⁴ U.S. Department of the Interior, MINERALS MANAGEMENT SERVICE, MORATORIUM NOTICE TO LESSEES AND OPERATORS, NTL No. 2010-N04, Effective 30 May 2010. See, Decision Memo dated 12 July 2010, From Secretary of the Interior To Director, Bureau of Ocean Energy Management, Regulation and Enforcement, Subject *Decision Memorandum regarding the suspension of certain offshore permitting and drilling activities on the Outer Continental Shelf*. See also, U.S. Department of the Interior, Minerals Management Service, NATIONAL NOTICE TO LESSEES AND OPERATORS OF FEDERAL OIL AND GAS LEASES, OUTER CONTINENTAL SHELF (OCS) NOTICE TO LESSEES AND OPERATORS, NTL No. 2010-N05, Effective 08 June 2010.

Based on the statements provided by Claimant, he indicated that he was unavailable to work from April 2010 through 12 July 2010 due to medical reasons. Therefore, it would not be possible for Claimant to have sustained any losses in the period following the Deepwater Horizon incident and prior to the moratorium.

Claimant's alleged loss of profits is the result of the moratorium and the reduced oil business from the Gulf of Mexico. The claim is denied because the alleged loss in the amount of \$10,987.44 is not due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil.

Claim Supervisor:

Date of Review: *1/7/11*

Supervisor's Comments: *Denial approved*

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

Fax: 202-493-6937
5890 DWHZ
Claim # N10036-0098
21 January 2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]

[REDACTED]
Mobile, AL 36608

RE: Claim Number: N10036-0098
[REDACTED]

The National Pollution Funds Center (NPFC), in accordance with 33 C.F.R. Part 136, denies payment on the claim number N10036-0098 involving the Deepwater Horizon incident. Please see the enclosed 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 N10036-0098.

Mail reconsideration requests to:

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

Sincerely,

[REDACTED]
U.S. Coast Guard
Claims Manager

Enclosure: Claim Summary / Determination Form

09/13/11

FOIA2011-3380-00000427

CLAIM SUMMARY / DETERMINATION FORM

Date : 20 January 2011
Claim Number : N10036-0098
Claimant : [REDACTED]
Type of Claimant : Private (US)
Type of Claim : Subsistence Use, Natural Resources Damages, & Loss of Profits
Claim Manager : [REDACTED]
Amount Requested : \$4,900.00

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 was discharged from an offshore facility associated with the Deepwater Horizon and located on the Mississippi Canyon, Block 252 (the Deepwater Horizon incident). This area was leased by BP Exploration and Production, Inc. (BP). The Coast Guard designated the offshore facility as the source of the discharge and BP as the responsible party (RP) for the discharge. BP accepted the designation, advertised its OPA claims process, and compensated claimants. On 23 August 2010, the Gulf Coast Claims Facility (GCCF) began accepting and adjudicating claims on behalf of BP.

CLAIM AND CLAIMANT

On 15 November 2010, [REDACTED] (Claimant) presented an Oil Spill Trust Fund (OSLTF) claim form to the National Pollution Fund Center (NPFC) seeking monthly costs and damages relating to subsistence use, natural resource damages, and lost profits and earnings.¹ On 18 November 2010, claimant clarified that he was seeking \$4,900.00 in total damages, calculated by multiplying his \$700 per month loss by 7 months.

Claimant is an Alabama resident. He holds an Alabama Department of Conservation residential disabled fishing license for saltwater and freshwater fishing. Prior to April 2010, claimant asserts having fished at least 5 times a week for over 3 years, catching white trout, red fish, catfish and crabs in Mobile Bay, Cedar Point and Dauphin Island. Claimant further indicates that he fed his family on his catch and asserts selling excess catch for cash money.

As a result of the Deepwater Horizon incident, claimant indicates that he was not able to fish and that "he did not fish after the oil spill."² Consequently, claimant "had to spend cash money from out of [his] own pocket to feed [his] family of 5,"³ (loss of subsistence use) and his customers had no fish to buy from him (loss of profits and earnings). Claimant's natural resources damages are not specifically described.

APPLICABLE LAW

The Oil Pollution Act of 1990 (OPA), 33 U.S.C. 2701 *et seq.*, provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a). Covered removal costs and damages under OPA include, but are not limited

¹ Optional OSLTF claim form dated 15 November 2010.

² Claimant faxed answers (1-7) received 08 December 2010.

³ Claimant letter requesting help immediately dated 17 September 2010.

to, natural resources damages, damages for loss of subsistence use of natural resources, and damages equal to the loss of profits or impairment of earning capacity due to the injury, destruction, or loss of real property, personal property, or natural resources. 33 U.S.C. § 2702(b)(2)(A), (b)(2)(C), and (b)(2)(E). Under 33 U.S.C. § 2702(b)(2)(A), natural resource damages are only recoverable by a United States trustee, a State trustee, and Indian tribe trustee, or a foreign trustee. Damages for loss of subsistence use and loss of profits and impairment of earning capacity are recoverable by any claimant establishing that their damages resulted from the incident.

The Oil Spill Liability Trust Fund (OSLTF), which is administered by the NPFC, 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. With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

General Claims Requirements

33 C.F.R. § 136.105(a) and § 136.105(e)(6), provides that 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.

Subsistence Use Loss Claim Requirements

Pursuant to the claims regulations at 33 C.F.R. §§136.219-223, 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.

