

U.S. Department of  
Homeland Security

United States  
Coast Guard



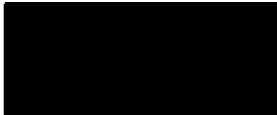
Director  
National Pollution Funds Center  
United States Coast Guard

NPFC CA MS 7100  
US COAST GUARD

Fax: 202-493-6937

CERTIFIED MAIL - RETURN RECEIPT REQUESTED  
Number: [REDACTED]

5890/DWHZ  
Claim# N10036-0400  
06 April 2011



RE: Claim Number: N10036-0400

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 N10036-0400 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 N10036-0400.

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	04 April 2011
Claim Number	N10036-0400
Claimant	██████████
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
Claim Manager	██
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. 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 03 January 2011, ██████████ (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Funds Center (NPFC). The OSLTF claim form alleged \$15,000.00 in lost profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

Claimant works as an account executive for ██████████, which distributes common promotional items bearing unique names and logos.<sup>1</sup> Claimant's specific duties involve soliciting individuals and businesses that require such products throughout Baldwin County, Alabama and the surrounding coastal area.

Since her employment began in August 2008, ██████ has compensated the Claimant on a purely commission basis, paying her 40% of all monthly sales she makes. In January 2010, the Claimant inherited another ██████ sales representative's accounts, in conjunction with her own growing book of clients. The Claimant expected her 2010 sales volume to significantly increase over the previous years.

Claimant asserted that due to the Deepwater Horizon oil spill and its effects on the Gulf Coast's economy, a number of clients withheld business.<sup>2</sup> Additionally, Claimant stated that ██████ terminated its bookkeeper/receptionist in order to remain solvent in the wake of oil spill, necessitating that the Claimant perform this job in addition to her sales responsibilities. The Claimant's requested sum reflects both withheld business from her clients, and the inability to acquire new clients due to time constraints from her increased clerical responsibilities.<sup>3</sup>

<sup>1</sup> Email from Claimant to the NPFC in response to request for additional information, dated 31 January 2011 (describing product line as "anything that can be imprinted with customers information whether it be a logo or a name and website," and listing calendars, pens, pencils, koozies, tape measures, t-shirts and magnets as examples).

<sup>2</sup> Email from Claimant to the NPFC in response to request for additional information, dated 31 January 2011 (Stating she was projected to make in excess of \$60,000 in 2010).

<sup>3</sup> Letter from Claimant to the NPFC explaining the nature of her employment with CPI and the impact of the oil spill on her sales, undated. The NPFC notes that Claimant has not, however, disclosed the methodology by which she calculated the amount of her loss.



## ***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 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 the OSLTF**

In support of her claim, Claimant presented the following documentation to the NPFC:

- OSLTF claim form, signed by Claimant and dated 13 December 2010;

- Letter from Owner, [REDACTED], explaining the nature of the company's business and effects from the oil spill;
- Claimant's monthly earnings statements with [REDACTED] from October 2008 through December 2010;
- Letter from Claimant to the NPFC explaining the nature of her employment with [REDACTED] and the impact of the oil spill on her sales, undated;
- Letter from Claimant to the GCCF regarding the financial basis for her claim, undated;
- Various [REDACTED] sales invoices;
- Email correspondence between Claimant and client regarding potential orders for two fishing tournaments;
- GCCF Denial Letter Re: Claimant's Emergency Advance Payment claim, dated 23 November 2010;
- Email from Claimant to the GCCF disputing claim denial, dated 28 November 2010;
- CPI Sales by Customer Summary for April 2009 through November 2010, with additional summaries denoting sales by representative;
- Federal income tax returns (form 1040s) for 2008 and 2009;
- Alabama state income tax returns for 2008 and 2009;
- Email from Claimant to the NPFC in response to request for additional information, dated 31 January 2011;
- W-2 Wage statements from CPI for 2008, 2009 and 2010;
- Correspondence from Claimant to the NPFC listing clients that allegedly reduced 2010 purchases from [REDACTED] due to the oil spill; and
- Email from Claimant to the NPFC detailing continuing economic impact on Claimant's clients and Gulf Coast as a whole, dated 02 February 2010.

On 27 August 2010, Claimant presented a six-month Emergency Advance Payment claim for \$10,000.00 in lost earnings to the GCCF. She was assigned GCCF Claimant II [REDACTED] and Claim [REDACTED]. On 23 November 2010, her claim was denied by the GCCF.<sup>4</sup>

On 03 January 2011, Claimant presented this claim for \$15,000.00 in lost earnings to 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. The NPFC considered all documentation presented by Claimant.

Pursuant to 33 C.F.R. § 136.233, a claimant must establish lost income through comparison of tax returns, financial statements and similar documents from both the claimed loss period and comparable periods. Financial documentation presented by the Claimant reveals increased year-over-year earnings from 2008 until the present. In 2010, the Claimant earned \$20,909.73 more than the prior year, despite the economic impact of the oil spill.<sup>5</sup> Accordingly, the Claimant's financial statements do not demonstrate a financial loss resulting from the Deepwater Horizon oil spill.

<sup>4</sup> GCCF denial letter Re: Claimant's Emergency Advance Payment claim, dated 23 November 2010.

<sup>5</sup> Concept Promotions Inc. W-2 for 2010 (reporting \$38,626.89 in total earnings) versus [REDACTED] W-2 for 2009 (reporting \$17,717.16 in total earnings).

The Claimant readily acknowledges that her earnings increased in 2010, but contends that had the oil spill not occurred, they would have been significantly higher.<sup>6</sup> In support of that statement, the Claimant provided a list of fifteen former clients, all of whom allegedly reduced or failed to place orders due to the oil spill. The Claimant draws attention to three particular clients on that list, all of which are annual fishing tournaments held in and around Mobile Bay, stating that attendance for two of these tournaments declined due to the oil spill, in turn causing a reduction in promotional t-shirt orders, while the third tournament was cancelled outright.<sup>7</sup> The Claimant, however, has not proven that decreased attendance and cancellation of these events, or reduced orders by any of her clients, resulted from the Deepwater Horizon oil spill.<sup>8</sup> As such, the Claimant has not met her evidentiary burden under 33 C.F.R. § 136.233.

The Claimant's alleged lost sales resulting from having to split her time between clerical duties and sales is also non-compensable under OPA, as this arrangement represents an intervening business decision undertaken by CPI and 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.

For the foregoing reasons, the claim is denied.

Claim Supervisor: [REDACTED]

Date of Supervisor's Review: 4/6/11

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

<sup>6</sup> Email from Claimant to the NPFC in response to request for additional information, dated 31 January 2011 ("As it appears, I have made more money so I understand it is hard to calculate. I do know that with my accrued client base and hers my salary was going to jump significantly due to the inheritance of her clients . . .").

<sup>7</sup> Letter from Claimant to the NPFC explaining the nature of her employment with CPI and the impact of the oil spill on her sales, undated. Therein Claimant asserts that she suffered a \$1,500.00 loss from decreased t-shirt sales to the [REDACTED] a "significant" loss from the [REDACTED] Challenge and a \$4,000 loss due to cancellation of the Ineos Phenol Saltwater Fishing tournament. The NPFC notes that at the time the Ineos Phenol Saltwater Fishing tournament was cancelled, the client had only requested a quote from Claimant, and that by 13 April 2010, the client had placed a cap and shirt order with another Louisiana based company, which suggests that Claimant was never entitled to profits from this event.

<sup>8</sup> Email from Claimant to the NPFC, dated 02 February 2011 ("I am not able to provide you with written proof that my clients are not doing business with me due to the oil spill."); Email from Claimant to the NPFC in response to request for additional information, dated 31 January 2011 ("Not sure that I could ever really prove what I have lost because we never know what we could have gained.").

U.S. Department of  
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Director  
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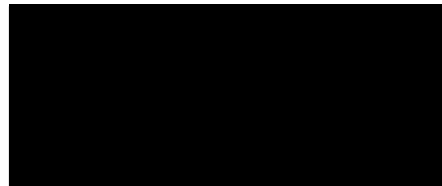
NPFC CA MS 7100  
US COAST GUARD

Fax: 202-493-6937

5890  
7/07/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]



RE: Claim Number: N10036-0401

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 N10036-0401 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.

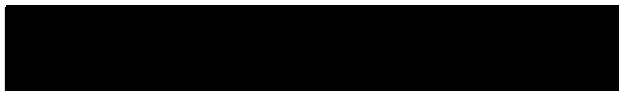
If you have any questions or would like to discuss the matter, you may contact me at the above address and phone number.

Sincerely,



Chief, Claims Adjudication Division  
U.S. Coast Guard

cc:



ENCL: Claim Summary / Determination Form

09/14/11

FOIA2011-3380-00001602

## CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-0401
Claimant	: [REDACTED]
Type of Claimant	: OSRO
Type of Claim	: Removal Costs
Claim Manager	: [REDACTED]

### **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 6 December 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 uncompensated removal costs associated with their work as a subcontractor to National Response Corporation (NRC) performing response actions during the Deepwater Horizon incident in the amount of \$992,729.40. The Claimant asserted that all invoices had been presented to the Responsible Party although it became apparent to the NPFC upon receipt of the claim, that the invoices had not in fact been presented to the Responsible Party of record, BP, but rather to the first tier subcontractor to NRC identified as International Offshore therefore the NPFC issued an official letter to the Claimant dated January 12, 2011.

In the NPFC's letter to the Claimant, the NPFC provided the Claimant with the mailing address for the RP and advised that the claim would be held in abeyance while proper presentment was made pursuant to 33 CFR §136.103(a). Additionally, the NPFC advised the Claimant that pursuant to CFR §136.105(d)(3), the Claimant needed to provide a written authorization for [REDACTED] to act on their behalf for the purpose of submitting their claim.

On February 2, 2011, the NPFC received a written authorization from the Claimant authorizing [REDACTED] to act on their behalf for the submission of the claim.

### **REQUEST FOR RECONSIDERATION:**

On May 26, 2011, the Claimant sent a request for reconsideration to the NPFC via their legal representative, Mr. Reich, stating they would like the NPFC to reconsider the claim.

The NPFC denied the claim originally on April 28, 2011 because on March 17, 2011 at 9:17am, the NPFC sent an email to the Claimant's legal representative, [REDACTED], with a copy to [REDACTED] of [REDACTED], stating the NPFC had not received any new information or received confirmation that [REDACTED] had made proper presentment of all costs to the RP. The email further advised [REDACTED] that if the Claimant had not made proper

presentment of costs to the RP, the NPFC would be forced to deny the claim on the grounds that the Claimant failed to make proper presentment in accordance with OPA and its governing claims regulations unless the Claimant wanted to withdraw the claim reserving the right to resubmit a proper claim at a later date.

On March 17, 2011 at 10:04am, the NPFC received a response email from [REDACTED] of [REDACTED] stating that he had a call in to [REDACTED] to call him ASAP and that he would get back to the NPFC as soon as he got to the bottom of the situation. The NPFC never received further communications from either the Claimant or his legal representative. The GCCF advised the NPFC that the Claimant's legal representative, [REDACTED] filed an Interim claim on March 1, 2011 in the amount of \$33,750.00 and the GCCF stated that a payment of \$60,579.14 had been made on that claim.<sup>1</sup>

Therefore, based on the failure of the Claimant to respond to the NPFC's request for information and failure of the Claimant to make proper presentment of all costs to the RP as directed by the NPFC on January 12, 2011, the claim was denied pursuant to 33 CFR §136.103(a) and 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.

On reconsideration, the Claimant presented a letter through its legal representative, [REDACTED] who stated the Claimant was requesting reconsideration of only \$8,950.00 of the original requested sum certain of \$992,729.40. The Claimant identified the costs it was seeking on reconsideration as [REDACTED] invoices [REDACTED] in the amount of \$2,450.00 and invoice [REDACTED] in the amount of \$6,500.00. The Claimant provided a copy of each invoice (both of which had been previously presented to the NPFC in its original submission), a copy of a May 13, 2011 letter from the Claimant to the GCCF requesting compensation in the amount of \$55,850.00 for [REDACTED] invoice [REDACTED] in the amount of \$2,450.00; invoice [REDACTED] in the amount of \$46,900.00; and invoice [REDACTED] in the amount of \$6,500.00 and a copy of a May 5, 2011 letter from the Claimant to BP requesting compensation for the same invoices in the Claimant's May 13, 2011 letter to the GCCF.

After the original claim presentment to the NPFC, the Claimant presented a claim to the RP/GCCF, for an Interim Payment Claim to the GCCF.<sup>2</sup> The claim was for \$992,729.40 in removal costs. The GCCF confirmed to the NPFC that it has not issued payment to the Claimant as of July 5, 2011.

### **RECONSIDERATION CLAIM ANALYSIS:**

The claimant requested reconsideration which was received by the NPFC on June 16, 2011. To support the request for reconsideration the Claimant submitted a letter along with copies of its alleged unpaid invoices and a copy of a letter from the Claimant to BP and to GCCF, respectively.

### **NPFC Determination on Reconsideration**

<sup>1</sup> Per phone conversation between NPFC and GCCF on 7/5/11, the GCCF confirmed that the original claimant ID # and amount claimed and paid was in error as they provided information associated with another Claimant by the name of [REDACTED]

<sup>2</sup> The GCCF confirmed Claimant ID # [REDACTED] in the amount of \$992,729.40.



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 and that the loss was due to the destruction or injury to real or personal property or natural resources. 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.

The NPFC performed a complete review of the documentation presented by the Claimant. Upon receipt of the reconsideration, the NPFC contacted the GCCF and principals within BP in order to have record checks performed in order to find out whether the two invoices subject of this claim were paid by either party.

BP responded to the NPFC on June 29, 2011, confirming payment of both invoices by BP directly to the Claimant's prime contractor, NRC Corporation. BP paid NRC via NRC invoice # [REDACTED] BP has provided a copy of the wire transfer to NRC demonstrating payment made and received. The GCCF confirmed to the NPFC via telephone on Tuesday, July 5, 2011, that no claims for Rockin D Marine have been paid by the GCCF to date.

Based on the foregoing information, the NPFC again denies the claim on reconsideration because the RP has proven that it has already paid for the services and costs associated with Rockin D Marine invoice [REDACTED] and invoice [REDACTED] BP made payment to NRC therefore the issue at hand is contractual in nature between the Claimant and NRC.

This claim is denied upon reconsideration.

Claim Supervisor [REDACTED]

Date of Supervisor's review: 7/7/11

Supervisor Action: *Denial on reconsideration is 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)

Fax: 202-493-6937

5890  
24 January 2011

VIA MAIL and EMAIL: [REDACTED]

[REDACTED]  
Bay Minette, AL 36507

Re: Claim Number: N10036-0402

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 N10036-0402.

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	24 January 2011
Claim Number	N10036-0402
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
Claim Manager	[REDACTED]
Amount Requested	\$42,300.00

### ***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 06 December 2010, Mr. [REDACTED] (Claimant), presented a lost profits & earnings claim in the amount of \$42,300.00 to the National Pollution Funds Center (NPFC) for reimbursement. Claimant asserted that he had been having difficulty finding and keeping employment due to the oil-spill. He further claimed that though he purchased a TWIC card, took a four week course for a [REDACTED] certification and obtained employment working for the oil-spill cleanup with the response group [REDACTED], only to lose this job when his services were no longer needed to once again become unemployed.<sup>1</sup>

### ***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).

<sup>1</sup> Letter from Claimant dated 06 December 2010  
09/14/11

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 Optional NPFC OSLTF Claim Form dated 06 December 2011, five (5) handwritten letters explaining his various employment situations, photocopy of Birth Certificate, Alabama State Drivers License and Social Security card and various tax return transcripts from the IRS for years 2005-2008.

Claimant previously submitted an Emergency Advance payment claim with the GCCF with Claimant Identification number # [REDACTED], in the amount of \$43,200.00 which was denied and currently has a claim under review with the GCCF. The GCCF Claim numbers are # [REDACTED] and # [REDACTED], respectively.

#### **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 as Claimant does not demonstrate income prior to the oil spill that could have been impacted by the oil spill. Accordingly, as Claimant worked for the oil-spill cleanup to earn income, he benefited from the Deepwater Horizon incident by having active employment during the reported time. Claimant has not provided sufficient documentary evidence to support that his claim for lost profits and earning capacity of \$43,200.00 was either a calculable loss or a direct result of the Deepwater Horizon incident and his claim is denied.

Claim Supervisor: 

Date of Review: *1/25/11*

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: [REDACTED]  
E-mail: [REDACTED]

Fax: 202-493-6937  
5890  
21 January 2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number [REDACTED]

[REDACTED]  
New Iberia, LA 70563

RE: Claim Number: N10036-0403

Dear Mr. [REDACTED]:

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number N10036-0403 involving Deepwater Horizon. Compensation is denied because claimant has not proven his claim of lost profits and earnings capacity. The enclosed determination provides the rationale of our decision.

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 N10036-0403.

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

## CLAIM SUMMARY / DETERMINATION FORM

Date	: 1/19/2011
Claim Number	: N10036-0403
Claimant	: ██████████
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: ██████████
Amount Requested	: \$68,000.00

***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***

Claimant Mr. ██████████, a commercial fisherman, submitted an Oil Spill Liability Trust Fund (OSLTF) Claim Form to the NPFC on 4 January 2011. Mr. ██████████ has an address that shows him residing in New Iberia, LA. In his claim, Mr. ██████████ states that he lost income and crab traps because the oil spill closed the area where he fishes. In support of his claim, Mr. ██████████ submitted tax returns for tax years 2007 through 2009. He also provided a printout of his Louisiana Trip Ticket Landings that encompasses the records from 6 January 2007 through 26 December 2009.

Mr. ██████████ reported having submitted a claim to the RP and been assigned GCCF's claim # ██████████ from who he received an emergency advance payment claim on 30 September 2010 in the amount of \$8,000.00 for a period of six months, which he deems "not enough to live by" in his claim to the OSLTF. ██████████ provided us with a letter dated 14 December 2010 where GCCF denied payment for an Emergency Advance Payment for not providing sufficient documentation. On 4 January 2011, the NPFC received Mr. Le's claim for \$68,000.00 in lost profits and earnings capacity.

**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:**

On 10 January 2011, a request for additional information was sent to claimant. In it, the NPFC summarized the claim submission by providing the following summary, based on the adjusted gross income shown on his Federal tax returns for tax years 2007 through 2009:

TAX YEAR	ADJUSTED GROSS INCOME
2009	\$12,798.00
2008	\$13,198.00
2007	\$10,633.00
<b>YEARLY AVERAGE</b>	<b>\$12,209.67</b>

In the request, Mr. [REDACTED] was specifically asked to explain how he arrived at the amount claimed and the fact that he'd received an \$8,000.00 payment from the RP, which is roughly 65% of what Mr. Le reports he earns on any given year in his Federal Tax Returns.

In a report dated 19 January 2011 provided to the NPFC by GCCF, Mr. [REDACTED] is shown as having submitted multiple claims to the RP (BP and its agent GCCF) and in turn been issued two payments:

Recorded Paid Date	Amount Paid
05/05/2010	\$27,826.00
09/30/2010	\$8,000.00
<b>Grand Total</b>	<b>\$35,826.00</b>

The total amount claimant has received is \$35,826.00. This amount is equivalent to the profits that claimant would have made in approximately 3 years. For that reason, claimant has not proven that he has uncompensated damages in the form of lost profits.

Given that claimant has been compensated the claim is denied.

**DETERMINED AMOUNT: \$0.00**

Claim Supervisor:	[REDACTED]
Date of Supervisor's Review:	11/21/11
Supervisor Action:	Approved
Supervisor's Comments:	Claim is denied.



U.S. Department of  
Homeland Security

United States  
Coast Guard

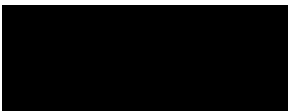


Director  
National Pollution Funds Center  
United States Coast Guard

US COAST GUARD STOP 7100  
4200 WILSON BLVD STE 1000  
ARLINGTON VA 20598-7100  
Staff Symbol: (CA)

5890  
1/18/2011

SENT VIA CERTIFIED MAIL – RETURN RECEIPT REQUESTED  
NUMBER: [REDACTED]



RE: Claim Number: N10036-0404

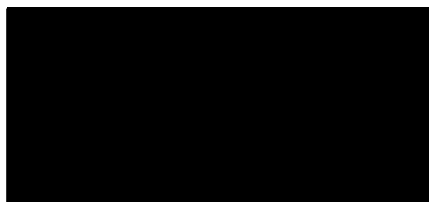
Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number N10036-0404 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 N10036-0404.

Mail reconsideration requests to:

DIRECTOR (ca)  
NATIONAL POLLUTION FUNDS CENTER  
US COAST GUARD STOP 7100  
4200 WILSON BLVD STE 1000  
ARLINGTON VA 20598-7100



U.S. Coast Guard

Encl: Claim Summary / Determination Form

09/14/11

FOIA2011-3380-00001613

## CLAIM SUMMARY / DETERMINATION FORM

Date	: 1/11/2011
Claim Number	: N10036-0404
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$4,000.00

### **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). The 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 January 2011, [REDACTED] (Claimant) presented a lost profits & earnings claim in the amount of \$4,000.00 to the National Pollution Funds Center (NPFC) for reimbursement. [REDACTED] asserts she lost wages due to the oil-spill, because, as a daycare provider, her clients' reduced hours at their jobs resulted in her receiving reduced pay.

### ***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 GCCF Claim Denial letter, a personal statement that explains the circumstances related to her losing employment; a statement written on her behalf by her employer; and 2008 and 2009 tax documents.

#### **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 \$4,000.00 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 loss of income is the direct result of her clients' loss of earnings. Additionally, Claimant has not shown that her loss of wages were a direct result of the Deepwater Horizon oil-spill, nor has she provided documentation to prove her claimed loss of earnings between April 20, 2010 (the date of the oil-spill) until June 25, 2010 (i.e., W2s, copies of canceled checks, bank statements, etc.). Therefore, Claimant's alleged loss of profits is the

result of her employment being terminated by her clients as a caregiver due to their financial hardships, not as a direct result of the Deepwater Horizon oil-spill.

Claim Supervisor 

Date of Supervisor's review: *1/18/11*

Supervisor Action: *Denial approved*

Supervisor's Comments:

CLAIM SUMMARY / DETERMINATION FORM

Date	: 2/8/2011
Claim Number	: N10036-0405
Claimant	: [REDACTED]
Type of Claimant	: Corporate (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$7,530.00

**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:**

The claimant seeks loss of employment income. The claimant is a small home cleaning business owned by [REDACTED] and [REDACTED]. The claimant asserts that the oil spill caused the company to lose business because the oil spill caused people to cancel condo and beach home vacations.