Lost Profits and Earning Capacity Claim Requirements

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.

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

- 1) That real or personal property or natural resources have been injured, destroyed, or lost.
- 2) 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.
- 3) 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.
- 4) 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. § 136.235, 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-

- 1) All income resulting from the incident;
- 2) All income from alternative employment or business undertaken;
- 3) Potential income from alternative employment or business not undertaken, but reasonably available;
- 4) Any saved overhead or normal expenses not incurred as a result of the incident; and
- 5) State, local, and Federal taxes.

DETERMINATION OF LOSS:

Claimant's Submission

To support his claim, claimant submitted the following documentation to the NPFC:

- Optional OSLTF claim form dated 15 November 2010;
- Claimant faxed answers (1-7) received 08 December 2010;
- Claimant [REDACTED] savings account statement from 13 September through 12 October 2010;
- Handwritten, undated letter from [REDACTED] indicating that she bought fish from claimant;
- Handwritten, undated letter from [REDACTED] indicating that he bought from fish from claimant;
- Handwritten letter from [REDACTED], dated 12/7/2010, indicating that she bought fish from claimant;
- 2009 income tax return, Form 1040;
- 2009 income tax Schedule C-EZ;
- Certified letter from NPFC requesting additional information from claimant;
- GCCF letter dated 28 October 2010 to claimant denying claimant's request for an emergency advance payment;
- Fax cover sheet from Office Depot indicating fax of 4 pages
- Walmart receipts for assorted items;
- Sam's Club receipt dated 9/3/2010 and Target receipt dated 7/10/2010;
- Claimant letter requesting help immediately dated 17 September 2010;
- Handwritten, undated letter from [REDACTED] indicating that he bought fish from claimant;
- Handwritten, undated letter from [REDACTED] indicating that he bought fish from claimant;
- Handwritten, undated letter from [REDACTED] indicating that he bought fish from claimant;
- Claimant, undated hardship letter;
- Copy of claimant's social security card;

- Copy of claimant's Alabama driver's license and Alabama Department of Conservation residential disability fishing license for saltwater and freshwater;
- Copy of claimant's monthly social security benefit amount.

Claimant basis his alleged loss on his reported inability to fish. He seeks \$1,400 as damages for lost subsistence use, determined as the cost to replace fish that he claims he would have caught and used for subsistence food (\$200 per month for seven months) if the spill had not occurred, \$1,400 for natural resource damages (also \$200 per month for seven months) and \$2,100 for lost profits and earnings for the fish that he did not sell (\$300 per month for seven months).⁴ On 18 November 2010, claimant clarified that he was seeking \$4,900.00 in total damages, calculated by multiplying this \$700 per month loss by 7 months.

On 25 August 2010, claimant presented a claim for Emergency Advance Payment to the GCCF, and was issued Claimant ID # [REDACTED] and Claim # [REDACTED]. On 23 October 2010, the Claimant was denied by the GCCF. This information was verified by the NPFC.

NPFC Determination

Both Claimant's subsistence claim and his lost profits and earnings claims are denied for the reasons set forth below.

Subsistence Use Loss and Natural Resources Damages

The subsistence claim is denied because the Claimant has not met his 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 C.F.R. Part §136). Specifically, Claimant has not demonstrated a pattern of subsistence use prior to and during the initial period of the incident. The Claimant provided a copy of his recreational fishing license, but the copy is illegible. Therefore, the NPFC cannot determine if it was valid prior to the spill, which would indicate that he was eligible to fish for sport or recreation during that time period. Additionally, Claimant failed to provide sufficient information to support a regular pattern of catch that he and his family relied upon to meet the minimum necessities of life. Moreover, the period of his claimed loss exceeds the closure period, suggesting that at least a portion of his claimed loss resulted from his choice not to fish rather than the Deepwater Horizon incident. Additionally, the Claimant did not show that he attempted to mitigate his subsistence use losses, to the extent that they occurred, by fishing in locations that were not closed to fishing.

The claim for natural resource damages is also denied because Claimant is not a designated natural resource trustee. We understand that within the state of Alabama the Department of Conservation and Natural Resources has been assigned by the Governor with the responsibility of assessing natural resource damages of state natural resources.

Lost Profits and Impairment of Earning Capacity

The lost profits component of Claimant's claim is also denied because he did not produce an Alabama commercial fishing license. Claimant provided a copy of his resident disabled fishing license (saltwater and freshwater). Alabama residents who hold resident fishing licenses pursuant to ALC §§ 9-11-53, 53.1 (1975) are authorized to take fish from Alabama public waters. The NPFC confirmed with the Alabama Department of Conservation and Natural Resources that a resident may not sell fish that he or she catches without a resident commercial fishing license.⁵ Claimant's residential disability fishing license for saltwater and freshwater is

⁴ Optional OSLTF claim form dated 15 November 2010.

⁵ The NPFC confirmed this licensure requirement with the Alabama Department of Conservation and Natural Resources on 15 December 2010.

not a commercial fishing license. Claimant's inability to profit from selling in violation of Alabama licensure laws is not a compensable loss.⁶

Claim Supervisors:



Date of Supervisor's review:

1/24/11

Supervisor Action:

Denial Approved

Supervisor's Comments:

⁶ Given this ground for denial, the NPFC need not address the sufficiency of claimant's evidence for her claim for lost profits and earning capacity.