**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:**

The claimant submitted her claim to the GCCF and was denied on December 4, 2010. She currently has a final claim pending review with the GCCF. To support the claim to the NPFC, the claimant initially submitted a State of Florida business registration for [REDACTED], a business tax receipt which expired September 30, 2009, several of the business' advertisements, a handwritten breakdown of earnings for 2009 also stating \$0 income for 2010, and payment receipts for work in 2009. The NPFC made an official request for additional information on 6 January 2011. The Claimant only provided tax statements in response. The tax statements did not support the claim. The claims manager contacted the claimant to ask her to obtain proof from her employers that the spill caused her to lose work in 2010. According to her, she was unable to obtain such proof, so the claims manager attempted to contact them to help her. The employers either did not return phone calls or refused to provide statements supporting the claimant's allegations.

The claimant did not provide a 2010 business license renewal. And, the claimant has not shown that the business was operating in 2010 in any way that it might have lost business. The NPFC was unable to verify any of the claimant's assertions. There is no evidence that the oil spill caused the claimant to lose profits nor is there evidence to establish a loss of profits or impairment of earnings at all. Because the claimant has not met her burden of proving that the oil spill caused her business to lose profits, the NPFC must deny the claim.

Claim Supervisor: 

Date of Supervisor's review: 2/28/11

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  
4200 Wilson Blvd. Suite 1000  
Arlington, VA 20598-7100  
Staff Symbol: (CA)  
Phone: [REDACTED]  
E-mail: [REDACTED]  
Fax: 202-493-6937  
5890  
02/08/2011

**CERTIFIED MAIL – RETURN RECEIPT REQUESTED**

Number [REDACTED]

[REDACTED]  
ATTN: [REDACTED]  
[REDACTED]

Mansfield, OH 44906

RE: Claim Number: N10036-0405

Dear Mrs. [REDACTED]:

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number N10036-0405 involving the Deepwater Horizon incident. Compensation is denied because of the reasons stated in the enclosed Claim Summary/Determination.

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 or within 30 days of your receipt of this letter, whichever date is earlier, 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 N10036-0405.

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

U.S. Department of  
Homeland Security

United States  
Coast Guard



Director  
National Pollution Funds Center  
United States Coast Guard

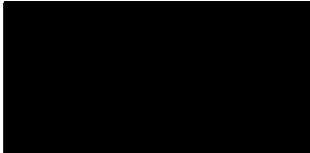
NPFC CA MS 7100  
US COAST GUARD  
4200 Wilson Blvd. Suite 1000  
Arlington, VA 20598-7100  
Staff Symbol: (CA)

Fax: 202-493-6937

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ  
Claim# N10036-0406  
07 March 2011



RE: Claim Number: N10036-0406



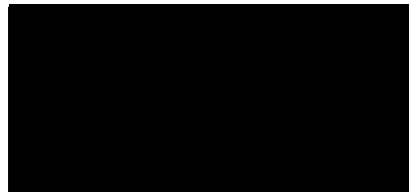
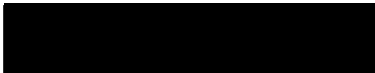
The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq. (OPA) and the associated regulations at 33 C.F.R. Part 136, denies payment on claim number N10036-0406 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination 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 N10036-0406.

Mail reconsideration requests to:

Director (ca)  
NPFC CA MS 7100  
US COAST GUARD



U. S. Coast Guard  
Claims Manager

Enclosure: Claim Summary/Determination Form

## CLAIM SUMMARY / DETERMINATION FORM

Date	23 February 2011
Claim Number	N10036-0406
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
Claim Manager	[REDACTED]
Amount Requested	\$11,407.00

### ***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 January 2011, [REDACTED] Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Funds Center (NPFC) seeking \$11,407.00 in lost earnings allegedly resulting from the Deepwater Horizon oil-spill.

Claimant stated that she worked for [REDACTED] in Mobile, AL. Claimant asserted that because of the Deepwater Horizon oil-spill, many people lost their jobs and this, in turn, caused stress-borne illnesses and the medical center she worked for had an influx of these types of patients. Claimant alleged that the influx of patients required the center to hire more critically needed professional employees like doctors and nurses. She further alleged that because she was one of the most junior level employees, the Center terminated her employment to free up money to hire these critically needed professionals.<sup>1</sup>

### ***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.

<sup>1</sup> See undated typed letter signed by Claimant received by the NPFC 04 January 2011

- (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 the OSLTF**

To support her claim, Claimant submitted an OSLTF claim form, dated 16 December 20; an undated typed letter explaining her claim; a copy of her GCCF denial letter, dated 12 November 2010; her 2008 unsigned tax preparation summary; and her 2009 U.S. Individual Income Tax Return.

Claimant seeks \$11,407.00 in lost earnings allegedly resulting from the Deepwater Horizon oil-spill.

On 30 September 2010, Claimant filed a six-month Emergency Advance Payment (EAP) claim for \$7,835.76 in lost earnings with the GCCF. She was issued GCCF Claimant ID [REDACTED] and Claim [REDACTED]. On 12 November 2010, this claim was denied by the GCCF.<sup>2</sup>

### **NPFC Determination**

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)

<sup>2</sup> Claimant has an Interim Payment claim under review at the GCCF.

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 documentation presented by the Claimant.

After an initial review of the claim, the NPFC sent the Claimant a letter requesting additional information in order to further evaluate her claim. The letter requested, among other things, financial documentation, including Claimant's W-2's and pay stubs, and written confirmation from the Claimant's employer that she had been terminated as a result of the Deepwater Horizon oil-spill. To date, the Claimant has not responded to the request.<sup>3</sup> The NPFC proceeded to evaluate the claim with the documentation originally submitted with her claim.

The claim is denied because the alleged loss in the amount of \$11,407.00 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 because the Claimant failed to meet her burden to provide sufficient evidence as requested by the NPFC.

Claim Supervisor 

Date of Supervisor's Review: *3/4/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

<sup>3</sup> The letter was sent Certified Mail Return Receipt Requested. The USPS Tracking site showed the letter was delivered 24 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  
Arlington, VA 20598-7100  
Staff Symbol: (CA)

Phone: [REDACTED]

E-mail: [REDACTED]

Fax: 202-493-6937

5890

January 24, 2011

**CERTIFIED MAIL – RETURN RECEIPT REQUESTED**

Number: [REDACTED]

[REDACTED]  
Irvington, AL 36544

RE: NPFC Claim Number: N10036-0704

Dear Mr. [REDACTED]:

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies your claim because the NPFC is unable to establish that your loss of earnings that you presented in your claim is a result of the Deepwater Horizon oil spill. Please read 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]  
Claims Manager  
U.S. Coast Guard

Encl: Claim Summary / Determination Form

## CLAIM SUMMARY / DETERMINATION FORM

Date	: 1/11/2011
Claim Number	: N10036-0407
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 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, 2010<sup>1</sup>. 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 4 January 2011, [REDACTED] (Claimant) presented an Oil Spill Liability Trust Fund (OSLTF) claim form seeking \$10,000.00 in lost profits and earning capacity resulting from the Deepwater Horizon oil spill. Mr. [REDACTED] stated that he is a licensed boat Captain who was employed by [REDACTED] Louisiana. Mr. [REDACTED] was hired in 10 May 2010 and laid-off on 19 November 2010. Mr. [REDACTED] asserted that he was laid off because of the moratorium on offshore rigs for safety reasons imposed by the U.S. Department of the Interior, Minerals Management Service.

Mr. [REDACTED] presented his claim for lost income to the Gulf Coast Claims Fund (GCCF). His GCCF claim identification number is: [REDACTED]. Mr. [REDACTED] was denied sometime in December

<sup>1</sup> 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.



by the GCCF. He could not remember the date of the denial letter or what it specifically said because he lost the letter.

Mr. ██████ attempted to submit his claim to the Rig Workers Assistance Fund, but he was unable speak to anyone at the phone number and he could not upload his claim to the website since he does not have a computer and will have to rely on one at the public library.

### ***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.

## **DETERMINATION OF LOSS**

### **A. Overview**

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

- Optional OSLTF Claim Form Submission dated 08 November 2010.
- Personal Narrative letter of 21 December 2010
- 2008 W-2 and Earnings Summary. Gross Wages: \$ 50,355.00 (from two employers)
- 2009 W-2 and Earnings Summary. Gross Pay \$50,629 (from one employer)
- Separation Notice Alleging Disqualification showing dates of hire and separation from Candy Fleet.
- Pay Checks from ██████████ from 10 May 2010 to 19 November 2010 (15 checks net wages of \$30,398.74)

### **B. Claimants Analysis of Claim**

Mr. ██████████ asserted that he was laid off work as a boat captain because of the DOI moratorium. However, in a phone discussion with ██████████ the Human Resources Director for ██████████ ██████████ was hired on 10 May 2010 after there was a demand for crew boats during the oil spill cleanup. Mr. ██████████ was laid off after the oil-spill cleanup due to a reduced demand for vessels. That is that ██████████ could employ additional personnel during the oil-spill response due to the demand for vessels.<sup>2</sup> With the conclusion of the oil-spill cleanup for the Deepwater Horizon there is less of a demand for crew boats and ██████████ scaled down its operations. Mr. ██████████ was laid off on 19 November 2010.

Mr. ██████████ asserted that ██████████ was slow before the Deepwater Horizon oil spill. ██████████ has 17 vessels and operated all of them a couple years ago when business was booming. ██████████ operates its fleet for shallow water rigs too, but business has been slow since 2008.

### **C. NPFC Analysis of Claim**

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

1. Employment information supplied by Mr. ██████████ shows he was hired by ██████████ on 10 May 2010 during oil spill cleanup of the Deepwater Horizon. His was laid off 19 November 2010.
2. Mr. ██████████ asserted that he was laid off due to the oil spill but his employment record shows he was unemployed before the oil spill incident.
3. The NPFC Claims Manager contacted ██████████ Human Resource Manager, to confirm the reason Mr. ██████████ was laid-off and was told that it was not necessarily due to the new permitting process imposed by the DOI Office of Mining and Minerals deepwater drilling moratorium<sup>3</sup>. Rather, there was a decrease in demand subsequent to the oil spill cleanup.

<sup>2</sup> See phone log and notes in CPS for summary of conversation with HR Mgr for ██████████

<sup>3</sup> 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 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

#### 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. Mr. ██████ explained in his letter of 21 December 2010 and in his submission Optional OSLTF Claim Form (CG NPFC-CA1) claim form and in his phone call with the Claims Manager that his loss of income is a result of being laid off due to safety measures following the six month deepwater drilling moratorium. However, it has been determined that Mr. ██████ loss of income is not directly related to the Deepwater Horizon oil-spill in the Gulf of Mexico but to the lack of demand for crew boats in general and related to the cyclical nature of the offshore oil business and not to oil spill.<sup>4</sup> Mr. ██████ claim may be considered a consequence of the moratorium but his lay-off was not the proximate cause of the Deepwater Horizon oil-spill but rather his employer's business decision to cut back on resources. Therefore this claim is respectfully denied under OPA.

Claim Supervisor: ██████

Date: 1/24/11

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)

[REDACTED]  
5890  
01/31/2011

VIA CERTIFIED MAIL

Number [REDACTED]  
[REDACTED]

RE: Claim Number: N10036-0408

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number N10036-00408 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 N10036-0408.

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

09/14/11

FOIA2011-3380-00001630

CLAIM SUMMARY / DETERMINATION FORM

Date	: 01/31/2011
Claim Number	: N10036-0408
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$6,800.00

**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 04 January 2011, [REDACTED] (Claimant) presented a lost profits & earnings claim in the amount of \$6,800.00 to the National Pollution Funds Center (NPFC) for reimbursement. Claimant asserted he lost wages due to the oil-spill and cannot find a new job as a result. The Claimant was unemployed prior the Deepwater Horizon incident. He claimed lost earnings and wages due to his inability to find new employment.

**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, received on 04 JAN 2011, copies of his 2007 IRS W2s for [REDACTED] (2 total) and [REDACTED] copies of his 2008 IRS W2s for [REDACTED] (3 total), a copy of his State of Alabama Unemployment Compensation Agency Form 1099-G for 2008 and an Explanation of Claim Letter to the NPFC, dated 12/20/2010.

#### **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 alleged his inability to find employment is due to the Deepwater Horizon oil-spill. However, 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.

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. He has not established an alleged loss of income nor that his alleged financial loss is a direct result of the Deepwater Horizon oil-spill incident.

Claim Supervisor 

Date of Supervisor's review: *1/31/11*

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  
4200 Wilson Blvd. Suite 1000  
Arlington, VA 20598-7100  
Staff Symbol: (CA)

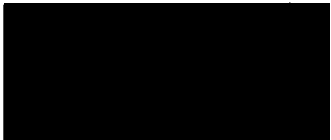
Phone: [REDACTED]

E-mail: [REDACTED]

Fax: 202-493-6937

VIA MAIL AND EMAIL: [REDACTED]

Claim # N10036-0409  
06 January 2011



RE: Claim Number: N10036-0409

[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.

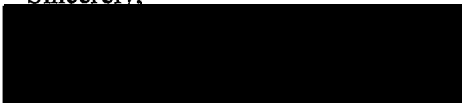
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-0409

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

Enclosure: Claim Summary / Determination Form

09/14/11

FOIA2011-3380-00001634

## CLAIM SUMMARY / DETERMINATION FORM

Date	: 1/6/2011
Claim Number	: N10036-0409
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$34,195.00

### ***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 January 2011, Mr. [REDACTED] (Claimant) presented a lost profits & earnings claim in the amount of \$34,195.00 to the National Pollution Funds Center (NPFC) for reimbursement. Mr. [REDACTED] asserts that he sustained damages in the form of lost profits and earning capacity while employed at the [REDACTED] due to the Deepwater Horizon oil spill.

Mr. [REDACTED] has been working for the [REDACTED] located in New Orleans, Louisiana since May 1983 and is the [REDACTED]. Mr. [REDACTED] states that if not for the oil spill incident he would have gotten a yearly bonus and would have worked "mandatory" over-time with a cumulative work week of 48 hours. The claimant also states that as a result of the oil-spill his current work week has been reduced to 4 days a week with the use of 1 vacation day to make up an entire work week and keep his salary equal to what it was before 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 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**

The claimant provided the NPFC Optional OSLTF Claim Form dated 12 December 2010, 2009 U.S. Individual Income Tax Return, 2008 U.S. Individual Income Tax Return, a letter from the HR Associate Services Director, [REDACTED] various pay stubs dated; 9/24/10, 4/23/10, 9/10/10, and a copy of a letter from the Claimant to GCCF dated October 6, 2010 explaining his circumstances. Claimant's OSLTF claim form states he presented his claim to the GCCF although the NPFC does have a copy of the denial claimant states he received.

#### **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 and has determined that Claimant has not proven his claimed losses.

The claim is denied because the alleged loss in the amount of \$34,195.00 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 employer's business decision to not issue bonuses to employees. Furthermore, the letter that the HR Associate Services Director wrote on behalf of Mr. [REDACTED] states that Mr. [REDACTED] did not receive his annual raise on May 25, 2010 due to the Deepwater Horizon oil-spill although Claimant's employer has not provided evidentiary information to support a corporate loss of profits by [REDACTED] and how that loss was a direct result of the Deepwater Horizon oil-spill incident..

Claim Supervisor: [REDACTED]

Date of Supervisor's review: 1/6/11

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  
4200 Wilson Blvd. Suite 1000  
Arlington, VA 20598-7100  
Staff Symbol: (CA)

Phone: [REDACTED]

E-mail: [REDACTED]

Fax: 202-493-6937  
5890

1/6/2011

VIA MAIL and EMAIL: [REDACTED]

[REDACTED]  
Jackson, AL 36545

RE: Claim Number: N10036-0410

Dear Ms. [REDACTED]:

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number N10036-0410 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 N10036-0410.

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

09/14/11

FOIA2011-3380-0001638

## CLAIM SUMMARY / DETERMINATION FORM

Date	: 1/6/2011
Claim Number	: N10036-0410
Claimant	: ██████████
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: ██████████
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 4 January 2011, Ms. ██████████ (Claimant) presented a lost profits and earnings claim in the amount of \$20,000.00 to the National Pollution Funds Center (NPFC) for reimbursement. Ms. ██████████ is asserting that her hours with her employer were reduced as a result of the oil spill and that her temporary oil response work was terminated one month after beginning her employment when she alleges that she was guaranteed two years of employment. Since the claimant was only employed for one month performing oil-spill response related work, and had her hours reduced at her other employment, she is claiming lost profits for the balance of the two years she was promised and for the hours lost from her regular employment.

### ***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 December 18, 2010, copies of her earning statements and a copy of her 2009 1040 Income Tax Return. The Claimant in her submission indicated that she presented her claim to the Responsible Party and that the claim was denied. Although she did not provide this denial her representation that she presented the claim is sufficient proof of her submission to the Responsible Party.

#### **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 \$20,000.00 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 is the result of her employer's business decision to terminate her employment.

Claim Supervisor:



Date of Supervisor's review: *1/6/11*

Supervisor Action: *Denial approved*

Supervisor's Comments:

## CLAIM SUMMARY / DETERMINATION FORM

Date : 1/10/2011  
Claim Number : N10036-0411  
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:

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

The claimant, [REDACTED] presented an undated claim form to the Oil Spill Liability Trust Fund (OSLTF) via the National Pollution Funds Center (NPFC) asserting that she lost wages because the couple she provided child care services for could no longer pay her due to the Deepwater Horizon oil-spill. Included with the claim is a letter dated December 15, 2010 signed by the claimant stating she depended on the beach along with her boss and boss' husband. The claimant requests \$13,000.00 in damages.

### 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;
- (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**

The claimant submitted the following in her submission package:

- (a) A GCCF denial letter dated October 28, 2010.
- (b) An undated, unsigned letter from her alleged ex employer, [REDACTED]
- (c) Another undated, unsigned letter from her alleged ex employer [REDACTED]
- (d) 2008 and 2009 1040 tax forms.
- (e) Claimant's social security card and identification.
- (f) A letter from the Department of Human Services to the claimant.
- (g) Handwritten receipts signed by [REDACTED] showing cash paid to the claimant for private nursing of a child from January – July 2010.

### **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 two letters allegedly submitted by the claimant's ex-employer [REDACTED] are not signed or dated. The claimant's boss allegedly managed condominiums and apartments and was laid off due to the oil spill. The claimant's boss states her husband also had his hours cut. [REDACTED] then allegedly cut the claimant's hours due to being laid off. The claimant provided no proof that her boss' alleged financial loss was due to the oil spill. Even if this was proven, the claimant's alleged loss was not a direct consequence of the oil spill incident, but caused by her boss' decision to lower her hours after allegedly losing their jobs.

The handwritten receipts provided show the claimant was making \$700.00 a week from January – April 2010. Her income was then reduced to \$500.00 per week for the month of May, then \$300.00 per week for two weeks in June and one week in July. There was no proof provided that the lowered wages were due to the oil spill incident.

The 2008 and 2009 1040 tax forms provided show the claimant's total income was \$12,300.00 both years. According to the cash receipts provided in the claim, the claimant's income for 2010 was \$14,800.00 as of July 2, 2010; \$2,500.00 more than the previous two tax years even with the alleged loss of profits. There is no loss of profits proven using the tax returns. Additionally, the letter provided in the claim from the Department of Human Services appears to have no relevance to this claim. Based on the evidence presented, the claimant failed to prove an economic loss. Additionally, nothing in the evidence proves the claimant was guaranteed a certain amount of income.

The claim is denied because the alleged loss in the amount of \$13,000.00 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 is the result of her employer's business decision to cut the claimant's hours. The evidence presented by the claimant does not establish the causal connection between her alleged reduction in hours and the Deepwater Horizon incident.

Claim Supervisor [REDACTED]

Date of Supervisor's review: 1/10/11

Supervisor Action: DENIED

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  
1/10/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]



RE: Claim Number: N10036-0411

Dear [REDACTED]

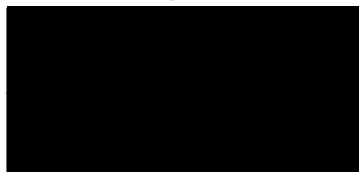
The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number N10036-0411 involving Deepwater Horizon. Please see the attached claim summary for further explanation.

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 N10036-0411.

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

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  
2/8/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

[REDACTED]  
[REDACTED]  
Violet, LA 70092

RE: Claim Number: N10036-0412

Dear Mr. [REDACTED]:

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number N10036-0412 involving the Deepwater Horizon incident. Compensation is denied because you failed to prove that the oil spill caused you a loss.

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 or within 30 days of your receipt of this letter, whichever date is earlier, 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 N10036-0412.

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

## CLAIM SUMMARY / DETERMINATION FORM

Date	: 2/8/2011
Claim Number	: N10036-0412
Claimant	: ██████████
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: ██████████
Amount Requested	: \$2,500.00

### 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:

The claimant seeks loss of crabbing income. He states that he earned money crabbing as a side job, but the oil spill prevented him from doing so.

### 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).

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:

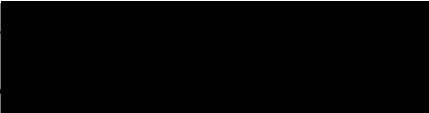
- (a) That real or personal property or natural resources have been injured, destroyed, or lost.



- (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:**

The claimant did not provide documentation to support his claim. And he did not respond to our request for additional information within the given time frame. The claim is denied because the claimant has not proven that the oil spill caused him to suffer compensable damages.

Claim Supervisor: 

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

Supervisor Action: 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)

5890  
01/07/2011

**CERTIFIED MAIL – RETURN RECEIPT REQUESTED**

Number: [REDACTED]



RE: Claim Number: N10036-0413

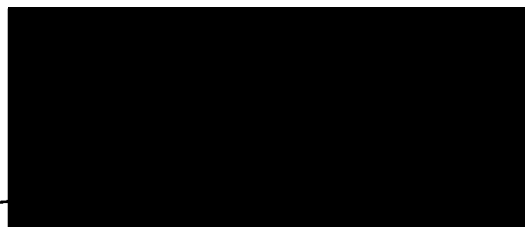
Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number N10036-0413 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 the claim. The reconsideration must be received by the NPFC within 60 days of the date of the 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 N10036-0413.

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

09/14/11

FOIA2011-3380-00001649

## CLAIM SUMMARY / DETERMINATION FORM

Date	: 01/07/2011
Claim Number	: N10036-0209
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$4,000.00

### ***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). The 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 January 2011 [REDACTED] (Claimant) presented a lost profits & earnings claim in the amount of \$4,000.00 to the National Pollution Funds Center (NPFC) for reimbursement. Claimant asserts she lost wages due to the oil spill, because, as a daycare provider, her clients' reduced hours at their own jobs resulted in her receiving reduced pay.

### ***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 GCCF Claim Denial letter, a personal statement that explains the circumstances related to her losing employment and two statements written on her behalf by two of her clientele.

#### **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 \$4,000.00 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 loss of income is the direct result of her client's loss of earnings. Additionally, Claimant has not shown that her loss of wages were a direct result of the Deepwater Horizon oil-spill, nor has she provided documentation to prove her claimed loss of earnings between April 20, 2010 (the date of the oil spill) until June 25, 2010 (i.e., W2s, copies of canceled checks, bank statements, etc.). Therefore, Claimant's alleged loss of profits is the result of her employment being terminated by her clients as a caregiver due to their financial hardships, not as a direct result of the Deepwater Horizon oil-spill.

Claim Supervisor: 

Date of Supervisor's review: *1/7/11*

Supervisor Action: *Denial approved*

Supervisor's Comments:

U.S. Department of  
Homeland Security

**United States  
Coast Guard**



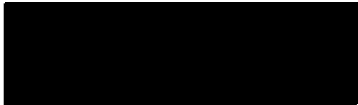
Director  
National Pollution Funds Center  
United States Coast Guard

NPFC CA MS 7100  
US COAST GUARD

Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED  
Number: [REDACTED]

5890/DWHZ  
Claim # N10036-0414  
31 March 2011



RE: Claim Number: N10036-0414

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 N10036-0414 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 N10036-0414.

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  
09/14/11

FOIA2011-3380-00001653

## CLAIM SUMMARY / DETERMINATION FORM

Date	: 29 March 2011
Claim Number	: N10036-0414
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. 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 January 2011, [REDACTED] (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Funds Center (NPFC). The OSLTF claim form alleged \$9,600.00 in loss of profits and earning capacity resulting from the Deepwater Horizon oil spill.

Claimant asserted that she sells dinners in Bayou La Batre, AL.<sup>1</sup> The Claimant alleged that as a result of the Deepwater Horizon oil spill, she could not sell her dinners and lost revenue.<sup>2</sup>

### ***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.

<sup>1</sup> Handwritten letter to the NPFC, dated 25 March 2011.

<sup>2</sup> *Id.*  
09/14/11



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 the following documentation to the NPFC:

- OSLTF claim form, dated 03 Jan 2011;
- Bank Statement from RBC Bank, period of 03 March to 03 May 2010;
- Bank Statement from [REDACTED] period of 03 March to 16 April 2010;
- Copy of Alabama Driver's License and Unreadable Social Security Card;
- Blank Sales Receipts (2);
- Handwritten Income Statement for 2010;
- Statement from [REDACTED]
- 2008 U.S. Income Tax Return, unsigned and missing information;
- 2009 U.S. Income Tax Return & State Tax Return, unsigned and missing information; and
- 2010 1099 Form.

On 28 February 2011, the NPFC sent the Claimant a letter requesting additional information on her claim. On 28 March 2011, the Claimant responded by providing the following additional information:

- Copy of 2001 Marriage License;
- Unreadable Copy of Alabama Drivers License and Social Security Card;
- Unknown Receipts (2);
  - o \$2150
  - o \$100
- Handwritten Income Statement from [REDACTED]
- Handwritten letter to the NPFC, dated 25 March 2011;
- 2008 U.S. Income Tax Return, unsigned and missing documents;
- 2009 U.S. Income Tax Return & State Tax Return, unsigned and missing documents; and
- 2010 U.S. Income Tax Return & State Tax Return, unsigned and missing documents.

Claimant seeks \$9,600.00 in loss of profits and earnings capacity allegedly resulting from the Deepwater Horizon oil spill.

On 25 September 2010, Claimant filed a six-month Emergency Advance Payment (EAP) claim with GCCF for \$6,660.00. She was assigned GCCF Claimant ID [REDACTED] and Claim [REDACTED]

On 03 January 2011, Claimant filed this claim for \$9,600.00 in lost profits and earnings capacity with the NPFC.<sup>3</sup>

### 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

This claim is denied because the alleged loss in the amount of \$9,600.00 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 alleged that she generated income by selling dinners in the shipyard and other areas in Bayou La Batre from January to April 2010.<sup>4</sup> She further alleged that as a result of the Deepwater Horizon oil spill, she could not sell her dinners because of an apparent perceived taint of the fish and shrimp from the Gulf.<sup>5</sup> Claimant indicated that since May 2010, she has not sold a single dinner.<sup>6</sup>

In spite of claimant's assertions, there is no evidence in her submission that supports the allegation that her alleged losses resulted from the Deepwater Horizon oil spill. The Claimant failed to demonstrate that her inability to sell dinners since May 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.

Additionally, the Claimant does not explain how she arrived at her estimated loss in profits and earnings of \$9,600.00. It is unclear how the Claimant expected to earn this amount from selling dinners from May 2010 to the date of this claim.

This claim is denied because (1) the Claimant failed to explain and document the alleged loss of profits claimed, (2) the Claimant failed to demonstrate that her 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, and (3) the Claimant failed to demonstrate she made proper presentment of the costs claimed to the NPFC to the RP since the claim she filed with the RP under the Emergency Advance Payment process was only for \$6,600.00.

Claim Supervisor 

Date of Supervisor's Review: *3/31/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

<sup>3</sup> By Claimant's filing date with the NPFC, 90 days had elapsed since Claimant's date of filing with the GCCF. To date, Claimant's EAP claim remains under review at the GCCF.

<sup>4</sup> Handwritten Income Statement for 2010, dated 25 March 2011.

<sup>5</sup> OSLTF claim form.

<sup>6</sup> Handwritten letter to the NPFC, dated 25 March 2011.

U.S. Department of  
Homeland Security

United States  
Coast Guard



Director  
National Pollution Funds Center  
United States Coast Guard

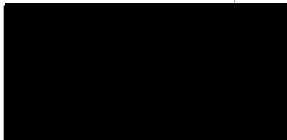
NPFC CA MS 7100  
US COAST GUARD

Fax: 202-493-6937

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ  
Claim# N10036-0415  
24 February 2011



RE: Claim Number: N10036-0415

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with 33 C.F.R. Part 136, denies payment on claim number N10036-0415 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination Form for further explanation.

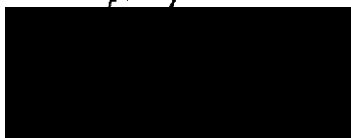
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-0415.

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

09/14/11

FOIA2011-3380-00001657

CLAIM SUMMARY / DETERMINATION FORM

Date	18 February 2011
Claim Number	N10036-0415
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
Claim Manager	[REDACTED]
Amount Requested	\$180,000.00

**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 January 2011, [REDACTED] (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Funds Center (NPFC) seeking \$180,000.00 in lost profits and earning capacity allegedly resulting from the Deepwater Horizon oil-spill.

Claimant operates a dump truck service company in Chunchula, Alabama. [REDACTED] transports building construction materials and removes debris from various construction sites. Claimant asserted that as a result of the Deepwater Horizon oil-spill, "companies and individuals stopped spending money to have these types of services done [and] our contractors in this area went to work for the oil-spill so there is [sic] less jobs to do."<sup>1</sup>

Claimant estimated that this impact resulted in a total loss of profits of \$180,000.00 to his business.

**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.

<sup>1</sup> Response from Claimant to NPFC request for information dated 20 January 2011.

- (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:

- OSLTF claim form dated 05 January 2011;
- ██████████ year end totals for 2009 & 2010;
- Response from Claimant to NPFC request for information dated 20 January 2011;
- 2007-2009 1120 for ██████████
- Monthly sales ledger for 2009 & 2010
- ██████████ financial compilation for ██████████
- Fax letter from Claimant explaining nature of loss dated 05 January 2011;
- Monthly Balances for ██████████ April-September 2010; and
- Bank statements for ██████████ April-September 2010.

Claimant seeks \$180,000.00 in lost profits allegedly resulting from the Deepwater Horizon oil spill.

On 21 November 2010, Claimant filed a six-month Emergency Advance Payment (EAP) claim for \$10,000.00 in lost profits with the GCCF. He was issued GCCF Claimant ID ██████████ and Claim ██████████ His claim was denied by the GCCF. This information was verified by the NPFC.

## NPFC Determination

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.

Claimant provided monthly Sales Ledger Summaries for 2009 & 2010 to support a decline in revenue. For the period May through December 2010, revenue for 2010 was \$77,450.00 compared to \$214,261.00 during 2009—a decline of \$136,811.00. Although this evidence indicates a decline, Claimant has not provided evidence to support his allegation that this decline resulted directly from the Deepwater Horizon oil-spill.

The Claimant asserted that “our survival depends on the people and companies in the coastal region to spend money on construction type work. So if there [sic] not spending money due to the Deepwater Horizon incident then we are out of a job.”<sup>2</sup> Claimant attributed the alleged decline in his business to reduced construction spending as a result of the Deepwater Horizon oil-spill. However, the Claimant does not provide evidence to support this allegation. For example, there is no documentation indicating that certain customers cancelled contracts as a result of the Deepwater Horizon oil-spill or that there was a general decline in construction spending in the Gulf region.

The claim is denied because the alleged loss of \$180,000.00 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.

Claim Supervisor: 

Date of Supervisor's Review: 2/24/11

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

<sup>2</sup> Response from Claimant to NPFC request for information dated 20 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  
Arlington, VA 20598-7100  
Staff Symbol: (CA)



5890  
24 January 2011

VIA CERTIFIED MAIL

Number [REDACTED]



RE: Claim Number: N10036-0416

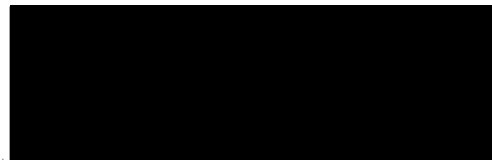
Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number N10036-416 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 N10036-0416.

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

09/14/11

FOIA2011-3380-00001661



CLAIM SUMMARY / DETERMINATION FORM

Date	24 January 2011
Claim Number	N10036-0416
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 05 January 2011, [REDACTED] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$8,000.00 in lost profits and earning capacity resulting from the Deepwater Horizon incident. Claimant is a Behavioral Aide with [REDACTED] who asserted that she "went from working 40 hours to 20 hours" due to the "oil spill in the gulf."<sup>1</sup> The Claimant also adds that "the main reason that has caused me to have a decline in my patient cares services and reduce my work hours is the Gulf Oil Spill."<sup>2</sup>

**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 NPFCA, 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.

<sup>1</sup> Letter from Claimant to BP dated 18 November 2010

<sup>2</sup> Letter from Claimant dated 21 October 2010

- (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 her claim, Claimant presented the NPFC Optional OSLTF Claim Form dated 05 January 2011, two letters to "Whom It May Concern" dated 21 October 2010 and 18 November 2010, respectively, 2008 W-2 Form, 2009 Form 1040 income tax return form, as well as the [REDACTED] earnings statements and pay stubs.

Claimant submitted a claim with the GCCF on 21 October 2010 for an Emergency Six-Month payment in the amount of \$8,000.00, Claimant II [REDACTED] Claim [REDACTED] which was denied.

Claimant asserted that she has lost hours and subsequent wages because she has a decreased number of patients to care for due to the oil spill's impacts.

#### **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.

The NPFC reviewed the evidence presented by the Claimant and interviewed a representative from [REDACTED] her current employer. After a phone conversation and written correspondence from [REDACTED] it was determined that "[REDACTED] reductions in hours in May of 2010 were completely voluntary. She cited personal health reasons as the cause of her needing reduced hours."<sup>3</sup> The letter goes on to cite that [REDACTED] has not reduced hours for any of its employees, faced a lay off, or otherwise suffered as a result of the Deepwater Horizon Oil Spill."<sup>4</sup> The Claimant has failed to meet her burden and her claim is denied.

<sup>3</sup> Letter from [REDACTED] Payroll Specialist for [REDACTED]

dated 19 January 2011

<sup>4</sup> Letter from [REDACTED] Payroll Specialist for [REDACTED]

dated 19 January 2011

Claim Supervisor:



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



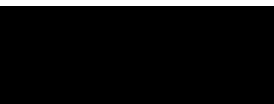
Director  
National Pollution Funds Center  
United States Coast Guard

NPFC CA MS 7100  
US COAST GUARD

Fax: 202-493-6937  
5890  
2/17/2011

VIA CERTIFIED MAIL

Number: [REDACTED]



RE: Claim Number: N10036-0417

Dear [REDACTED]

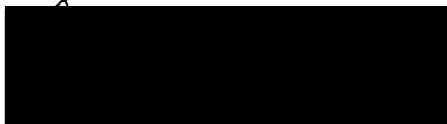
The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number N10036-0417 involving Deepwater Horizon. Please see the attached Claim Summary / Determination Form for an explanation regarding this denial.

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 N10036-0417.

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

09/14/11

FOIA2011-3380-00001665

## CLAIM SUMMARY / DETERMINATION FORM

Date	: 2/13/2011
Claim Number	: N10036-0417
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. 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 January 5, 2011, [REDACTED] (Claimant) presented a loss of profits & earnings claim in the amount of \$8,000.00 to the National Pollution Funds Center (NPFC). The Claimant asserted that he lost income from his clientele as a direct result of the Deepwater Horizon incident.

Upon notification to the GCCF on whether the Claimant first presented the costs to the RP, GCCF has confirmed that they have NOT received a claim from [REDACTED] as an individual. GCCF has received a claim from [REDACTED] as a business entity. GCCF has that claim identified with Claimant Identification Number [REDACTED] and with Claim Number [REDACTED]. The GCCF database shows two payments issued to the business entity. One payment was a six month emergency advance payment in the amount of \$18,000.00 and then another quick pay final claim payment in the amount of \$25,000.00. It is not clear what the original amount requested by the Claimant was and the Claimant never informed the NPFC that he had received any payments from the GCCF but rather stated on his OSLTF Claim Form that was received on January 5, 2011 by the NPFC, that he received a denial of his final 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***

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 the 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.

After receiving information from the GCCF regarding compensation that was paid to Mr. Martin Charles for his business, [REDACTED] [REDACTED] contacted the Claimant on his phone number twice and left a message that he needed to provide information and a copy of the release he signed with the GCCF. To date Claimant has still not responded therefore this claim is denied because the Claimant has failed to meet his burden demonstrating that he has a loss of profits and earnings as a direct result of the Deepwater Horizon incident. Additionally, given the \$43,000.00 the claimant and his business received from the RP, the Claimant has not provided support for the \$8,000.00 loss he is claiming.

Claim Supervisor: [REDACTED]

Date of Supervisor's review: 2/17/11

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

Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ  
Claim # N10036-0418  
15 February 2011

Re: Claim Number: N10036-0418

The National Pollution Funds Center (NPFC), in accordance with 33 C.F.R. Part 136, denies payment on claim number N10036-0418 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 N10036-0418.

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	15 February 2011
Claim Number	N10036-0418
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
Claim Manager	[REDACTED]
Amount Requested	\$8,200.00

**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 05 January 2011, [REDACTED] (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Fund Center (NPFC) seeking \$8,200.00 in lost profits and earning capacity resulting from the Deepwater Horizon incident.

The Claimant owns and rents out a unit at the [REDACTED] in Pensacola Beach, Florida (Portofino). He asserts he has suffered lost rental income from vacationers who either did not book reservations or cancelled existing reservations as a result of the Deepwater Horizon incident.<sup>1</sup>

**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.

<sup>1</sup> Claimant handwritten answers to NPFC letter for additional information.

**ENCLOSURE**

- (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:

- NPFC OSLTF Claim Form dated 05 January 2011;
- Claimant 1040 from 2007-2009, including Schedule E's Supplemental Income and Loss for the subject property
- 2010 master daily rates;
- [REDACTED] rental income summaries 2007-2010;
- Copy of Claimant's U.S. Passport;
- Statement dated 08 January 2010 from [REDACTED] on subject property showing year to date totals for 2009;
- Escambia County tax statement on Portofino property (2 pages); and
- Claimant handwritten answers to NPFC letter for additional information.

Claimant seeks \$8,200.00 in lost rental income resulting from the Deepwater Horizon incident's alleged impact on his rental business.

Claimant reports that he filed three Emergency Advance Payment (EAP) claims for lost rental income with the GCCF. The GCCF assigned him both Claimant ID [REDACTED] and Claimant ID # [REDACTED] and Claim [REDACTED] to his EAP claim. On 22 September 2010, the GCCF paid \$7,900.00 on EAP Claim [REDACTED]

In communication to the NPFC, Claimant asserted that the \$7,900.00 payment from the GCCF was for a separate property he owns unrelated to the Portofino unit.<sup>2</sup> Claimant explained that he had filed 3 claims—[REDACTED] (Portofino rental), [REDACTED] (main house rental), and [REDACTED] (Splash rental). He further explained that BP paid \$19,000.00 on [REDACTED] and GCCF paid \$7,900.00 towards [REDACTED]. He maintains that no compensation has been paid towards his alleged \$8,200.00 loss from the Portofino unit.<sup>3</sup>

In his filing before the NPFC, Claimant asserted that ninety days had elapsed since he filed his lost rental income claim for the Portofino condo with the GCCF.<sup>4</sup>

### NPFC Determination

This claim is denied. Under 33 U.S.C. § 2713(a) claims must first be presented to the Responsible Party. 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. This evidence does not support Claimant's allegation that he suffered a loss in rental income as a result of the Deepwater Horizon incident.

On 14 January 2010, the NPFC sent a letter to the Claimant requesting additional documentation and received a response from the Claimant. However, this response did not include property management agreements, copies of cancelled rental contracts, returned checks, and copies of communication with prospective renters—key documentation requested by the NPFC.

Additionally, Claimant's 1040's from 2007-2009 included respective Schedules E's Supplement Income and Loss for the subject unit at the Portofino Island Resort. The rental logs provided by the Claimant for 2007 and 2009 could not be reconciled with the corresponding Schedule E. The NPFC could not determine if there was a loss of rental income as a result of the inconsistent evidence. Since the Claimant has not established the amount of the loss or that this alleged loss resulted from the Deepwater Horizon incident, his claim is denied.

Claim Supervisor: [REDACTED]

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

Supervisor's Actions: DENIED APPROVED

Supervisor's Comments:

<sup>2</sup> Claimant owns 3 rental units—the [REDACTED] condo in Pensacola, FL; the Splash condo in Panama City, FL; and the [REDACTED] in Red River, NM.

<sup>3</sup> PHONECON between Claimant and the NPFC on 04 February 2011.

<sup>4</sup> Claimant has a Final Payment claim under review with the GCCF. Based upon the information from the GCCF and the Claimant, it appears to the NPFC that Claimant did receive compensation from the GCCF for his EAP Claim relating to the Portofino condominium. However, because Claimant is dissatisfied with the amount that he has received compared to what he requested, the NPFC is reviewing the claim before us to determine whether it is compensable to a degree greater than what the Claimant has already been compensated by the Responsible Party.

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# N10036-0419  
24 February 2011

RE: Claim Number: N10036-0419

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 N10036-0419 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 N10036-0419.

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	: 24 February 2011
Claim Number	: N10036-0419
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. 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.

**PRESENTMENT TO THE RESPONSIBLE PARTY/GCCF**

On 17 May 2010, Claimant filed a claim with BP. BP paid Claimant \$24,872.00.

On 26 August 2010, Claimant filed a six month Emergency Advance Payment (EAP) claim for \$9,000.00 in lost profits with the GCCF. The GCCF assigned him Claimant ID [REDACTED] and Claim [REDACTED]. On 21 January 2011, the GCCF approved his EAP claim and paid him \$9,000.00.

On 18 January 2011, Claimant filed a Quick Payment final claim with the GCCF. According to the GCCF, Claimant received an additional \$25,000.00 payment from the GCCF and executed a Release and Covenant Not to Sue.

**CLAIM AND CLAIMANT**

On 05 January 2011, Ut Huynh Hoang (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Funds Center (NPFC) seeking \$72,000.00 in lost profits & earnings resulting from the Deepwater Horizon oil spill (DWHZ oil spill or oil spill).

Claimant is a Louisiana-licensed commercial fisherman. He asserts that he lost income and crab traps as a result of the oil spill. He further asserts that his fishing grounds were closed as a result of the 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 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).

Payment of any claim or obligation by the Fund under this Act shall be subject to the United States Government acquiring by subrogation all rights of the claimant or the state to recover from the responsible party. 33 U.S.C. § 2712(f).

**DETERMINATION OF LOSS**

**Claimant's Submission to the OSLTF**

To support his claim, Claimant submitted the following:

- OSLTF Claim form dated 31 December 2010;
- Claimant 1040 for 2007, 2008 and 2009 with supporting schedules;
- Copy of Claimant's Louisiana drivers license, boat registration certificate, and official LA licenses for resident commercial fisherman, resident set line, resident crab trap fee and any legal NBR;
- Notarized letter dated 31 December 2010 explaining Claimant's loss; and
- LA trip tickets from 11 December 2006 through 20 February 2010.

Claimant seeks \$72,000.00 in lost profits allegedly as a result of the DWHZ oil spill. Claimant does not address the almost \$59,000 in compensation reportedly provided by BP or GCCF.

**NPFC Determination**

Based on information submitted by the Claimant and information available to the NPFC, BP and the GCCF paid a total of \$58,872.00 to the Claimant as compensation for this claim to NPFC. According to information from the GCCF, Claimant executed a Release and Covenant Not to Sue in return for the Quick Payment.

This claim is denied because it appears from the record that the Claimant has fully settled his claims with BP/GCCF, and that BP and GCCF have compensated the Claimant, including a \$25,000 Quick Payment for which GCCF reportedly required a final and full release of rights against any responsible party. The Claimant has not addressed these payments or otherwise provided any information to show the Claimant has any rights to recover any of the amount claimed here from a responsible party. The Fund will not pay what has already been compensated and any Fund payment is subject to acquiring rights to recover from the responsible party.

If the Claimant disagrees with this determination to deny the claim he may request reconsideration. If so the Claimant should provide any and all documentation of any payments received from BP or GCCF, including any related agreements or releases signed by the claimant. If the claimant disagrees that any payments have been received from BP or GCCF, or that any payments received are for damages other than those included in this claim for \$72,000 to the NPFC, the claimant should explain the circumstances fully. If the Claimant disagrees that it has signed any release of its claims against a responsible party, including any release in return for a Quick Payment, the Claimant should fully explain the circumstances in the request for reconsideration.

Claim Supervisor:



Date of Supervisor's Review:

2/24/11

Supervisor's Actions:

Denial of claim

Supervisor's Comments:



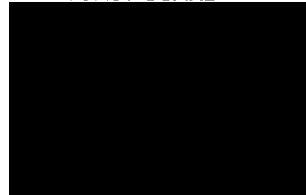
U.S. Department of  
Homeland Security

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# N10036-0420  
22 February 2011



RE: Claim Number: N10036-0420

Dear Ms. [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with 33 C.F.R. Part 136, denies payment on claim number N10036-0420 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 N10036-00420.

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	08 February 2011
Claim Number	N10036-0420
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
Claim Manager	[REDACTED]
Amount Requested	\$7,300.00

### ***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. 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 05 January 2011, [REDACTED] (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Fund Center (NPFC) seeking \$7,300.00 in lost profits and earning capacity resulting from the Deepwater Horizon incident.<sup>1</sup>

Claimant works as a server for a restaurant in the Tampa International Airport under the parent name of [REDACTED].<sup>2</sup> Claimant asserted that her employer has reduced the number of hours and cut shifts early due to the Deepwater Horizon incident. She alleged lost benefits and tips because of the reduction in customers and hours worked.

### ***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.

<sup>1</sup> Claimant's OSLTF claim form indicates two separate amounts for her loss—\$7,300.00 and \$10,300.00. The Claimant only alleges \$7,300.00 in lost profits and earning capacity. The NPFC could not verify if the additional \$3,000.00 is lost profits or a different type of loss.

<sup>2</sup> Claimant presented paystubs and W-2's from [REDACTED]

- (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 to the NPFC:

- OSLTF claim form dated 27 December 2010;
- Handwritten letter from Claimant answering NPFC questions dated 04 February 2011;
- Paystubs/earnings statements from [REDACTED] with check date 31 December 2008, 10 November 2010, 24 November 2010, 23 December 2010, and 29 December 2010;
- 2007-2010 W-2 statements for Claimant; and
- Claimant's individual federal income tax return for 2009.

Claimant seeks \$7,300.00 in lost earnings and wages allegedly resulting from the Deepwater Horizon incident.<sup>3</sup>

On 11 November 2010, Claimant filed a six-month Emergency Advance Payment (EAP) claim for \$7,800.00 in lost earnings with the GCCF. She was assigned GCCF [REDACTED] and [REDACTED]. On 04 December 2010, her claim was denied by the GCCF. This information was verified by the NPFC.<sup>4</sup>

<sup>3</sup> The NPFC, in a letter dated 17 January 2011, attempted to get the Claimant to clarify the total amount of her loss—whether it was \$7,300.00 or \$10,300.00 in lost earnings. The claimant simply responded with a new figure-- \$8,993.00.

<sup>4</sup> Claimant also has a Final Payment claim under review at the GCCF.

## NPFC Determination

Under 33 U.S.C. § 2702(b)(2)(E) and 33 C.F.R. Part 136, a claimant must prove that her 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.

Claimant asserted that her 2010 earnings were reduced in the amount of \$7,300.00 due to the Deepwater Horizon incident. Claimant's W-2 statements show gross tips and wages from 2009 to 2010 reduced by \$3,989.24—a 15.62% decrease. Claimant's W-2 statements also show an 8% decrease in gross tips and wages from 2008 to 2009.

While the claim documentation supports a steady decline in wage and tip income from 2008 to 2009 and then from 2009 to 2010, the Claimant has not provided evidence linking her lost earnings to the Deepwater Horizon incident. The claim is denied because the alleged loss in the amount of \$7,300.00 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.

Claim Supervisor: 

Date of Supervisor's Review: *2/22/11*

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

Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED  
Number: [REDACTED]

5890/DWHZ  
Claim # N10036-0421  
23 February 2011

Re: Claim Number: N10036-0421

Dear [REDACTED]

The National Pollution Funds Center, in accordance with 33 C.F.R. Part 136, denies payment on the claim number N10036-0421 involving the Deepwater Horizon incident. Please see the enclosed Claim Summary/Determination Form for further explanation.

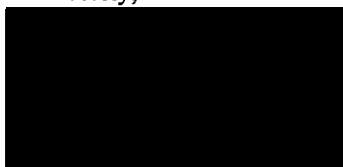
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-0421.

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	: 15 February 2011
Claim Number	: N10036-0421
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$6,000.00

### ***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 05 January 2011, [REDACTED] (Claimant) presented an Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) seeking \$6,000.00 in lost profits and earning capacity resulting from the Deepwater Horizon incident.

Based on a telephone conversation, the NPFC learned that the Claimant previously worked for a non-profit daycare center; her employment was terminated on 01 May 2010. The Claimant did not provide any additional information regarding her prior employment or the nature of her loss.

### ***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***

### **Procedural History**

On 13 October 2010, Claimant presented an emergency advance payment claim to GCCF in the amount of \$8,000.00 and was assigned Claimant ID [REDACTED] and Claim [REDACTED]. The claim was denied on 03 December 2010.

### **Claimant's Submission**

In support of her claim, Claimant presented an OSLTF Claim Form, proof of registration with the Alabama Career Center and IRS transcripts for her 2008 and 2009 1040 forms.


On 07 January 2011, NPFC sent a Request for Additional Information letter to the Claimant via certified mail, requesting additional information regarding the nature of her prior employment and claimed loss. In the letter, the NPFC informed the Claimant that if the information requested was not received within 14 days, the NPFC would proceed with adjudication based on the documentation presented. The NPFC verified that the letter was delivered on 14 January 2011. As of the date of this determination, the Claimant has not responded to NPFC's request for information.

### **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 not provided additional documentation to support her claim in order to demonstrate she has a loss of profits and earnings. Therefore, this claim is denied because the Claimant has failed to meet her burden of establishing a loss of profits and earnings as a direct result of the Deepwater Horizon incident.

Claim Supervisor: 

Date of Supervisor's Review: *2/22/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:



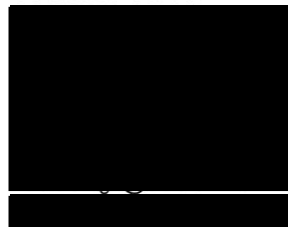
U.S. Department of  
Homeland Security

**United States  
Coast Guard**



Director  
National Pollution Funds Center  
United States Coast Guard

NPFC CA MS 7100  
US COAST GUARD



CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ  
Claim# N10036-0422  
24 February 2011



RE: Claim Number: N10036-0422

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with 33 C.F.R. Part 136, denies payment on claim number N10036-0422 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination Form for further explanation.

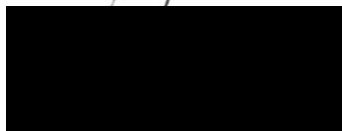
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-0422.

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	21 February 2011
Claim Number	N10036-0422
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
Claim Manager	[REDACTED]
Amount Requested	\$117,540.00

### ***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 05 January 2011, [REDACTED] (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Funds Center (NPFC) seeking \$117,540.00 in lost profits and earning capacity allegedly resulting from the Deepwater Horizon incident.

Claimant is a Louisiana licensed commercial fisherman. Claimant alleged that as a result of the Deepwater Horizon incident, he lost income and crab traps.<sup>1</sup>

### ***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 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 documentation to the NPFC:

- OSLTF claim form dated 31 December 2010;
- Claimant letter alleging presentment of \$92,000.00 in damages to GCCF, dated 31 December 2010;
- Copies of Claimant boat registration, commercial fisherman license, res vessel license, res crab trap license, res set line, and Louisiana drivers license;
- Claimant's 2009 U.S. individual income tax return (1040) with accompanying schedules;
- Claimant's 2008 U.S. individual income tax return (1040) with accompanying schedules;
- Claimant's 2007 U.S. individual income tax return (1040) with accompanying schedules; and
- Louisiana Trip Ticket Landings Data from 27 September 2006 to 24 March 2010.

Claimant seeks \$117,540.00 in lost earnings allegedly resulting from the Deepwater Horizon incident.

On 18 May 2010, Claimant filed a claim with the responsible party, BP, where his losses were calculated at \$5,098.00 a month. The Claimant received and was paid \$21,158.60 in compensation by BP.

On 27 August 2010, Claimant filed a six-month Emergency Advance Payment (EAP) claim for \$25,000.00 with the GCCF.<sup>2</sup> Claimant was issued GCCF Claimant ID [REDACTED] and Claim [REDACTED]. On 25 September 2010, Claimant was paid \$25,000.00 by the GCCF.

<sup>2</sup> Claimant incorrectly stated that he filed for \$92,000.00 with the GCCF.



In total, the Claimant has received \$46,158.60 in compensation prior to filing a claim with the NPFC. This information has been verified 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.

Claimant's alleged loss of \$117,540 in lost profits and earnings reflected the reported gross business income on line 7 of his 2009 1040 Schedule C. Claimant's actual business profits for 2009 after deducting direct and indirect expenses was \$14,778.<sup>3</sup> On the Claimant's 2009 1040, Claimant reported wages, salaries, and tips of \$15,355.00, taxable interest of \$64.00, and \$7,619.00 from the LA Department of Wildlife.<sup>4</sup> After adding these figures, it brings the Claimant's total 2009 income (including business profits) to \$37,816.00. This figure represents a reasoned estimation of the Claimant's lost profits and earnings for 2010.

Because Claimant has been paid \$46,158.60 to date by the Responsible Party, the NPFC has determined that he has been fully compensated for his estimated lost profits and earnings of \$37,816.00. This claim is accordingly denied.

Claim Supervisor 

Date of Supervisor's Review: *2/24/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

<sup>3</sup> Claimant's 2009 1040 Schedule C, line 31.

<sup>4</sup> Claimant's 2009 1040, line 7-22.

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# N10036-0422  
24 February 2011

RE: Claim Number: N10036-0422

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with 33 C.F.R. Part 136, denies payment on claim number N10036-0422 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 N10036-0422.

Mail reconsideration requests to:

Director (ca)  
NPFC CA MS 7100  
US COAST GUARD

Sincerely,  
[REDACTED]

Enclosure: Claim Summary/Determination Form

## CLAIM SUMMARY / DETERMINATION FORM

Date	21 February 2011
Claim Number	N10036-0422
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
Claim Manager	[REDACTED]
Amount Requested	\$117,540.00

### ***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 05 January 2011, [REDACTED] (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Funds Center (NPFC) seeking \$117,540.00 in lost profits and earning capacity allegedly resulting from the Deepwater Horizon incident.

Claimant is a Louisiana licensed commercial fisherman. Claimant alleged that as a result of the Deepwater Horizon incident, he lost income and crab traps.<sup>1</sup>

### ***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 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 documentation to the NPFC:

- OSLTF claim form dated 31 December 2010;
- Claimant letter alleging presentment of \$92,000.00 in damages to GCCF, dated 31 December 2010;
- Copies of Claimant boat registration, commercial fisherman license, res vessel license, res crab trap license, res set line, and Louisiana drivers license;
- Claimant's 2009 U.S. individual income tax return (1040) with accompanying schedules;
- Claimant's 2008 U.S. individual income tax return (1040) with accompanying schedules;
- Claimant's 2007 U.S. individual income tax return (1040) with accompanying schedules; and
- Louisiana Trip Ticket Landings Data from 27 September 2006 to 24 March 2010.

Claimant seeks \$117,540.00 in lost earnings allegedly resulting from the Deepwater Horizon incident.

On 18 May 2010, Claimant filed a claim with the responsible party, BP, where his losses were calculated at \$5,098.00 a month. The Claimant received and was paid \$21,158.60 in compensation by BP.

On 27 August 2010, Claimant filed a six-month Emergency Advance Payment (EAP) claim for \$25,000.00 with the GCCF.<sup>2</sup> Claimant was issued GCCF Claimant ID [REDACTED] and Claim [REDACTED]. On 25 September 2010, Claimant was paid \$25,000.00 by the GCCF.

<sup>2</sup> Claimant incorrectly stated that he filed for \$92,000.00 with the GCCF.



In total, the Claimant has received \$46,158.60 in compensation prior to filing a claim with the NPFC. This information has been verified 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.

Claimant's alleged loss of \$117,540 in lost profits and earnings reflected the reported gross business income on line 7 of his 2009 1040 Schedule C. Claimant's actual business profits for 2009 after deducting direct and indirect expenses was \$14,778.<sup>3</sup> On the Claimant's 2009 1040, Claimant reported wages, salaries, and tips of \$15,355.00, taxable interest of \$64.00, and \$7,619.00 from the [REDACTED].<sup>4</sup> After adding these figures, it brings the Claimant's total 2009 income (including business profits) to \$37,816.00. This figure represents a reasoned estimation of the Claimant's lost profits and earnings for 2010.

Because Claimant has been paid \$46,158.60 to date by the Responsible Party, the NPFC has determined that he has been fully compensated for his estimated lost profits and earnings of \$37,816.00. This claim is accordingly denied.

[REDACTED]  
Claim Supervisor

Date of Supervisor's Review: *2/24/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

<sup>3</sup> Claimant's 2009 1040 Schedule C, line 31.

<sup>4</sup> Claimant's 2009 1040, line 7-22.

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  
1/31/2011

BY MAIL AND EMAIL

[REDACTED]

[REDACTED]

Gulfport, MS 39501

RE: Claim Number: N10036-0423

Dear Mr. [REDACTED]:

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number N10036-0423 involving Deepwater Horizon. Please see 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 N10036-0423.

Mail reconsideration requests to:

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

Sincerely, [REDACTED]

[REDACTED]

Claims Manager  
U.S. Coast Guard

CLAIM SUMMARY / DETERMINATION FORM

Date	: January 27, 2011
Claim Number	: N10036-0423
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$2,000.00

**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 January 4, 2011, Mr. [REDACTED] (Claimant) presented a lost profits & earnings claim in the amount of \$2,000.00 to the National Pollution Funds Center (NPFC) for reimbursement. The Claimant asserted that he lost wages due to cutbacks on hours worked per week. The Claimant stated he went down from 40 hours per week to 32 hours per week as a fire place installer for [REDACTED] in Gulfport, Mississippi as a result of the Deepwater Horizon incident.

The Claimant filed a claim with the GCCF and was given claim number [REDACTED]. He also provided the denial letter from the GCCF 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 his claim, the Claimant submitted the following documentation:

- NPFC OSLTF Claim Form dated December 16, 2010
- Hardship letter dated December 4, 2010
- Copy of Claimant's wife's 2009 W-2
- 2009 U.S. Individual Income Tax Return
- Copy of GCCF denial letter
- Hardship letter to GCCF
- Hardship letter from employer ( [REDACTED] )
- Copy of weekly pay stubs from January 2010 through December 2010

## 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.

Prior to the incident in 2010, the Claimant worked an average of 37 hours per week compared to after the incident, when the Claimant worked an average of 36 hours per week. The claimant's pay rate remained unchanged during 2010 at \$9.00 per hour. No documentation has been presented to support that any increase in the hourly pay rate was due during 2010.

Contrary to representations made in the claim, the claimant did not work 40 hours per week prior to the incident; he worked 37. Furthermore, the claimant's hours did not decrease to 32 hours per week. Although there was a nominal decrease in weekly hours of about 3% (37 hours to 36 hours), there is no evidence this very small change was a direct result of the Deepwater Horizon Incident. As such, the claimant has failed to establish any amount of lost wages as a direct result of the incident.

Based on the documents and information presented, the Claimant has not established that a loss of profits or earnings capacity occurred as a direct result of the Deepwater Horizon.

Claim Supervisor: 

Date of Supervisor's review: *1/31/11*

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  
Arlington, VA 20598-7100  
Staff Symbol: (CA)  
Phone: [REDACTED]  
E-mail: [REDACTED]  
Fax: 202-493-6937

5890  
3/17/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]

[REDACTED]  
Gulfport, MS 39501

RE: Claim Number: N10036-0423

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 N10036-0423 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	: 3/14/2011
Claim Number	: N10036-0423
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$2,000.00

### ***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 January 4, 2011, [REDACTED] (Claimant) presented a lost profits & earnings claim in the amount of \$2,000.00 to the National Pollution Funds Center (NPFC) for reimbursement. The Claimant asserted that he lost wages due to cutbacks on hours worked per week. The Claimant stated he went down from 40 hours per week to 32 hours per week as a fire place installer for [REDACTED] in Gulfport, Mississippi as a result of the Deepwater Horizon incident but did not indicate a time period for which this lost profits was incurred. The NPFC denied the claim on January 31, 2010, because evidence provided to the NPFC shows that prior to the incident in 2010 he worked an average of 37 hours per week; after the incident he worked an average of 36 hours per week. This small decrease (3%) was nominal and there was no evidence that it was due to injury to or destruction of real property or personal property or the natural resources resulting from the incident.

The Claimant filed a claim with the GCCF and was given claim number [REDACTED]. He also provided the denial letter from the GCCF dated November 2, 2010.

### ***REQUEST FOR RECONSIDERATION:***

On February 17, 2011, the Claimant sent a facsimile request for reconsideration to the NPFC stating he would like the NPFC to reconsider his claim. It is important to note that the Claimant has not provided any new information in support of his claim for reconsideration.

### ***RECONSIDERATION CLAIM ANALYSIS:***

The claimant requested reconsideration via facsimile on March 9, 2011. To support his request for reconsideration, the claimant provided no new information. The Claimant originally requested compensation for lost wages resulting from a reduction in hours per week as a fireplace installer.



## 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 another analysis of the payroll information the Claimant did provide in his original claim submission. Below are two tables which identify the Claimant's pre-spill hours and the Claimant's post-spill hours.

**TABLE 1: Pre-spill Earnings**

<i>Pay Period</i>	<i>Total Hours Worked</i>
1/6/10	40.5
1/13/10	32
1/20/10	40
1/27/10	40
2/3/10	32
2/24/10	32.5
3/3/10	32
3/10/10	40
3/17/10	40
3/31/10	40
4/7/10	40
4/14/10	40.5
4/21/10	41.5

**TABLE 2: Post-spill Earnings**

<i>Pay Period</i>	<i>Total Hours Worked</i>
4/28/10	40
5/5/10	38
5/12/10	41.5
5/19/10	40.5
5/25/10	40.5
6/2/10	41
6/9/10	40
6/16/10	40
6/23/10	44
6/30/10	44.5
7/7/10	37.5
7/14/10	40
7/21/10	35
7/28/10	32
8/4/10	8

8/11/10	32
8/17/10	32
8/24/10	32.5

Based on the preceding tables, the NPFC has determined that the Claimant's hours were overall consistent after the Deepwater Horizon incident than prior to the incident. Additionally, there is no way for the NPFC to determine if any of the reduced hours were associated with the Claimant not attending work for one reason or another. Furthermore, the Claimant's hours did not reduce until August 2010 which the Deepwater Horizon incident was capped in August. 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.

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. Therefore this claim is denied upon reconsideration.

Claim Supervisor:



Date of Supervisor's review: *3/17/11*

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

Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]

[REDACTED]

5890/DWHZ  
Claim # N10036-0424  
09 March 2011

Re: Claim Number: N10036-0424

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 N10036-0424 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 N10036-0424.

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	08 March 2011
Claim Number	N10036-0424
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
Claim Manager	[REDACTED]
Amount Requested	\$14,600.00

### **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. 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 January 2011, Mr. Charles D. Coder (Claimant) presented an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) seeking \$14,600.00 in lost profits & earnings resulting from the Deepwater Horizon oil-spill.

Claimant's Optional OSLTF Claim Form asserted that the "BP oil spill caused me to lose a portion of my income. Incentive compensation that is tied to company profits and volumes was not met due to volume declines."<sup>1</sup> The Claimant's description of the impact alleged that the hospital patient volumes were affected as "tourists come to the beaches and some end up in the hospital...because of the spill, they didn't come to Southern Alabama."<sup>2</sup>

Claimant served as "a senior executive for the [REDACTED] which operates an acute care hospital in Foley, Alabama" which "suffered a loss of income due to a marked decrease in tourists traveling to the Gulf Coast."<sup>3</sup> As the Chief Financial Officer (CFO), the Claimant illustrates his alleged losses as the result of "the broad reduction in tourism during the second fiscal quarter of 2010, admissions and, accordingly, profits fell far short of planned results."<sup>4</sup> Subsequent to these events, the Claimant advised that he "wil not be paid anything under the [REDACTED] *Incentive Compensation Plan*."<sup>5</sup>

A letter from the current [REDACTED] CFO, Mr. Keith Newton, stated that "this employee's compensation is composed of a base salary, paid bi-weekly, and an annual incentive compensation payment that based on several metrics, can account for between 30-50% of the base salary."<sup>6</sup> He further stated that "if trends during the first quarter 2010 were

<sup>1</sup> See, Claimant's Optional OSLTF Claim Form, dated 13 December 2010, received 04 January 2011

<sup>2</sup> *Id*

<sup>3</sup> See, Letter from Claimant as Chief Financial Officer to BP Claims Center dated 01 November 2010

<sup>4</sup> *Id*

<sup>5</sup> *Id*

<sup>6</sup> See, Letter from [REDACTED] as Chief Financial Officer to BP Claims Center dated 01 November 2010

applied to the remainder of the year this individual would have received additional income of approximately \$16,000.00 when incentive compensation is paid out in March 2011.”<sup>7</sup>

### ***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.

Under 33 C.F.R. §136.9, Falsification of claims, 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.

### ***DETERMINATION OF LOSS***

#### **Claimant's Submission to the OSLTF**

Claimant provided various documents to substantiate the claim:

- NPFC Optional OSLTF Claim Form, dated 13 December 2010;
- Typed letter from Claimant to NPFC dated 13 December 2010;
- Typed letter on letterhead from Claimant to BP Claims, dated 01 November 2010;
- Typed letter on letterhead from [REDACTED] CFO to the GCCF;
- Memo from [REDACTED], VP and CFO of [REDACTED], detailing prospective bonus payments for 2010, attachments entitled 2010 CFO Incentive Compensation, Coder, Chuck, Effective date 01 January 2010, memo dated 30 March 2010;
- Two (2) Monitor Check Master Inquiry statements, dated 06 March 2009 and 01 March 2010, respectively;
- Copy of the GCCF denial letter from Claimant, Claimant Identification Number: [REDACTED] dated 30 November 2010, determination that Claimant "did not demonstrate that you lost profits or income as a direct result of the Spill;"
- 2008 W2 Wage and Tax Statement;
- 2008 and 2009 Form 1040, U.S. Individual Income Tax Return, with attachment forms and schedules.

Claimant did present a claim to the RP (GCCF) on 04 November 2010 for the amount of \$14,600.00. This claim was denied on 30 November 2010 as evidenced by the Claimant's GCCF denial letter.

#### **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.

During the adjudication of the claim, the NPFC spoke with the current Chief Executive Officer of [REDACTED], [REDACTED], who advised that he knew of the claims that had been submitted although he was unaware as to why there would be a claim from this Claimant, dated November 2010, on [REDACTED]



letterhead since he was not employed there at the time he submitted the letter on the company letterhead and signed as the Chief Financial Officer. According to the current Chief Financial Officer, [REDACTED], Claimant was transferred to another hospital in Virginia owned by the parent company, [REDACTED] in Franklin, Tennessee on or about May 1, 2010. The current CEO also advised that incentives had yet to be calculated or announced and the values reported/claimed to the OSLTF are indeed prospective and speculative. He advised that he would request that the current CFO, [REDACTED] contact the NPFC to discuss the various claims on behalf of employees and the organization.<sup>8</sup>

Subsequent to the conversation with the CEO, the NPFC made efforts to contact the current CFO with regard to this matter. Upon making contact with [REDACTED], he advised that every Chief Officer of the facility had filed a claim, with the exception of the CEO, who had arrived in late July or August 2010. He further advised that he did type the letter that substantiated what the Claimant had presented as the oil-spill had caused a decrease in patient volume due to decreases in tourism, which was combined with the economic issues thereby resulting in an increased number of self-pay and uninsured patients due to unemployment.

Upon review of all data presented to the NPFC in support of this claim, the NPFC was able to confirm that there was not a loss of income for the Claimant 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 submitted a letter from the current CFO that explains that the Claimant, as part of senior management, his salary compensation is comprised of a base salary and an annual incentive compensation payment that is based on several metrics and that the compensation payment can account for between 30%-50% of the Claimant's base salary. He further stated that the incentive compensation payment is based primarily on the hospital's attainment of their 'planned' net profit before taxes, interest, depreciation and amortization as well as a few other identified goals.

After the NPFC reviewed the plan and associated documentation and graphs, the incentive compensation plan is based on 'projections' and includes many factors above and beyond patient volume, for instance (i.e., the plan includes considerations for bad debt expenses and charity discounts, the net accounts receivable based on age in days, cash receipts, overall net revenues and quality of service). Additionally, the current CFO confirmed that the incentive compensation plan does not pay out until approximately March 2011, therefore the Claimant has not even realized his alleged loss based on the current claim, and, the incentive compensation plan amount is purely speculative and prospective at the time of this adjudication and does not constitute a loss under the Oil Pollution Act (OPA).

Furthermore, the Claimant's evidence demonstrates that should there be an alleged loss at some point in time in the future, that the hospital's annual incentive compensation plan is not strictly based on patient volume therefore the Claimant has not met his burden by a preponderance of the evidence that any loss would be a consequence of the injury, destruction or loss of real property, personal property, or natural resources as a result of a discharge or substantial threat of a discharge of oil.

<sup>8</sup> Conversation between [REDACTED]



In closing, it is important to note that the Claimant presented a letter in his claim submission dated November 1, 2010 on [REDACTED] letterhead and signed in the capacity as Chief Financial Officer (CFO) when in fact he was not the CFO of that hospital at the time of the writing since he departed that hospital in May 2010 as confirmed by the current CFO, Mr. Newton when contacted by the NPPC. The claims regulations state in relevant part.....” 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”.

This claim is denied because the alleged loss is prospective and speculative and therefore not OPA compensable, as well as, the Claimant has not demonstrated a loss due to the injury, destruction or loss of real property, personal property, or natural resources as a result of a discharge or substantial threat of a discharge of oil.

Claim Supervisor [REDACTED]

Date of Review: *3/9/11*

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

Fax: 202-493-6937

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ  
Claim# N10036-0425  
18 April 2011

C/O: [REDACTED]

RE: Claim Number: N10036-0425

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 claim # N10036-0425. 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 N10036-0425.

Mail reconsideration requests to:

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

[REDACTED]  
Marine Science Technician I  
U. S. Coast Guard  
Claims Manager

Enclosure: Claim Summary/Determination Form  
Summary of Documentation Provided

09/14/11

FOIA2011-3380-00001705

CLAIM SUMMARY/DETERMINATION FORM

Date	16 April 2011
Claim Number	N10036-0425
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits & Earning Capacity
Claim Manager	[REDACTED]
Amount Requested	\$23,000.00

**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 04 January 2011, [REDACTED] (Claimant) through his legal representative presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Funds Center (NPFC). The OSLTF claim form alleged \$23,000.00 in lost profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

Claimant is the owner and executive chef at [REDACTED]<sup>1</sup> a restaurant in Katy Texas. Claimant opened the restaurant in January 2009.<sup>2</sup> Claimant's legal representative characterizes the restaurant as a "thriving business" that served "some of the freshest and reasonably priced seafood in [Houston and surrounding areas]."<sup>3</sup> Claimant's legal representative indicated that as a result of the restaurant's success, it moved from a smaller location (seating six tables) to [REDACTED] (seating 17 tables) in March 2010.<sup>4</sup>

Claimant's legal representative alleged that the Claimant purchased fresh seafood from suppliers who acquired this product from the Louisiana Gulf Coast.<sup>5</sup> As this legal representative argues, the Deepwater Horizon oil spill resulted in extensive closures of fishing grounds in the Gulf of Mexico which led to a decrease in the fresh Gulf seafood that the Claimant relied upon in his restaurant.<sup>6</sup> The argument further stated that the Claimant was forced to purchase fresh seafood at higher cost and even resort to frozen seafood, which customers who had come to appreciate the fresh seafood in the Claimant's cooking, did not like.<sup>7</sup> Claimant's legal representative also points out that a fear of contaminated Gulf seafood damaged Claimant's business.<sup>8</sup>

<sup>1</sup> Letter from Claimant, dated 08 March 2011, responding to the NPFC's "various areas of inquiry."

<sup>2</sup> Id.

<sup>3</sup> Submittal letter of claim, from the [REDACTED] dated 12 December 2010 with attachments.

<sup>4</sup> Id.

<sup>5</sup> Id.

<sup>6</sup> Id.

<sup>7</sup> Id.

<sup>8</sup> Id.

Allegedly as a result of increasing costs and decreasing revenues, the Claimant fell behind on his rent and was served a Notice to Vacate at [REDACTED] Suite E on 20 September 2010.<sup>9</sup> Claimant's legal representative indicated that the Claimant "was forced to shut down the business and vacate the premises . . . and [though closed he] continues to deal with the repercussions of the BP disaster and has many outstanding invoices to the many vendors used by the establishment."<sup>10</sup>

### ***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 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.

<sup>9</sup> Notice to Vacate property at [REDACTED] dated 20 September 2011.

<sup>10</sup> Letter from Claimant, dated 08 March 2011, responding to the NPFC's "various areas of inquiry."

## **DETERMINATION OF LOSS**

### **Claimant's Submission**

To support this claim, Claimant through his legal representative submitted the documentation detailed in Enclosure (2).

On 25 August 2010, Claimant presented a one-month Emergency Advance Payment claim for \$23,281.41 with the GCCF. He was assigned Claimant ID [REDACTED] and Claim [REDACTED]. On 21 October 2010, this claim was denied by the GCCF.<sup>11</sup>

Claimant then presented this claim for \$23,000.00 in lost profits and earnings capacity with the NPFC.

### **NPFC Determination**

This claim is denied. 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 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.

In the course of adjudicating this claim, the NPFC uncovered information that either undermined or contradicted the Claimant's assertions.

Claimant's legal representative alleged that the Claimant moved his restaurant in March 2010 to the [REDACTED] property as a result of the restaurant's success.<sup>12</sup> However, a conversation with [REDACTED] the Claimant's landlord at the prior smaller location, revealed that the Claimant had breached his lease agreement and left that property sometime in March 2010, owing both past and future rents.<sup>13</sup> A "Final Default Judgment" issued by the 133<sup>rd</sup> Judicial District Court in Harris County, Texas of and from Defendant, [REDACTED] in the principal sum of \$91,174.00 for damages for the breach of the Lease" to be recovered by "the Plaintiff, [REDACTED]"<sup>14</sup> supports the DSA Commercial information about the Claimant's breach of the lease.

<sup>11</sup> GCCF denial letter Re: Claimant's Emergency Advance payment claim, dated 21 October 2010.

<sup>12</sup> Submittal letter of claim, from the [REDACTED] dated 12 December 2010 with attachments.

<sup>13</sup> PHONECON between [REDACTED] and NPFC on 31 March 2011. The conversation further revealed that there was an insurance claim filed regarding a breaking and entering complaint while the business had been leasing the location and that this incident had been considered "highly suspicious."

<sup>14</sup> Judgment documentation retrieved from <http://www.hcdistrictclerk.com> (last visited 28 March 2011).

The NPFC also contacted the Claimant's landlord at [REDACTED]<sup>15</sup>. Landlord indicated that during the Claimant's first week of business, [REDACTED] attorney and two sheriffs showed up at the property and served the Claimant with a judgment for taking equipment from the old location. The landlord for the [REDACTED] property indicated that after this equipment was retrieved, the Claimant began to fall behind in rent, resulting in the 20 September 2011 Notice to Vacate the [REDACTED] property. Landlord further indicated that after the Notice to Vacate was served, he noticed that the premises were locked up and stripped of items of value (TV, cash registers, and tables). Landlord stated that he then cleared the property, placed what he gathered in storage, and never heard from the Claimant again.<sup>16</sup> Landlord also indicated that vendors and suppliers with whom the Claimant had conducted business continued to show up at the property.<sup>17</sup>

The Claimant asserts that he suffered a loss of profits due to the destruction of, or injury to the natural resource resulting from the Deepwater Horizon incident; however the information obtained by the NPFC reflects that the loss of profits were due to other factors and financial and business decisions made by the Claimant.

Further, Claimant asserts its loss of profits at \$23,000. The NPFC did review the receipts provided by the Claimant but is unable to make a determination on the quantification of the alleged losses because the documents are incomplete and/or irrelevant. In a letter to the NPFC dated March 8, 2011, Claimant asserts that he could not obtain the necessary documentation to support the claim because the landlord "took possession of the premises and I was not permitted to access it to obtain my personal documents." However, the landlord indicated that he cleared the property, placed what he gathered into storage and never heard from the Claimant again. Thus, it appears that Claimant made no effort to obtain or preserve documents related to the business.

Additionally, based on conversations the NPFC had with the Claimant's food suppliers, [REDACTED] they refuted the Claimant's assertions that he bought and prepared fresh Gulf seafood. Long Hing Supply indicated that it only buys and sells frozen shrimp which it admittedly could not verify as coming from the Gulf.<sup>18</sup> Four Seasons indicated that the items indicated on an invoice from 09 June 2009, which the Claimant had provided, were actually Tiger Prawns imported from Asia.<sup>19</sup> Furthermore, the Claimant's vendor invoices failed to demonstrate the weight amounts or price changes that he alleged in his claim submission.

For the reasons stated above this claim is denied on the grounds that the Claimant has made false statements material to this claim submission in order to obtain damages 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. Misrepresentation of facts is subject to prosecution under Federal law, including 18 U.S.C. §§ 287 and 1001 and 31 U.S.C. § 3729.

<sup>15</sup> PHONECON between [REDACTED] and the NPFC on 31 March 2011.

<sup>16</sup> Landlord further indicated that had Claimant requested items which had been placed in storage, these items would have been made available. This statement contradicts the statement made by Claimant's legal representative that "the landlord has failed to comply with [Claimant's] requests for copies of the lease and payment receipts [which was among the property disposed of by the landlord]." Claimant's letter to the NPFC, dated 08 March 2011, in response to NPFC's letter requesting additional information.

<sup>17</sup> Landlord states that the security installer, in an attempt to recoup losses from unpaid invoices, stripped wire which he had installed in the property.

<sup>18</sup> PHONECON between [REDACTED] and the NPFC, 31 March 2011.

<sup>19</sup> PHONECON between [REDACTED] and the NPFC, 31 March 2011.

Claim Supervisor 

Date of Supervisor's Review: *4/18/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:



Enclosure (2): Claimant Documentation before the NPFC

1. OSLTF claim form, dated 12 December 2010, received 04 January 2011.
2. Submittal letter of claim, from the Gallagher Law Firm dated 12 December 2010 with attachments:
  - a. Description of the nature and extent of damages claimed; Description of how the incident caused the damages; and Description of action taken to avoid/minimize damage
  - b. Itemization of Sales (1 August 2009 through 1 November 2010)
  - c. Itemization of four documents provided
3. GCCF denial letter to Catfish Mike's, dated 21 October 2010
4. The Gallagher Law Firm letter of 25 October 2010 to [REDACTED] Administrator, Gulf Coast Claims Facility, with fax receipt
5. The Gallagher Law Firm letter of 12 October 2010 to [REDACTED] Administrator, Gulf Coast Claims Facility
6. Sales receipt summaries (some duplicates) for OMG It's [REDACTED] TX, reporting on—  
8/1/2009 – 9/1/2009  
9/1/2009 – 10/1/2009  
10/1/2009 – 11/1/2009  
2/1/2009 – 3/1/2010  
3/1/2010 – 4/1/2010  
4/1/2010 – 5/1/2010  
5/1/2010 – 6/1/2010  
6/1/2010 – 7/1/2010  
7/1/2010 – 8/1/2010  
8/1/2010 – 9/1/2010  
9/1/2010 – 10/1/2010  
10/1/2010 – 11/1/2010
7. Invoices from [REDACTED] dated 10/1/2009 and 10/7/2009
8. Invoice from [REDACTED] dated 2/17/2010
9. Invoices from [REDACTED] dated 5/26/2010, 20 May 2010 (not legible) and 24 May 2010
10. [REDACTED] 9/20/2010
11. [REDACTED] invoice dated 6/24/2009
12. [REDACTED] invoice dated 4/30/2010
13. [REDACTED] invoice dated 6/10/2010
14. Gulf Coast Claims Facility Protocol for Emergency Advance Payments, August 23, 2010
15. Undated download of 'Deepwater Horizon oil spill' from Wikipedia
16. Press release 'Gulf Coast Claims Facility now Processing Oil Spill Claims' dated August 23, 2010
17. Letter of representation from [REDACTED] dated 27 January 2011
18. Letter requesting time extension from [REDACTED] dated 08 February 2011
19. Letter requesting a further time extension from [REDACTED] dated 22 February 2011
20. Letter from [REDACTED] dated 08 March 2011, detailing documentation provided in response to the NPFC's letter requesting additional information
21. Claimant's P&L's from 2009 & 2010
22. Claimant menu
23. Letter from Claimant, dated 08 March 2011, indicating difficulty of retrieving requested information
24. 2010 1120 S
25. Handwritten letter addressed to whom it may concern
26. Franchise tax certification
27. Certificate of formation of for-profit corporation
28. IRS tax ID # for Claimant
29. Letter from Claimant, dated 08 March 2011, responding to the NPFC's "various areas of inquiry"

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  
2/8/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED  
Number [REDACTED]

[REDACTED]

RE: Claim Number: N10036-0426

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number N10036-0426 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 N10036-0426.

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

09/14/11

FOIA2011-3380-00001712

## CLAIM SUMMARY / DETERMINATION FORM

Date	: 2/8/2011
Claim Number	: N10036-0426
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$4,000.00

### ***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 (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 January 4, 2011, [REDACTED] (Claimant) presented a lost profits & earnings claim in the amount of \$4,000.00 to the National Pollution Funds Center (NPFC) for reimbursement. [REDACTED] asserted she lost wages due to the Deepwater Horizon incident. [REDACTED] stated that her employer, [REDACTED] was not able to pay her because of the oil-spill so she sought alternate employment. It is important to note that the Claimant worked as a care giver to [REDACTED] wife from January 2, 2010 through April 19, 2010 as stated by both the claimant and [REDACTED]

Claimant further asserted that she was hired through a temporary employment agency on or about April 21, 2010 and she stated her employment ended on May 28, 2010 because the occupation was cut short.

Claimant presented a claim to the GCCF. The GCCF Claimant Identification number is [REDACTED]. GCCF denied the claim on December 14, 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 her claim, the Claimant submitted the following documentation:

- Handwritten letter dated 12/20/10 whereby Claimant requested \$4,000.00
- Handwritten letter dated 12/20/10 from [REDACTED]
- Copy of 2009 Form 1040
- Copy of Assignment Card from [REDACTED] which shows start date and expected end date
- Copy of Claimant bank statement for period of April 24, 2010 through May 21, 2010
- Copy of payroll stub for week ending April 30, 2010 by [REDACTED]
- Copy of GCCF denial letter dated 12/14/10
- Copy of Social Security Card and AL Drivers License

#### **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 provided by Claimant does not establish 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. [REDACTED] employment as a care giver for [REDACTED] ended prior to the Deepwater Horizon incident based upon both statements provided. Additionally, the evidence provided indicates that [REDACTED] hired the claimant with a start date of April 21, 2010 and an expected end date of May 28, 2010. Therefore the Claimant's alleged loss of her temporary employment has also not been demonstrated to be a the direct result of the Deepwater Horizon incident.

Claim Supervisor [REDACTED]

Date of Supervisor's review: *2/8/11*

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  
5890  
Claim No. N10036-0427  
10 January 2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]

RE: Claim Number: N10036-0427

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with 33 C.F.R. Part 136, denies payment on the claim number N10036-0427 involving Deepwater Horizon. 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 N10036-0427.

Mail reconsideration requests to:

Director (ca)  
NPFC CA MS 7100  
US COAST GUARD  
[REDACTED]

Sincerely,  
[REDACTED]

Lieutenant Commander  
U.S. Coast Guard  
Claims Manager

Enclosure: (1) Claim Summary / Determination Form  
(2) List of Documentation Provided by Claimant

09/14/11

FOIA2011-3380-00001716



CLAIM SUMMARY / DETERMINATION FORM

Date : 10 January 2011  
Claim Number : N10036-0427  
Claimant : [REDACTED]  
Type of Claimant : Private (US)  
Type of Claim : Loss of Profits and Earning Capacity  
Claim Manager : [REDACTED]  
Amount Requested : \$7,000,000.00

**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 (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 05 January 2011, [REDACTED] (Claimant), submitted a written request for removal and clean-up costs resulting from the Deepwater Horizon incident in the amount of \$7,000,000.00 against the Oil Spill Liability Trust Fund (OSLTF). Claimant alleges that he “develop[ed] technology that was used by the B.P. to contain the source of the well, as well as the oil that poured into the ocean because of the Deepwater Horizon Blowout.”<sup>1</sup> Claimant alleges that his supporting documentation “verifi[es] the 2 months of physical labor it took me to design and draft 3 new shut off valves in the new blowout preventer . . . [which] contained and cleaned up 3,260,000 barrels of oils [sic] as well as stopped the oil leak successfully.”<sup>2</sup> Claimant seeks removal and clean-up costs for his contribution of a concept to stop the oil leak.<sup>3</sup>

**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 removal costs and damages resulting from the discharge of oil into navigable waters and adjoining shorelines, as described in Section 2702(b) of OPA. A responsible party’s liability will include “removal costs incurred by any person for acts taken by the person which are consistent with the National Contingency Plan.” 33 U.S.C. § 2702(b)(1)(B).

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, to pay claims for uncompensated removal costs that are determined to be consistent with the National Contingency Plan and uncompensated damages. Removal costs are defined as “the costs of removal that are incurred after a discharge of oil has occurred or, in any case in which there is a substantial threat of a discharge of oil, the costs to prevent, minimize, or mitigate oil pollution from an incident”.

<sup>1</sup> Claimant’s Letter to the GCCF dated 21OCT10.

<sup>2</sup> Id.

<sup>3</sup> In his Letter to GCCF dated 21OCT10, Claimant expressly denies claiming any removal or clean-up costs arising out of the Deepwater Horizon incident.

09/14/11

**ENCLOSURE**

FOIA2011-3380-00001717

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 submitted the documents listed in enclosure (2).

Claimant presented a claim for \$7,000,000.00 to the OSLTF seeking removal costs. The basis for his claim is the alleged time and effort he spent developing technology that he believes was employed by B.P. to stop the oil leak from the well head that caused the Deepwater Horizon incident. Thus, Claimant seeks removal and clean-up costs for his contribution of a concept to stop the oil leak.<sup>4</sup>

Claimant submitted his claim to the GCCF and was assigned Claimant ID # [REDACTED]. Claimant had two claims, one for Lost Earnings or Profits under Claim # [REDACTED] and another for Removal and Cleanup Costs under Claim # [REDACTED]. Both of his GCCF claims were denied by the GCCF pursuant to GCCF denial letters issued 24 November 2010 and 04 December 2010. The NPFC independently verified that the Claimant was denied by the GCCF.

#### **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. The NPFC considered all the documentation submitted by the Claimant.

The claim is denied because the alleged loss in the amount of \$7,000,000.00 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 is a request for compensation of his time and effort in providing a product and concept to stop the oil-spill leak, and not the result of the Deepwater Horizon incident. Such efforts to provide ideas and concepts for stopping the oil-spill leak are not damages that may be compensated from the OSLTF.

Claim Supervisor: [REDACTED]

Date of Supervisor's review: 1/10/11

Supervisor Action: DENIAL APPROVED

Supervisor's Comments:

<sup>4</sup> In his Letter to GCCF dated 21OCT10, Claimant expressly denies claiming any removal or clean-up costs arising out of the Deepwater Horizon incident.

Enclosure (2)

Documentation Submitted to the NPFC by Claimant N10036-0427

- letter from Claimant to GCCF dated 21OCT10
- copy of his Social Security Card and Florida Driver's License;
- web-page print-out of GCCF's claims process; a web-page print-out of BP containment designs/equipment
- Claimant's exhibit A (a map displaying the effort to cap the leaking BP well)
- Claimant's handwritten letter to GCCF dated 17OCT10
- letter from [REDACTED] regarding Claimant's submission to BP;
- [REDACTED] letterhead with handwritten instructions from Claimant to [REDACTED]
- billing letter from [REDACTED] to GCCF;
- page of key contact numbers; Claimant handwritten points A-K
- google map of the Gulf of Mexico, North Atlantic Ocean and the Caribbean Sea
- Claimant handwritten points 1-25
- GCCF letter to Claimant on assignment of claim from BP to GCCF; list of GCCF claims site offices
- newspaper article entitled "CAPPED"
- 6 pages on assorted newspaper articles on the BP oil spill; 5 pages web-page print-out on BP's technical updates to stop the oil leak
- Alternative Technology Response Form
- Claimant handwritten letter to BP requesting that BP consider his design for use
- Claimant handwritten letter to BP about presentation of his design
- Claimant handwritten letter to President "Obama [sic];" handwritten letter from a "firm" alleging that BP used Claimant's design to "create the Final Product now titled the New Sealing Cap currently deployed in the Gulf of Mexico"
- handwritten points 1-12; 2 letters from Claimant listing Claimant's former employment;
- employment letter for Claimant from [REDACTED]
- employment letter for Claimant from [REDACTED]
- Claimant's letter of request for employment verification
- 2 web-page print-outs on [REDACTED] & [REDACTED]
- web-page print-out of contact information for [REDACTED]
- certification of registration for Flagrant Furniture Designs
- letter from [REDACTED] to Claimant dated 2DEC99
- Claimant [REDACTED] letter
- [REDACTED] chronology
- Claimant letter dated April 2002 on furniture designs
- sketch of Dodge crew chief
- sketch exotic patio 8 piece set
- sketch tropical patio set
- sketch Florida palm
- picture of man holding design
- yahoo webmail print out
- email print-out to Whitehouse
- faxed handwritten letter to [REDACTED]

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# N10036-0428  
18 February 2011



RE: Claim Number: N10036-0428

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with 33 C.F.R. Part 136, denies payment on claim number N10036-0428 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination Form for further explanation.

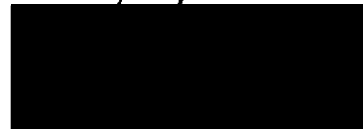
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-0428.

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	17 February 2011
Claim Number	N10036-0428
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. 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 05 January 2011, [REDACTED] (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Fund Center (NPFC) seeking \$60,000.00 in lost profits and earnings allegedly resulting from the Deepwater Horizon incident.

The Claimant worked for [REDACTED] as a welder on offshore gas pipelines. He asserted that [REDACTED] reduced his hours and laid him off as a result of the Deepwater 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.
- (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:

- OSLTF claim form dated 05 Jan 2011;
- Claimant letter dated 17 Nov 2010;
- Copy of Claimant's driver license and social security card;
- 2008 W-2's from [REDACTED], [REDACTED], & [REDACTED];
- 2009 W-2's from [REDACTED], [REDACTED];
- Earnings statements from [REDACTED] for period ending 02 May 2010, 11 April 2010, 18 April 2010, 25 April 2010;
- Pay stub from [REDACTED] for period ending 17 January 2010, 24 January 2010, 07 February 2010, 14 February 2010, 21 February 2010, 07 March 2010;
- Letter from [REDACTED] dated 18 November 2010;
- GCCF denial letter dated 30 Nov 2010; and
- Alabama Conservation License for [REDACTED]

Claimant seeks \$60,000.00 in lost earnings and wages allegedly resulting from the Deepwater Horizon incident.

On 03 November 2010, the Claimant filed a six-month Emergency Advance Payment (EAP) claim for \$29,500.00 in lost earnings with the GCCF. He was issued GCCF Claimant ID [REDACTED] and Claim [REDACTED]. On 01 December 2010 Claim [REDACTED] was denied by the GCCF. This information was verified by the NPFC.<sup>1</sup>

<sup>1</sup> The Claimant has an Interim Payment claim under review at the GCCF.



## 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 of the documentation submitted by the Claimant.

The Claimant alleged that he lost hours and was laid off at [REDACTED] as a result of the Deepwater Horizon incident. On 17 January 2011, the NPFC sent the Claimant a letter requesting, among other things, documentation from his employer explaining the relationship between Claimant's reduction in hours and layoff with the Deepwater Horizon incident. To date, the Claimant has provided no response to this letter.<sup>2</sup>

In his original submission, there is a letter from [REDACTED] confirming that the Claimant worked as a welder with [REDACTED] from 16 April through 20 June 2010. The letter also indicated that the reason for the Claimant's departure is "lack of work."<sup>3</sup> The Claimant's alleged financial loss is a result of his employer's business decision to terminate his employment not the direct result of the Deepwater Horizon incident therefore this claim is denied as the Claimant has failed to meet his burden in demonstrating a loss of profits and earnings as a result of the Deepwater Horizon.

Claim Supervisor: [REDACTED]

Date of Supervisor's Review: *2/18/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

<sup>2</sup> NPFC records indicate that the Claimant received and signed for the letter on 22 January 2011.

<sup>3</sup> Letter from [REDACTED] dated 18 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

Fax: 202-493-6937  
5890  
3/06/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]



RE: Claim Number: N10036-0429

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 N10036-0429 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 N10036-0429.

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  
09/14/11

FOIA2011-3380-00001724

## CLAIM SUMMARY / DETERMINATION FORM

Date	: February 28, 2011
Claim Number	: N10036-0429
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$85,000.00

### **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 January 5, 2011, [REDACTED] (Claimant) presented a lost profits & earnings claim in the amount of \$85,000.00 to the National Pollution Funds Center (NPFC) for reimbursement. The Claimant asserted that he lost wages from his work assignment as a welder and pipefitter for offshore gas pipelines while employed at [REDACTED] as a result of the Deepwater Horizon incident.

The GCCF assigned Claimant identification [REDACTED]. The Claimant provided the GCCF denial later dated December 6, 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) 14/11 That real or personal property or natural resources have been injured, destroyed, or lost. FOIA 2011-0590-00001-725

- (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 undated and signed by [REDACTED]
- U.S. Individual Income Tax Return, Form 1040 for 2008 and 2009;
- Weekly Payroll Summary report from [REDACTED] from 1/10/10 to 6/30/10;
- Correspondence from [REDACTED] dated November 18, 2010;
- GCCF claim denial letter dated December 6, 2010;
- Personal narrative by Claimant to the GCCF dated November 17, 2010;
- W-2 Wage and Tax Statement for 2008 and 2009;
- 2010 year end Unemployment benefits summary;
- Copy of Technip ID card.

### **NPFC Determination**

Under 33 CFR 136.105(a), 33 CFR 136.105(c) 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 and the claim must be signed in ink by the Claimant.

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.

Upon initial review, the NPFC contacted [REDACTED] Claimant's former employer, and spoke to [REDACTED] of the Human Resource Department. [REDACTED] stated that the Claimant was released from employment with [REDACTED] due to the end of a contractual relationship with [REDACTED] on a project the Claimant was assigned to. As per [REDACTED] the Deepwater Horizon incident had no bearing on the Claimant's termination from [REDACTED]

Based on consideration of all documents and information presented as well as correspondence with the employer, the Claimant has not demonstrated a loss of profits or earnings capacity as a direct result of the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of discharge of oil. Therefore, this claim is denied.

Claim Supervisor: [REDACTED]

Date of Supervisor's review: 3/6/11

Supervisor Action: *Denial approved*

Supervisor's Comments:

## CLAIM SUMMARY / DETERMINATION FORM

Date	: 1/13/2011
Claim Number	: N10036-0430
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$22,500.00

### ***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***

The claimant is a fisherman in the Gulf of Mexico area. He seeks \$22,500 for income he says he lost because of the BP oil spill. To support his claim, he provided an Optional OSLTF Claim Form, his last pay stub, a 2009 social security statement, an unemployment benefits statement from 11/9/2010, and his 2009 federal income tax return.

### ***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 and the exclusive economic zone. Damages include damages equal to the loss of profits or impairment of earning capacity due to the injury, destruction, or loss of real property, person property, or natural resources, Section 2702(b)(2)(E) of OPA.

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, to pay claims for uncompensated damages. 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 claims regulations at 33 C.F.R. §136.231 and .235 provide the additional requirements for 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 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:**

Mr. [REDACTED] stated on his Optional OSLTF Claim Form that he "wasn't able to fish because of the Oil Spill." He also states that "they stop us from working" and that he "wasn't able to work." He also stated that the responsible party denied his claim.

The NPFC contacted the claimant's employer, [REDACTED], to confirm his allegations. The claimant's employer stated that the fishing fleet never stopped working because of the oil spill and the claimant continued with his employment as a fisherman with [REDACTED] throughout the entire 2010 fishing season from Mid-April through November when the fishing season ended. [REDACTED] confirmed that the claimant was paid for fishing the entire season, but stated that the claimant probably had a reduction in pay. [REDACTED] stated that the claimant received a final paycheck dated 11/5/10 and he received a safety bonus of \$1,000 in December, neither of which was disclosed or provided to the NPFC by the claimant, so we do not know how much he actually earned in 2010 from fishing. The unemployment document presented by the claimant was processed in November, after the fishing season ended. According to his employer most of the fishermen receive unemployment during the off-season and the claimant's sister confirmed that the claimant also does so.

The claimant stated on the OSLTF claim form that the responsible party denied his claim. However, the NPFC learned via telephone conversation with his sister, [REDACTED], that BP paid him at least \$2,500 for the month of April. She stated that he received no other payments. The NPFC also obtained information from the Gulf Coast Claims Facility (GCCF) reflecting that it paid the claimant \$16,000 as an emergency advance payment. The total of these payments puts his income in line with the amount he earned in 2009.

The claimant misrepresented his claim to the OSLTF because he was employed in fishing and paid for the entire 2010 fishing season. And he has not provided evidence to the NPFC that he suffered a loss of profits due to the BP oil spill. Further, he was compensated by the responsible party, both BP and the GCCF, for the claims he presented to them.

Under 33 C.F.R. 136.9, Falsification of claims, 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 claim is denied.

Claim Supervisor:



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

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  
4200 Wilson Blvd. Suite 1000  
Arlington, VA 20598-7100  
Staff Symbol: (CA)  
Phone: [REDACTED]  
E-mail: [REDACTED]  
Fax: 202-493-6937  
5890  
1/19/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]

[REDACTED]  
[REDACTED]  
Beatrice, AL 36425

RE: Claim Number: N10036-0430

Dear Mr. [REDACTED]:

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number N10036-0430 involving the Deepwater Horizon incident. Compensation is denied because you failed to prove a loss of income directly resulting from the oil spill.

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 or within 30 days of your receipt of this letter, whichever date is earlier, 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 N10036-0430.

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

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  
1/19/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]

[REDACTED]  
Theodore, AL 36582

RE: Claim Number: N10036-0431

Dear Ms. [REDACTED]:

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number N10036-0431 involving Deepwater Horizon. Please see the attached Claim Summary / Determination Form an explanation about 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 N10036-0431.

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

09/14/11

FOIA2011-3380-00001732

## CLAIM SUMMARY / DETERMINATION FORM

Date	: 1/18/2011
Claim Number	: N10036-0431
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 (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 5 January 2011, Ms. [REDACTED] (Claimant), presented a lost profits & earnings claim in the amount of \$7,000.00 to the National Pollution Funds Center (NPFC) for reimbursement. Ms. [REDACTED] is asserting that she moved to Gulf Shores in order to work for [REDACTED] as a seasonal housekeeper but had to quit after the Deepwater Horizon incident due to reduced hours.

Ms. [REDACTED] provided a letter from her employer, [REDACTED] dated October 21, 2010, although the letter from her employer clearly states... "She quit her position with our company after failing to report to work on 3 scheduled days".

### ***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 presented miscellaneous pay stubs from [REDACTED], a copy of her social security card and AL driver's license, letter from her previous employer, [REDACTED] dated October 21, 2010, a copy of a \$500 loan against her car dated April 29, 2010 and a copy of another loan \$500 loan against her car dated July 3, 2010, and a personal statement that appears to be dated March 2010.

#### **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 \$7,000.00 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. Ms. [REDACTED] left her employment with [REDACTED] after failing to report to work on three scheduled days. Ms. [REDACTED] has failed to demonstrate she had a loss of profits and earnings as a direct result of the Deepwater Horizon incident as well as she has failed to meet her burden to establish she has experienced a loss of profits and earnings.



Claim Supervisor: 

Date of Supervisor's review: 1/18/11

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  
4200 Wilson Blvd. Suite 1000  
Arlington, VA 20598-7100  
Staff Symbol: (CA)

Phone: [REDACTED]

E-mail: [REDACTED]

Fax: 202-493-6937

5890

1/18/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]

[REDACTED]  
Pensacola, FL 32504

RE: Claim Number: N10036-0432

Dear Ms. [REDACTED]:

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number N10036-0432 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 N10036-0432.

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  
09/14/11

FOIA2011-3380-00001736

CLAIM SUMMARY / DETERMINATION FORM

Date	: 1/18/2011
Claim Number	: N10036-0432
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 6 January 2011, Ms. [REDACTED] (Claimant), presented a lost profits & earnings claim in the amount of \$15,000.00 to the National Pollution Funds Center (NPFC) for reimbursement. Ms. [REDACTED] is asserting that she lost her job as an oil-spill worker without any notice from her Employer. She states the employer just packed up and left causing her wage losses.

**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:**

#### **Claimant's Submission**


To support her claim, the Claimant submitted the NPFC OSLTF Claim Form dated January 6, 2011, a copy of a personal statement, miscellaneous copies of identification cards, a copy of her social security card, a copy of her 2009 Wage and Income Transcript which shows she received \$13,006.00 in unemployment compensation, a copy of her 2008 Wage and Income Transcript which shows she received \$8,078.00 in wages for 2008, a copy Emergency Unemployment Compensation Monetary Determination dated August 9, 2010, and a copy of various pay stubs from March 2010 through July 2010. Claimant states she filed a claim with the RP and was denied although Claimant did not provide a copy of her denial letter. Claimant's submission indicates she was assigned claimant identification # [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 submitted 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. Claimant's termination from employment and alleged financial losses are

the result of business decisions made by her employer to shut down, 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: 

Date of Supervisor's review:

1/18/11

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  
4200 Wilson Blvd. Suite 1000  
Arlington, VA 20598-7100  
Staff Symbol: (CA)  
Phone: [REDACTED]  
E-mail: [REDACTED]

Fax: 202-493-6937  
5890  
1/18/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED  
Number [REDACTED]

[REDACTED]  
Pensacola, FL 32504

RE: Claim Number: N10036-0433

Dear Ms. [REDACTED]:

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number N10036-0433 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 N10036-0433.

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



CLAIM SUMMARY / DETERMINATION FORM

Date	: 1/18/2011
Claim Number	: N10036-0433
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$26,880.00

**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 4 January 2011, Ms. [REDACTED] (Claimant), presented a lost profits & earnings claim in the amount of \$26,880.00 to the National Pollution Funds Center (NPFC) for reimbursement. Ms. [REDACTED] is asserting that she lost her job as an oil-spill worker and was promised two years worth of work but the company shut down.

Based on documentation provided by the Claimant, it is not clear what employment Ms. [REDACTED] had immediately preceding her being hired as an oil-spill response worker with [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 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:**

#### **Claimant's Submission**

To support her claim, the Claimant submitted the NPFC OSLTF Claim Form dated January 4, 2011, an illegible copy of an identification card, a copy of her social security card, a copy of a 2009 W-2 with [REDACTED], a copy of a 2008 W-2 for [REDACTED], and a copy of six pay stubs from [REDACTED] for the time period of June 26, 2010 through August 28, 2010. Claimant states on her OSLTF Claim Form that she presented a claim to the RP on or about August 22, 2010 but was denied. Claimant has not provided a copy of her denial letter or her claimant identification number.

#### **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 \$26,880.00 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 from employment and alleged financial losses are the result of business decisions made by her 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: 

Date of Supervisor's review: 1/18/11

Supervisor Action: DENIAL ALLOWED

Supervisor's Comments:

U.S. Department of  
Homeland Security

United States  
Coast Guard



Director  
National Pollution Funds Center  
United States Coast Guard

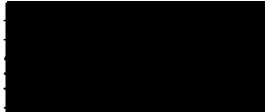
NPFC CA MS 7100  
US COAST GUARD



5890  
1/7/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]



RE: Claim Number: N10036-0434

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number N10036-0434 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 N10036-0434.

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

Enclosure: Claim Summary / Determination Form

09/14/11

FOIA2011-3380-00001744

## CLAIM SUMMARY / DETERMINATION FORM

Date	: 1/7/2011
Claim Number	: N10036-0434
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$37,000.00

### **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 5 January 2011, Ms. Delovena Riley (Claimant) presented a lost profits & earnings claim in the amount of \$37,000.00 to the National Pollution Funds Center (NPFC) for reimbursement. [REDACTED] is asserting that she was laid off from her position with P2S because of the Deepwater Horizon incident.

Based on documentation provided by the Claimant, it is not clear what employment [REDACTED] had prior to the Deepwater Horizon incident nor is there information on whether she left employment to voluntarily work as a response contractor for the Deepwater Horizon incident.<sup>1</sup> [REDACTED] submission asserts that she would have made \$37,000.00 had she been hired to work on the oil-spill for at least a year at \$18.00 hr.

### **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

<sup>1</sup> Letter from Claimant to NPFC dated 4 November 2010.

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:**

#### **Claimant's Submission**

To support her claim, the Claimant submitted the NPFC OSLTF Claim Form dated January 2, 2011, a copy of an occupational license from the City of Port St. Joe for the period of 10/1/08 – 9/30/09, a letter dated November 4, 2010 whereby [REDACTED] explains her circumstances, a copy of a payroll stub from July 26, 2010 through August 01, 2010, and a copy of GCCF denial letter dated November 2, 2010 stating Claimant has not demonstrated a loss of profits as a direct result of the Deepwater Horizon oil-spill incident. The GCCF assigned claimant identification # [REDACTED] to [REDACTED] claim submission.

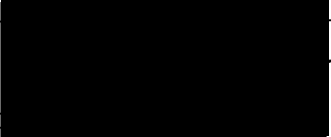
#### **NPFC Determination**

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 claim is denied because the alleged loss in the amount of \$37,000.00 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 has failed to establish she has experienced a financial loss as a direct result of the Deepwater Horizon incident. Claimant appears to have been unemployed at the time of the Deepwater Horizon incident and is requesting compensation for an annual salary of a job she did not have or lose as a consequence of the oil-spill and therefore she cannot be compensated by the OSLTF.

Claim Supervisor 

Date of Supervisor's review: *1/7/11*

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

5890  
June 1, 2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]



RE: Claim Number: N10036-0434

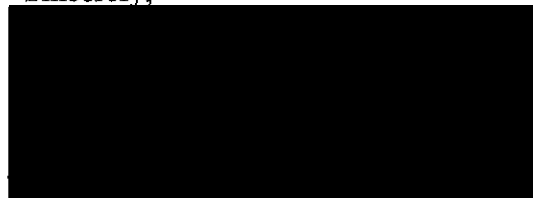
Dear Ms. Riley:

The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act of 1990, 33 CFR U.S.C. § 2701 et seq. (OPA) and the associated regulations at 33 C.F.R. Part 136, denies payment on the claim number N10036-0434 involving Deepwater Horizon. 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 address and phone number above.

Sincerely,



Chief, Claims Adjudication Division  
U.S. Coast Guard

Enclosure: Claim Summary / Determination Form

## CLAIM SUMMARY / DETERMINATION FORM

Date	: 6/1/2011
Claim Number	: N10036-0434
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: \$15,000.00 (revised)

### **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 5 January 2011, [REDACTED] (Claimant) presented a lost profits & earnings claim in the amount of \$37,000.00 to the National Pollution Funds Center (NPFC) for reimbursement. [REDACTED] asserted that she was laid off from her position with P2S because of the Deepwater Horizon incident.

Based on documentation provided by the Claimant, it is not clear what employment [REDACTED] had prior to the Deepwater Horizon incident nor is there information on whether she left employment to voluntarily work as a response contractor for the Deepwater Horizon incident.<sup>1</sup> [REDACTED] submission asserted that she would have made \$37,000.00 had she been hired to work on the oil-spill for at least a year at \$18.00 hr.

The NPFC denied the claim on January 7, 2011, on the basis that the Claimant alleged loss was not due to the injury, destruction of loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil.

### **REQUEST FOR RECONSIDERATION**

On January 13, 2011, the claimant contacted the NPFC stating she was considering requesting reconsideration of her denied claim. She was advised that she had 60 days from the date of the denial to submit her request for reconsideration and to provide all necessary documentation to support her reconsideration request.<sup>2</sup>

<sup>1</sup> Letter from Claimant to NPFC dated 4 November 2010.

<sup>2</sup> Phone call between claimant and claims manager on January 13, 2011.

The NPFC received the request for reconsideration via facsimile on May 31, 2011. To support her request for reconsideration, the Claimant provided the following:

- OSLTF revised sum certain of \$15,000 dated 31 May 2011;
- Catering Menu;
- Copy of Denial Letter on Interim Payment/Final Payment Claim dated 6 May 2011;
- Cancellation Letter from [REDACTED] dated 23 May 2011;
- Cancellation Letter from [REDACTED];
- Cancellation Letter from [REDACTED];
- (2) Copy of Denial Letter on Emergency Advance Payments dated 2 November 2010;
- (2) Copy of 2009 Tax Return;
- Copy of 2007 Occupational License;
- (2) Copy of 2008 Occupational License;
- Copy of 2010 Occupational License;
- Letter from the Florida Department of State dated 30 July 2007;
- Copy of Fictitious Name Registration dated 13 July 2007;
- Letter from the IRS dated 19 July 2007;
- Letter from claimant dated 4 November 2010;
- Copy of GCCF acknowledgement letter dated 23 August 2010;
- Pay statement period ending 1 August 2010;
- Copy of Certified Nursing Assistant License.

Based on the 60-day time frame to request reconsideration, the Claimant's request for reconsideration was due by March 14, 2011. The Claimant's denial letter specifically stated in part... "However, if you find that you will be unable to gather particular information within the period, you may include a request for an extension of time for a specific duration with your reconsideration request." The Claimant did not seek an extension of time nor did she provide additional or legal arguments to support the request for reconsideration.

#### **NPFC DETERMINATION ON RECONSIDERATION:**

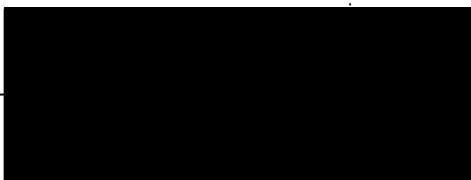
The Director, NPFC, upon written request of the claimant reconsiders any claim denied. The request for reconsideration must be in writing and include the factual or legal grounds for the relief requested, providing any additional support for the claim. The request must be received by the Director, NPFC, within 60 days after the date of the denial was mailed to the Claimant. 33 C.F.R.136.115 (d).

The Claimant's request for reconsideration must have been received at the NPFC by close of business on March 14, 2011 and must have provided all information to the NPFC in support of the request. As of the date of this determination, the Claimant failed to submit her official request for reconsideration in a timely manner as provided for in her initial denial letter dated January 7, 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: *6/1/11*

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

5890  
1/7/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]

[REDACTED]

RE: Claim Number: N10036-0434

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number N10036-0434 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 N10036-0434.

Mail reconsideration requests to:

Director (ca)  
NPFC CA MS 7100  
US COAST GUARD

[REDACTED]

Sincerely

[REDACTED]

Claims Manager  
U.S. Coast Guard

Enclosure: Claim Summary / Determination Form

09/14/11

FOIA2011-3380-00001752



## CLAIM SUMMARY / DETERMINATION FORM

Date	: 1/7/2011
Claim Number	: N10036-0434
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$37,000.00

### 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 5 January 2011, [REDACTED] (Claimant) presented a lost profits & earnings claim in the amount of \$37,000.00 to the National Pollution Funds Center (NPFC) for reimbursement. [REDACTED] is asserting that she was laid off from her position with P2S because of the Deepwater Horizon incident.

Based on documentation provided by the Claimant, it is not clear what employment [REDACTED] had prior to the Deepwater Horizon incident nor is there information on whether she left employment to voluntarily work as a response contractor for the Deepwater Horizon incident.<sup>1</sup> [REDACTED] submission asserts that she would have made \$37,000.00 had she been hired to work on the oil-spill for at least a year at \$18.00 hr.

### 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

<sup>1</sup> Letter from Claimant to NPFC dated 4 November 2010.

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:**

#### **Claimant's Submission**

To support her claim, the Claimant submitted the NPFC OSLTF Claim Form dated January 2, 2011, a copy of an occupational license from the City of Port St. Joe for the period of 10/1/08 – 9/30/09, a letter dated November 4, 2010 whereby ██████ explains her circumstances, a copy of a payroll stub from July 26, 2010 through August 01, 2010, and a copy of GCCF denial letter dated November 2, 2010 stating Claimant has not demonstrated a loss of profits as a direct result of the Deepwater Horizon oil-spill incident. The GCCF assigned claimant identification # ██████ to ██████ 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 claim is denied because the alleged loss in the amount of \$37,000.00 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 has failed to establish she has experienced a financial loss as a direct result of the Deepwater Horizon incident. Claimant appears to have been unemployed at the time of the Deepwater Horizon incident and is requesting compensation for an annual salary of a job she did not have or lose as a consequence of the oil-spill and therefore she cannot be compensated by the OSLTF.

Claim Supervisor:

Date of Supervisor's review: *1/7/11*

Supervisor Action: *Denial approved*

Supervisor's Comments:

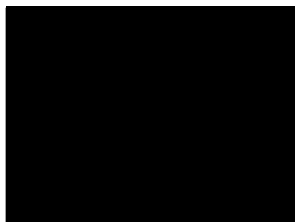
U.S. Department of  
Homeland Security

United States  
Coast Guard



Director  
National Pollution Funds Center  
United States Coast Guard

NPFC CA MS 7100  
US COAST GUARD



5890  
1/7/2011

VIA MAIL AND EMAIL: [REDACTED]



RE: Claim Number: N10036-0435



The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number N10036-0435 involving Deepwater Horizon. Please see the attached Claim Summary / Determination Form for the rationale regarding this denial.

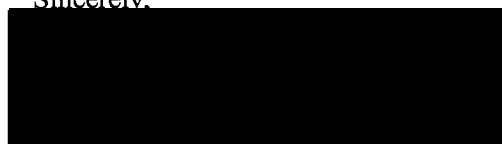
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-0435.

Mail reconsideration requests to:

Director (ca)  
NPFC CA MS 7100  
US COAST GUARD



Sincerely,



Claims Manager  
U.S. Coast Guard

Enclosure: Claim Summary / Determination Form

09/14/11

FOIA2011-3380-00001756

## CLAIM SUMMARY / DETERMINATION FORM

Date	: 1/7/2011
Claim Number	: N10036-0435
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$14,247.00

### ***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 January 2011, [REDACTED] (Claimant), presented a lost profits & earnings claim in the amount of \$14,247.00 to the National Pollution Funds Center (NPFC) for reimbursement. [REDACTED] is asserting that he is out \$14,247.00 in expenses that it cost him to get his boat ready for upcoming shrimp season in 2010 but was ultimately not able to do so because of the Deepwater Horizon incident. It is important to note that the documents provided by the Claimant that account for the \$14,247.00 were all dated prior to the Deepwater Horizon incident. The expenses were incurred between February 2010 and April 1, 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, the Claimant submitted the NPFC OSLTF Claim Form dated January 5, 2011, a copy of his driver's license, a copy of an invoice for \$3,000.00 for the rebuilding of a shrimp box aboard the Claimant's boat, a copy of handwritten bill of sale dated February 4, 2010 whereby the Claimant purchased a 385 hp CAT diesel engine for his boat for \$8,500.00, a copy of sales receipt from [REDACTED] in the amount of \$927.70, and a copy of a credit card statement that shows charges for [REDACTED] in the amount of \$1,616.69 and \$202.74, respectively. The GCCF assigned claim identification [REDACTED] to [REDACTED] claim submission. Claimant states on his OSLTF Claim Form that he was denied by the GCCF although the NPFC does not have a copy of the denial letter.

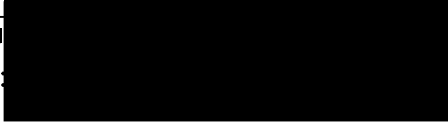
#### **NPFC Determination**

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 \$14,247.00 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 is associated with his personal decision to spend money to ready his boat which would have occurred with or without the oil-spill therefore the Claimant's expenses were incurred by his own decision to buy these items for his boat and not the direct result of the oil-spill. Personal expenses are not a compensable damage under OPA.

Claim Supervisor: 

Date of Review: 1/7/11

Supervisor's Comments: *Denial approved*

U.S. Department of  
Homeland Security

United States  
Coast Guard



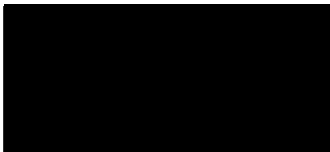
Director  
National Pollution Funds Center  
United States Coast Guard

NPFC CA MS 7100  
US COAST GUARD

Fax: 202-493-6937  
5890  
3/17/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]



RE: Claim Number: N10036-0436

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number N10036-0436 involving Deepwater Horizon. Please see the attached Claim Summary/ Determination Form for an 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 N10036-0436.

Mail reconsideration requests to:

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

Sincerely, [REDACTED]

[REDACTED]  
Claims Manager  
U.S. Coast Guard

Encl: Claim Summary / Determination Form

09/14/11

FOIA2011-3380-00001760

## CLAIM SUMMARY / DETERMINATION FORM

Date	: March 17, 2011
Claim Number	: N10036-0436
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$39,656.00

### ***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 January 6, 2011, [REDACTED] (Claimant) presented a loss of profits & earnings claim in the amount of \$39,656.00 to the National Pollution Funds Center (NPFC) on behalf of her company, [REDACTED]. The Claimant asserted that her company was not able to generate income due as a direct result of the Deepwater Horizon incident.

As we understand it, [REDACTED] is a grocery delivery business for tourists who visit the Gulf Coast of Alabama. Tenants staying at vacation rentals can use the Claimant's service to stock the rental with food and drinks. The Claimant generates revenue by charging grocery fees, delivery fees, and tips.

The Claimant submitted an emergency advance payment claim to the GCCF and was denied on December 6, 2010. However, the GCCF conducted a second review of the claim and compensated the Claimant \$25,100.00 on March 5, 2011. On March 15, 2011 the NPFC contacted the Claimant to inquire about payments received from the GCCF. The Claimant stated that after the emergency advance payment was received, they accepted the Quick Payment Final Claim from the GCCF for \$25,000.00. Overall, the Claimant states she has been compensated \$50,100.00.

### ***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 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 January 2011, prior to payment from the GCCF, the Claimant submitted the claim to the NPFC for \$39,656.00. Since the submission, the Claimant advised the NPFC that she has been compensated a total of \$50,100.00 by the GCCF, acting on behalf of the responsible party. The claim is denied because the Claimant has been fully compensated.

Claim Supervisor 

Date of Supervisor's review: *3/17/11*

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

5890  
24 January 2011

VIA MAIL and EMAIL: [REDACTED]

RE: Claim Number: N10036-0437

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number N10036-437 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 N10036-0437.

Mail reconsideration requests to:

Director (ca)  
NPFC CA MS 7100  
US COAST GUARD

Sincerely,

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

Encl: Claim Summary / Determination Form

09/14/11

FOIA2011-3380-00001763

## CLAIM SUMMARY / DETERMINATION FORM

Date	24 January 2011
Claim Number	N10036-0437
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 06 January 2011, [REDACTED] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$8,000.00 in lost profits and earning capacity resulting from the Deepwater Horizon incident. Claimant was employed with [REDACTED] and [REDACTED] and asserted that "when the oil spill happened people were not moving as much to our area or moving into their summer homes" which resulted in a decrease in business and Claimant being "laid off" from her job.<sup>1</sup>

### ***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 her claim, Claimant presented the NPFC Optional OSLTF Claim Form dated 06 January 2011, photocopy of her Social Security Card and Florida State Drivers License, pay stubs from [REDACTED] as well 2009 tax return Form 1040 with attachments. Claimant also provided an Employee Termination Worksheet which lists the date of termination as 17 September 2010 and the reason for termination as lack of work.<sup>2</sup>

Claimant submitted a claim with the GCCF for an Emergency Advance payment which was denied in a letter from the GCCF dated 02 November 2011 for her Claimant ID [REDACTED]

Claimant asserted that she has lost her employment due to the impacts of the oil spill.

#### **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.

The NPFC reviewed the evidence presented by the Claimant and interviewed a representative from [REDACTED] her former employer. During the phone conversation it was determined that she lost no hours due to the oil spill, only due to the slowed economy and they added that nobody at this organization has lost work due to the oil spill.<sup>3</sup> The Claimant has failed to meet her burden that her losses were a direct result of the Deepwater Horizon incident and the claim is denied.

<sup>2</sup> Employee Termination Worksheet

<sup>3</sup> Conversation between employer, [REDACTED]

Claim Supervisor: 

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  
National Pollution Funds Center  
United States Coast Guard

NPFC CA MS 7100  
US COAST GUARD



CERTIFIED MAIL – RETURN RECEIPT REQUESTED  
Number: [REDACTED]

5890/DWHZ  
Claim # N10036-0438  
28 March 2011



RE: Claim Number: N10036-0438

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 N10036-0438 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination Form for further explanation.

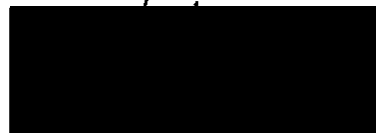
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-0438.

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

09/14/11

FOIA2011-3380-00001767

## CLAIM SUMMARY / DETERMINATION FORM

Date	: 25 March 2011
Claim Number	: N10036-0438
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$4,215.00

### ***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 07 January 2011, [REDACTED] (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Funds Center (NPFC). The OSLTF claim form alleged \$4,215.00 in loss of profits and earning capacity resulting from the Deepwater Horizon.

The Claimant is a seasonal worker for [REDACTED], a cleaning service for resort condo and home rentals.<sup>1</sup> She indicated that she worked during the peak summer season for SeaGals during previous years and planned on working there again in the summer of 2010. Claimant asserted that because of the Deepwater Horizon oil spill, tourism was down and she was not re-hired for the summer of 2010.<sup>2</sup>

### ***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.

<sup>1</sup> Letter from Claimant's employer verifying Claimant's employment.

<sup>2</sup> OSLTF claim form.

- 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 the OSLTF**

To support her claim, Claimant submitted the following documentation to the NPFC:

- OSLTF claim form, dated 06 January 2011;
- Letter from Claimant's employer verifying Claimant's planned 2010 employment with [REDACTED]
- Obscured 2009 Form 1099-MISC;
- Social security card; and
- 2008 and 2009 payroll records from [REDACTED]

Claimant seeks \$4,215.00 in loss of earnings allegedly resulting from the Deepwater Horizon oil spill.

Prior to the GCCF taking claims, the Claimant was paid \$2,810 by BP.<sup>3</sup> On 08 September 2010, the Claimant filed a six-month Emergency Advance Payment claim of \$4,200.00 with the GCCF for lost profits and earnings. She was assigned GCCF Claimant ID [REDACTED] and Claim [REDACTED]. This claim was denied by the GCCF on 10 February 2011.<sup>4</sup>

Prior to this denial, on 06 January 2011, the Claimant filed this claim for \$4,215.00 in lost earnings with the NPFC.<sup>5</sup>

<sup>3</sup> GCCF filing report for Claimant, dated 18 March 2011.

<sup>4</sup> Claimant has a Full Review Final Payment claim currently under review at the GCCF.

<sup>5</sup> 90 days had elapsed since the filing of Claimant's Emergency Advance Payment claim with the GCCF.

## 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.

This claim is denied for lack of supporting documentation. The Claimant's initial submission to the NPFC consisted solely of a letter from her employer that indicated that the employer had planned to re-hire the Claimant for the 2010 summer and a poorly scanned 2009 Form 1040.

On 02 March 2011, the NPFC sent the Claimant a letter requesting additional information to verify Claimant's alleged loss. The letter requested, among other things, financial documentation, including the Claimant's income tax returns, earnings statements, and copies of her work schedules with [REDACTED]. The letter also requested that the Claimant answer nine questions to clarify her employment history.

On 21 March 2011, the Claimant responded to the NPFC's request. However, of all the documentation that was requested by the NPFC, the Claimant only provided 2008 and 2009 payroll records. Further, she failed to respond to any of the nine questions.

In light of the foregoing, this claim is denied because Claimant has not provided sufficient documentation to support her alleged loss in earnings of \$4,215.00 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 [REDACTED]

Date of Supervisor's Review: *3/27/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:



U.S. Department of  
Homeland Security

**United States  
Coast Guard**



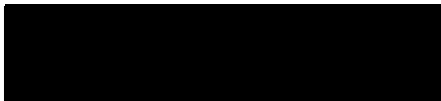
Director  
National Pollution Funds Center  
United States Coast Guard

NPFC CA MS 7100  
US COAST GUARD



CERTIFIED MAIL – RETURN RECEIPT REQUESTED  
Number: [REDACTED]

DWHZ/5890  
Claim # N10036-0440  
22 March 2011



C/O: [REDACTED]



RE: Claim Number: N10036-0440

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 CFR Part 136, denies payment on the claim number N10036-0440 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination Form for further explanation.

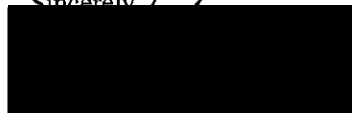
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-0440.

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

Enclosure: Claim Summary/Determination Form  
09/14/11

FOIA2011-3380-00001771

## CLAIM SUMMARY / DETERMINATION FORM

Date	: 3/19/2011
Claim Number	: N10036-0440
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$1,612.00

### ***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 07 January 2011, [REDACTED] (Claimant) through his legal representative presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Funds Center (NPFC). The OSLTF claim form alleged \$1,612.00 in lost profits and earnings capacity resulting from the Deepwater Horizon oil spill.<sup>1</sup>

Claimant owns and rents [REDACTED] by the Gulf in Destin, Florida. He alleged that as a result of the Deepwater Horizon oil spill, he lost rental income from June through November 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 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

<sup>1</sup> This amount represents the remainder of Claimant's \$2,812.00 claim with the GCCF, of which \$1,200.00 was paid by the GCCF.

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 the OSLTF**

To support his claim, the Claimant through his legal representative submitted the following documentation to the NPFC:

- OSLTF claim form, dated 05 January 2011;
- Claim reimbursement summary;
- [REDACTED] invoice;
- GCCF Claims Facility claim form, undated;
- Agreed Upon Procedures Report prepared by [REDACTED] dated 24 September 2010, and including Attachments A-M.

On 18 October 2010, Claimant filed a six-month Emergency Advance Payment claim for \$2,812.00 in lost profits with the GCCF. He was assigned GCCF Claimant ID [REDACTED] and Claim [REDACTED]. He was paid \$1,200.00 towards his claim.<sup>2</sup>

Claimant seeks the remainder of his claim, \$1,612.00, with 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

<sup>2</sup> OSLTF claim form.

impairment of earning capacity. The NPFC considered all the documentation submitted by the Claimant.

The claim is denied for lack of supporting documentation. After an initial review, the NPFC sent the Claimant's legal representative, a letter requesting additional information in order to further evaluate the claim.<sup>3</sup> The letter requested, among other things, actual rental statements from September through November 2010 to accurately account for the Claimant's alleged losses. On 10 February 2011, Claimant's legal representative requested a 30 day extension to comply with the letter. The NPFC granted the request.<sup>4</sup> On 16 March 2011, the 30 day extension expired and no response has been received by the NPFC.

The NPFC has adjudicated the claim with the documentation that the Claimant's legal representative submitted. This evidence does not demonstrate that the Claimant had a loss of \$1,612.00 that resulted from 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: *3/21/11*

Supervisor Action: *Denial approved*

Supervisor's Comments:

<sup>3</sup> The letter was sent to Claimant's legal representative on 01 February 2011.

<sup>4</sup> EMAIL from the NPFC to Claimant's legal representative on 11 February 2011.

U.S. Department of  
Homeland Security

**United States  
Coast Guard**



Director  
National Pollution Funds Center  
United States Coast Guard

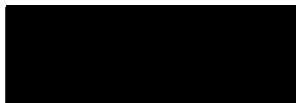
NPFC CA MS 7100  
US COAST GUARD



CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]

DWHZ/5890  
Claim # N10036-0442  
22 March 2011



C/O: [REDACTED]

RE: Claim Number: N10036-0442

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 CFR Part 136, denies payment on claim number N10036-0442 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 N10036-0442.

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

Enclosure: Claim Summary/Determination Form  
09/14/11

FOIA2011-3380-00001775



## CLAIM SUMMARY / DETERMINATION FORM

Date	: 3/20/2011
Claim Number	: N10036-0442
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$5,091.00

### *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 07 January 2011, [REDACTED] (Claimant) through his legal representative, presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Funds Center (NPFC). The OSLTF claim form alleged \$5,091.00 in lost profits and earnings capacity resulting from the Deepwater Horizon oil spill.<sup>1</sup>

Claimant owns and rents a short-term residential vacation condominium [REDACTED] at the [REDACTED] in Destin, Florida.<sup>2</sup> Okaloosa County property records indicate that the Claimant purchased the subject property on 31 March 2010.<sup>3</sup> The Claimant thereafter entered into an agreement authorizing [REDACTED] to manage and rent the subject property.<sup>4</sup> The Claimant alleged that as a result of the Deepwater Horizon oil spill, the unit lost rental income from May through December 2010.<sup>5</sup>

### *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:

<sup>1</sup> This amount represents the remainder of Claimant's \$8,091.00 claim with the GCCF, of which \$3,000.00 was paid by the GCCF.

<sup>2</sup> Summarized factors.

<sup>3</sup> Attachment J of Agreed Upon Procedures Report.

<sup>4</sup> Claimant signed the agreement on 01 April 2010.

<sup>5</sup> Summary of reimbursement claim.



- (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 the OSLTF**

To support his claim, Claimant through his legal representative submitted the following documentation to the NPFC:

- OSLTF Claim Form, 05 January 2011;
- GCCF Claims Facility Claims Form, undated;
- GCCF Notice of Determination Emergency Advance Payment;
- GCCF letter notifying claimant of incomplete claim, dated 15 October 2010;
- GCCF letter requesting additional information from claimant, dated 28 October 2010;
- Claim reimbursement summary;
- [REDACTED]
- Agreed Upon Procedures Report prepared by [REDACTED] dated 04 October 2010, and including attachments A-P;
- Summary of interim claim for 1<sup>st</sup> Quarter 2011;
- GCCF interim payment claim form;
- [REDACTED] invoices for calculation and finalization of interim payment;
- Summarized factors;

- Oil spill impact statement; and
- October-December multi-year rental statement

Claimant filed a six-month Emergency Advance Payment claim for \$8,091.00 in lost profits with the GCCF. He was assigned Claimant ID [REDACTED] and Claim [REDACTED]. On 03 November 2011, this claim was determined to be compensable in the amount of \$3,000.00 by the GCCF.<sup>6</sup> Claimant subsequently received \$3,000.00.<sup>7</sup>

Claimant seeks the remainder of his claim, \$5,091.00, with the NPFC.<sup>8</sup>

### **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.

This claim is denied because the Claimant failed to substantiate his alleged loss of rental income from May through December 2010. As noted, the Claimant purchased unit [REDACTED] at the [REDACTED] [REDACTED] on 31 March 2010. The Claimant's rental records indicated that the Claimant began renting the unit in May 2010. There are no rental records prior to this date.

To calculate his alleged loss in rental income, the Claimant used monthly rental income figures from 2008 and 2009 for a comparable unit at the [REDACTED].<sup>9</sup> It is unclear how the Claimant arrived at these comparable figures as a basis for calculating his loss. In a letter, dated 29 January 2011, the NPFC requested that the Claimant explain "[h]ow the monthly rental income figures in Attachment N Average Comparable Unit Gross Revenues were arrived at. . . . [and] how these figures are relevant to calculating claimant's loss."<sup>10</sup> The Claimant's legal representative responded to the letter on March 16 2011; however, the response did not address the aforementioned questions.

Therefore, the Claimant failed to explain the basis for calculating his alleged loss. Without actual prior rental history for the unit in question or a justification for resorting to comparable unit figures, there is no basis in the Claimant's submission for calculating his loss.

In light of the foregoing, this claim is denied.

Claim Supervisor: [REDACTED]
Date of Supervisor's review: 3/22/11
Supervisor Action: <i>Denial approved</i>

<sup>6</sup> GCCF Notice of Determination Emergency Advance Payment.

<sup>7</sup> OSLTF claim form.

<sup>8</sup> Claimant indicates on his OSLTF claim form that he was underpaid this amount.

<sup>9</sup> Attachment N of Agreed Upon Procedures Report. The attachment is generated by [REDACTED]

<sup>10</sup> This NPFC letter requesting additional information was sent to Claimant's legal representative on 01 February 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

Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]

DWHZ/5890  
Claim # N10036-0443  
24 March 2011

[REDACTED]

C/O:

[REDACTED]

RE: Claim Number: N10036-0443

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 N10036-0443 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 N10036-0443.

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

Enclosure: Claim Summary/Determination Form  
09/14/11

FOIA2011-3380-00001779

## CLAIM SUMMARY / DETERMINATION FORM

Date	: 3/22/2011
Claim Number	: N10036-0443
Claimant	: [REDACTED]
Type of Claimant	: Corporate (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$168,734.00

### ***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 07 January 2011, [REDACTED] (Claimant) through its legal representative presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Funds Center (NPFC). The OSLTF claim form alleged \$168,734.00 in lost profits as a result of the Deepwater Horizon oil spill.<sup>1</sup>

Claimant operates out of Fort Walton Beach, Florida and sells LED signs to local and out of state businesses.<sup>2</sup> The Claimant indicated that its business relies heavily on tourism. The Claimant also alleged that as a result of the Deepwater Horizon oil spill, tourism in the Florida panhandle decreased, and it lost business during its peak earning months of April through August.<sup>3</sup>

### ***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.

<sup>1</sup> This claimed amount represents the remainder of Claimant's Emergency Advance Payment claim of \$233,034.00 after GCCF paid \$64,300.00 towards this claim.

<sup>2</sup> Oil spill impact statement. LED stands for light-emitting diode.

<sup>3</sup> Oil spill impact statement.



- (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 the OSLTF:**

To support the claim, Claimant through its legal representative submitted the following documentation to the NPFC:

- NPFC Optional OSLTF Claim Form, 05 January 2011;
- GCCF Claims Facility Claims Form, no date;
- Summary reimbursement of claim;
- Attorney authorization form;
- CPA firm of [REDACTED] invoice;
- Agreed Upon Procedures Report prepared by [REDACTED] dated 05 November 2010. The report is essentially a quantified claim presentation. It includes the following attachments:
  - Attachment A—lost business revenues June 2010
  - Attachment B—saved variable expenses for June 2010
  - Attachment C—lost business revenues July 2010
  - Attachment D—saved variable expenses for July 2010
  - Attachment E—lost business revenues August 2010
  - Attachment F—saved variable expenses for August 2010
  - Attachment G—calculation of projected lost business revenues for September, October, and November 2010
  - Attachment H—projected saved variable expenses for September, October, and November 2010
  - Attachment I—factors used in lose revenue calculation

- Attachment J—variable expense analysis
- Attachment K—projection of lost business revenue percentage
- Attachment L—special power of attorney
- Attachment M—profit and loss statements January 2008-August 2010
- Attachment N—business and driver’s licenses
- Attachment O—U.S. Income Tax Return for an S Corporation, 2008 and 2009
- Attachment P—monthly sales tax returns, State of Florida, Department of Revenue, January to December 2009 and January to September 2010. 2008 is not included.
- Attachment Q—payroll reports March-October 15, 2010
- Attachment R—Oil Spill Impact Statement

Claimant seeks \$168,734.00 in lost profits allegedly as a result of the Deepwater Horizon oil spill.<sup>4</sup>

On 11 November 2010, Claimant filed a six-month Emergency Advance Payment claim for \$233,034.00 in lost profits with the GCCF. Claimant was assigned GCCF Claimant ID # [REDACTED] and Claim [REDACTED]. Claimant received \$64,300.00 from the GCCF.<sup>5</sup>

**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.

After an initial review of the Claimant’s submission, the NPFC sent the Claimant’s legal representative a letter, dated 08 February 2011, requesting additional information to further evaluate the claim. The letter requested, among other things, financial documentation to verify the Claimant’s alleged lost profits and certain explanations for the Claimant’s methodology of calculating its losses. The Claimant was given 30 days from the date of letter to respond. On 10 March 2011—the 30<sup>th</sup> day—the Claimant’s legal representative requested a 10-day extension to comply with the letter, and this request was granted by the NPFC.<sup>6</sup> To date, however, no response to the letter has been received by the NPFC.

This claim is denied because the alleged loss in the amount of \$168,734.00 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 because the Claimant has failed to demonstrate a loss of profits and earnings in the amount requested by way of proper documentation.

Claim Supervisor: [REDACTED]

Date of Supervisor’s review: 3/24/11

Supervisor Action: *Denial approved*

<sup>4</sup> As noted, this amount represents the remainder of Claimant’s Emergency Advance Payment claim of \$233,034.00 after the GCCF made payment of \$64,300.00.

<sup>5</sup> OSLTF claim form.

<sup>6</sup> EMAIL Claimant’s legal representative to the NPFC dated 10 March 2011.

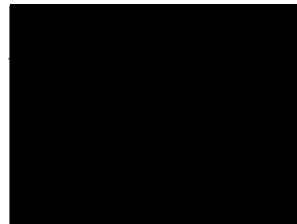
U.S. Department of  
Homeland Security

United States  
Coast Guard



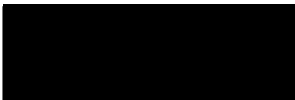
Director  
National Pollution Funds Center  
United States Coast Guard

NPFC CA MS 7100  
US COAST GUARD

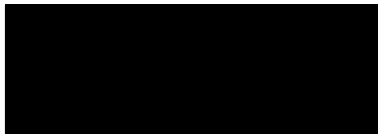


CERTIFIED MAIL – RETURN RECEIPT REQUESTED  
Number: [REDACTED]

DWHZ/5890  
Claim # N10036-0446  
22 March 2011



C/O: [REDACTED]



RE: Claim Number: N10036-0446

Dear [REDACTED],

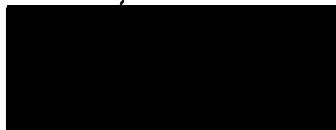
The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq. (OPA) and the associated regulations at 33 CFR Part 136, denies payment on claim number N10036-0446 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination 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 N10036-0446.

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

Enclosure: Claim Summary/Determination Form  
09/14/11

FOIA2011-3380-00001783



CLAIM SUMMARY / DETERMINATION FORM

Date	: 3/19/2011
Claim Number	: N10036-0446
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$5,457.52

**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 07 January 2011, [REDACTED] (Claimant) through his legal representative presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Funds Center (NPFC). The OSLTF claim form alleged \$5,457.52 in lost profits and earnings capacity resulting from the Deepwater Horizon oil spill.<sup>1</sup>

Claimant owns and rents [REDACTED] He alleged that as a result of the Deepwater Horizon oil spill, he lost rental income from May through November 2010.<sup>2</sup>

**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.

<sup>1</sup> This amount represents the remainder of Claimant's \$9,357.52 claim with the GCCF, of which \$3,900.00 was paid by the GCCF. The NPFC recognizes that \$242.00 of this claim represents removal and clean up costs. Although Claimant does not elect removal costs on his OSLTF claim form, the NPFC will separately address the \$242.00 portion as a claim for removal and clean-up costs.

<sup>2</sup> Summary of reimbursement claim.

- (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 the OSLTF**

To support his claim, Claimant through his legal representative submitted the following documentation to the NPFC:

- NPFC Optional OSLTF Claim Form, dated 05 January 2011
- GCCF Claims Facility Claims Form, dated 08 September 2010
- GCCF letter denying claimant's Emergency Advance Payment, dated 14 December 2010
- GCCF letter requesting additional information from claimant, dated 20 September 2010
- GCCF letter requesting additional documentation from claimant, dated 09 November 2010
- Special power of attorney
- Carr, Riggs, & Ingram, LLC (CRI) invoice
- Driver's license
- Okaloosa County real estate tax document for claimant's property
- Summary of reimbursement claim
- Letter about special assessment for oil equipment and supplies
- Calculation of loss of rental income for May 2010
- Calculation of loss of rental income for June 2010
- Calculation of loss of rental income for July 2010
- Calculation of projected loss of rental income for August through November 2010
- Multiyear rental income statement for January
- Multiyear rental income statement for February
- Multiyear rental income statement for March
- Multiyear rental income statement for April
- Multiyear rental income statement for May

- Multiyear rental income statement for June
- Multiyear rental income statement for July
- Information on [REDACTED] Beach Resort #01814
- Rental management agreement
- 2007 1040 federal tax form for claimant
- 2008 1040 federal tax form for claimant
- 2009 1040 federal tax form for claimant

On 07 September 2010, Claimant filed a six-month Emergency Advance Payment claim for \$9,115.27 in lost profits with the GCCF. He was assigned GCCF Claimant ID [REDACTED] and Claim [REDACTED]. He was paid \$3,900.00 towards his claim.<sup>3</sup>

Claimant seeks the remainder of his claim, \$5,457.52, with 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.

The claim is denied for lack of supporting documentation. After an initial review, the NPFC sent the Claimant's legal representative a letter requesting additional information in order to further evaluate the claim.<sup>4</sup> The letter requested, among other things, actual rental statements from August through November 2010 to accurately account for Claimant's alleged losses. On 10 February 2011, the Claimant's legal representative requested a 30 day extension to comply with the letter, and that request was granted by the NPFC.<sup>5</sup> On 16 March 2011, the 30 day extension expired and no response has been received by the NPFC.

The NPFC adjudicated the claim with the documentation that the Claimant's legal representative submitted. This evidence does not demonstrate a loss of \$5,457.52 as claimed.

In light of the foregoing, this claim is denied.

Claim Supervisor: [REDACTED]

Date of Supervisor's review: 3/22/11

Supervisor Action: *Denial approved*

Supervisor's Comments:

<sup>3</sup> OSLTF claim form.

<sup>4</sup> The letter was sent to Claimant's legal representative on 01 February 2011.

<sup>5</sup> EMAIL from the NPFC to Claimant's legal representative on 11 February 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

Fax: 202-493-6937  
5890  
1/31/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]



RE: Claim Number: N10036-0450

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number N10036-0450 involving Deepwater Horizon. Please see attached Claim Summary / Determination Form for an explanation regarding this denial.

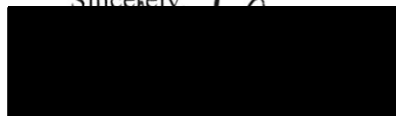
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-0450.

Mail reconsideration requests to:

Director (ca)  
NPFC CA MS 7100  
US COAST GUARD



Sincerely, [REDACTED]



Claims Manager  
U.S. Coast Guard



CLAIM SUMMARY / DETERMINATION FORM

Date	: January 26, 2011
Claim Number	: N10036-0450
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$29,500.00

**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 January 7, 2011, [REDACTED] (Claimant) presented a lost profits & earnings claim on behalf of [REDACTED] in the amount of \$29,500.00 to the National Pollution Funds Center (NPFC) for reimbursement. The Claimant asserted that she lost wages from her business, [REDACTED] as a result of the Deepwater Horizon incident.

The Claimant did not provide correspondence or documentation pertaining to her claim with the GCCF, but stated her claim was subsequently denied.

**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 following documentation:

- NPFC OSLTF Claim Form dated January 7, 2011
- 2008 & 2009 Individual Income Tax return
- 2008 & 2009 Profit or Loss from Business forms (1040 Schedule C)
- Hand-written profit and loss statement for each month of 2010

### **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 operated a child care services (daycare) business and filed a claim for lost profits totaling \$29,500.00. This amount exceeds the reported gross income for the business in 2008 and 2009. The total reported income for the business in 2008 and 2009 was \$26,870.00 and \$26,325.00, respectively<sup>1</sup>. The Net Income (Loss) for the business in 2008 and 2009 was (\$5,526.00) and (\$13,046.00), respectively<sup>2</sup>. The single largest expense of the business in 2008 and 2009 was outside labor at \$9,920 for each year<sup>3</sup>. The Claimant provided hand-written profit and loss statements for each month of 2010. According to the hand-written profit and loss statements, the daycare business grew substantially in 2010 earning total gross income of \$88,730. However, the net loss remained substantially equivalent to 2009 at (\$13,212.00). Driving the operating loss was Office Supplies and Operating Expenses which totaled approximately \$59,000.00 for the year, or 66% of total income. In 2008 and 2009, Operating Supplies were reported at only 16% to 17% of total income. Additionally, outside labor decreased from \$9,920.00 in 2008 and 2009 to only \$3,566.00 in 2010, a year when gross income more than tripled. Simply put, the changes in reported results for 2010 do not make financial sense.

Although the hand-written profit and loss statements for 2010 appear somewhat questionable; taken at face value, they do not support a loss of total revenue or net income in 2010.

Based on the documents and information presented, the Claimant has not established that a loss of profits or earnings capacity occurred as a direct result of the Deepwater Horizon.

Claim Supervisor:

Date of Supervisor's review: *1/31/11*

Supervisor Action: *Denial approved*

Supervisor's Comments:

<sup>1</sup> U.S. Individual Income Tax Return

<sup>2</sup> U.S. Individual Income Tax Return

<sup>3</sup> U.S. Individual Income Tax Return

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 Sergeant (GS)

CERTIFIED MAIL – RETURN RECEIPT REQUESTED  
Number: [REDACTED]

[REDACTED]  
Fax: 202-493-6937  
5890

Claim # N10036-0451  
14 January 2011

[REDACTED]  
RE: Claim Number: N10036-0451

Dear Mr. [REDACTED]:

The National Pollution Funds Center (NPFC), in accordance with 33 C.F.R. Part 136, denies payment on the claim number N10036-0451 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 N10036-0451.

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

Enclosure: Claim Summary / Determination Form

## CLAIM SUMMARY / DETERMINATION FORM

Date : 14 January 2011  
Claim Number : N10036-0451  
Claimant : ██████████  
Type of Claimant : Private (US)  
Type of Claim : Loss of Profits and Earning Capacity  
Claim Manager : ██████████  
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 07 January 2011, Mr. ██████████ (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 \$18,000.00. Claimant asserts that he took a course in order to become a deckhand but was never reimbursed for taking the course or hired on as a response worker.

### ***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 07 January 2011,
- Gulf Coast Claims Facility (GCCF) letter dated 23 October 2011 stating that his "Emergency Advance Payment Claim does not have any supporting documentation." GCCF was unable to complete their review. <sup>1</sup>
- A highly modified handwritten editing of a letter from a claim previously submitted to NPFC on 08 December 2010 by claimant no. [REDACTED]. The letter crosses out Claimant No. [REDACTED]'s name, address, and text; then adds handwritten modifications with the Claimant's signature.
- 2008 Tax Return
- 2009 Wage and Income Transcript with multiple Form 1099-A Acquisition or Abandonment
- A copy of a DD Form (DD-214 Notice of Separation from Service?) for the Claimant. The dates and form number are unreadable.
- [REDACTED] Identification card for the Claimant (ID # [REDACTED]) labeled [REDACTED] - Post Emergency Response
- Roughly written [REDACTED] General Purpose Card for the Claimant dated 09-11-2010 with [REDACTED]

<sup>1</sup> Optional OSLTF claim form submitted by the Claimant on 07 January 2011

- [REDACTED] Check Inquiry Report (U.S. Payroll) dated 10/13/2010 for the Claimant
- A copy of the Claimant's food stamp card.

The Claimant states that his losses resulted from taking a course to be a deck hand, was never called to work, and was never paid for taking the course. The Claimant provides a [REDACTED] Post Emergency Response Identification Card in his name and identifies this card as proof that he "was never paid for this training."

The Claimant submitted a claim to GCCF and received Claimant ID # [REDACTED] and Claim # [REDACTED]. On 23 October 2010, the Claimant received a letter from GCCF stating that his "Emergency Advance Payment Claim does not have any supporting documentation." GCCF was unable to complete their review.<sup>2</sup> On 23 October 2010 the GCCF requested additional information from the Claimant and requested that he answer by 23 November 2010. On 24 November 2010 the GCCF issued him a denial which was verified 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.

The claimant has failed to meet their burden by the preponderance of the evidence that he experienced a loss as a direct result of the Deepwater Horizon incident.

Claim Supervisor:



Date of Supervisor's review:

*1/18/11*

Supervisor Action:

*Denial 1/20/11*

Supervisor's Comments:

<sup>2</sup> Optional OSLTF claim form and supporting documentation submitted by the Claimant on 07 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

Fax: 202-493-6937

**CERTIFIED MAIL – RETURN RECEIPT REQUESTED**

Number: [REDACTED]

5890/DWHZ  
Claim # N10036-0452  
28 February 2011

Re: Claim Number: N10036-0452

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 N10036-0452 involving the Deepwater Horizon incident. Please see the enclosed Claim Summary/Determination Form for further explanation.

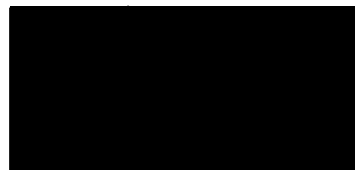
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-0452.

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  
09/14/11

FOIA2011-3380-00001795



CLAIM SUMMARY / DETERMINATION FORM

Date	24 February 2011
Claim Number	N10036-0452
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
Claim Manager	[REDACTED]
Amount Requested	\$44,000.00

**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 10 January 2010, [REDACTED] (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Funds Center (NPFC) seeking \$44,000.00 in lost profits and earning capacity allegedly resulting from the Deepwater Horizon oil-spill.

Since 25 October 2006, Claimant has worked for [REDACTED], as a diver supervisor, earning \$38.00 an hour.<sup>1</sup> He provided six letters from [REDACTED] which address reductions in benefits, pay rates, and temporary layoffs because of a decline in business activity in the Gulf of Mexico.<sup>2</sup> Claimant's submission suggested that these employment-related reductions resulted from the Deepwater Horizon oil-spill.<sup>3</sup>

**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.

<sup>1</sup> [REDACTED] letter verifying Claimant's employment dated 08 October 2010.

<sup>2</sup> [REDACTED] letter verifying Claimant's employment dated 08 October 2010 is the only letter addressing a subject other than those mentioned above.

<sup>3</sup> Claimant does not explicitly make this allegation in his submission, nor does he explain the connection between his work-related reductions and the Deepwater Horizon 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 the OSLTF**

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

- OSLTF claim form dated 6 January 2011;
- [REDACTED] earnings statements for Claimant dated 9 April 2010, 15 October 2010, and 17 December 2010;
- Claimant [REDACTED] tax returns summary for 2008 & 2009;
- 2008 & 2009 W-2s from [REDACTED] for Claimant; and
- six letters from BISSO:
  1. Dated 08 October 2010 stating all offshore employees temporarily laid-off;
  2. Dated 18 October 2010 stating Claimant is a dive supervisor, hire date of 25 October 2006 and current pay rate of \$38.00 an hour;
  3. Dated 02 November 2010 stating Co. canceled 401(k) matching;
  4. Dated 02 November 2010 stating a 10% decrease in pay rates for dive, vessel, and barge crew because of the decline in business activity in the Gulf of Mexico;
  5. Dated 05 November 2010 stating suspension of safety award program because of economic conditions;
  6. Dated 15 November 2010 stating Claimant may be having his pay rate reduced at a higher than 10% rate.

Claimant seeks \$44,000.00 in lost earnings allegedly resulting from the Deepwater Horizon oil-spill.

On October 22 2010, Claimant filed a six-month Emergency Advance Payment (EAP) claim for \$69,000.00 in lost earnings with the GCCF. He was issued GCCF Claimant ID [REDACTED] and Claim [REDACTED]. On 13 December 2010, his EAP claim was denied.

### NPFC Determination

The claim is denied because the alleged loss in the amount of \$44,000.00 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.

To support his claim, Claimant submitted six letters, three earnings statements, and tax summaries for 2008 & 2009 as well as his 2008 & 2009 W-2. These documents neither singly nor collectively explain how the Claimant suffered \$44,000.00 in losses as a result of the Deepwater Horizon oil-spill. Although the [REDACTED] letters suggest that reductions in benefits and pay were instituted, there is no indication either through the Claimant's earnings statements or tax summaries that he suffered these reductions, and if so, how much these reductions amounted to as a means of quantifying the Claimant's loss.

Additionally, the [REDACTED] letters do not reference the Deepwater Horizon oil-spill as a causative factor in implementing reductions in employee pay and benefits. The [REDACTED] letters collectively suggest that dwindling business in the Gulf of Mexico precipitated the reductions in benefits and pay for employees.<sup>4</sup> Claimant provided no additional evidence to support the allegation that his \$44,000.00 loss resulted from the Deepwater Horizon oil-spill.

In light of the foregoing analysis, this claim is denied.

Claim Supervisor [REDACTED]

Date of Supervisor's Review: 2/27/11

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

[REDACTED] letter dated 08 October 2010 indicates that "[b]usiness conditions have caused the company to implement temporary layoff for some of our employees." Additionally, the BISSO letter dated 02 November 2010 states that "[d]ue to the general downturn in the Gulf of Mexico market, we regret to inform you that effective Monday, November 8, 2010, we will be reducing salaries and day rates for all [REDACTED] barge, dive and vessel crews by ten percent (10%)." What's more [REDACTED] letter dated 05 November 2010 explains that "business in the Gulf of Mexico has declined dramatically, forcing [REDACTED] to make several difficult decisions. . . . [including suspension of the ] Safety Awards programs through the end of the first quarter of 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  
Arlington, VA 20598-7100  
Staff Symbol: (CA)  
Phone: [REDACTED]  
E-mail: [REDACTED]  
Fax: 202-493-6937  
5890  
1/18/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number [REDACTED]

RE: Claim Number: N10036-0453

Dear Mr. [REDACTED]:

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number N10036-0453 involving Deepwater Horizon. Please see the attached Claim Summary / Determination Form for the details 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 N10036-0453.

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

09/14/11

FOIA2011-3380-00001799

## CLAIM SUMMARY / DETERMINATION FORM

Date	: 1/18/2011
Claim Number	: N10036-0453
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 05 January 2011, Mr. [REDACTED] (Claimant) presented a lost profits & earnings capacity claim in the amount of \$10,000.00 to the National Pollution Funds Center (NPFC) for reimbursement. Mr. [REDACTED] is asserting that he lost wages as a result of the Deepwater Horizon incident. Mr. [REDACTED] provided a copy of two pay stubs from [REDACTED] out of Foley, AL for the pay periods of February 4, 2009 and February 25, 2009. Claimant also provided a W-2 from [REDACTED] for 2009 which shows gross wages of \$49,171.35. Mr. [REDACTED] has not provided any other details to explain how he derived his claimed lost profits nor has the Mr. [REDACTED] provided information on whether he worked for [REDACTED] during 2010 therefore it is not clear who the Claimant's employer is or was during 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, Mr. ██████ presented the NPFC Optional OSLTF Claim Form dated 04 January 2011, two pay stubs from February 2009 a copy of Claimant's W-2 from ██████ ██████ for 2009, and a copy of his GGCF denial letter dated November 2, 2010. The GGCF assigned claim identification # ██████ to his claim which was denied.

##### **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 \$10,000.00 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. Mr. ██████ has failed to meet his burden to demonstrate he has



experienced a loss of profits and earnings as a direct result of the Deepwater Horizon incident. Additionally, the Mr. [REDACTED] has failed to provide sufficient comparable financials demonstrating a loss occurred at all.

Claim Supervisor: [REDACTED]

Date of Supervisor's review: 1/13/11

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

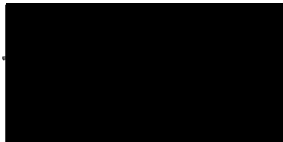
NPFC CA MS 7100  
US COAST GUARD



5890  
3/28/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number [REDACTED]



RE: Claim Number: N10036-0454

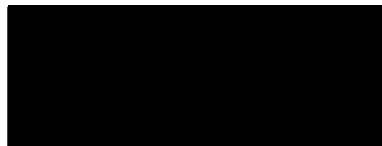
Dear [REDACTED]

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 N10036-0454 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 N10036-0454.

Mail reconsideration requests to:

Director (ca)  
NPFC CA MS 7100  
US COAST GUARD



Claims Manager  
U.S. Coast Guard

Encl: Claim Summary / Determination Form  
09/14/11

FOIA2011-3380-0001803

## CLAIM SUMMARY / DETERMINATION FORM

Date	: March 28, 2011
Claim Number	: N10036-0454
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$1,200,000.00

### ***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 January 11, 2011, [REDACTED] (Claimant) presented a lost profits & earnings claim on behalf of his company, [REDACTED] in the amount of \$1,200,000.00 to the National Pollution Funds Center (NPFC) for reimbursement. The Claimant provided a letter on February 15, 2011 authorizing [REDACTED] to act on the company's behalf for all information regarding the claim.

As stated by the Claimant, [REDACTED] is a wholesale seafood dealer that was unable to purchase seafood due to the lack of fisherman in the Gulf because of the oil spill. The Claimant stated that when the fishing areas reopened, the seafood was limited and prices tripled.

The Claimant provided the NPFC with no correspondence for the claim between [REDACTED] and the GCCF. The Claimant failed to mention that they had been compensated \$135,670.00 from BP and \$181,300.00 by the GCCF for a total of \$316,970.00. Also, based on information provided by the GCCF, the Claimant only presented a claim to the GCCF for \$800,000.00 therefore the Claimant has failed to demonstrate proper presentment to the RP as required by regulation.

### ***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:

1. NPFC OSLTF Claim form, dated 20 Dec 2010
2. 2009 1120S Tax Return
3. 2008 1120S Tax Return
4. 2007 1120S Tax Return
5. Monthly Statements of Profit and Loss for April through October 2010.
6. Monthly Statements of Profit and Loss for April through October 2009.
7. Monthly Statements of Profit and Loss for April through October 2008.
8. Balance sheets for 2008 and 2009
9. 2010 Occupational license for Plaquemines Parish
10. Articles of organization from the state of Louisiana
11. Sales journal from April 2010 through December 2010

## 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.

Based on financial documentation provided by the Claimant, the NPFC's analysis consists of the following:

Month/Year:	Sales	Cost of Goods Sold	Expenses	Total
May-08	\$ 356,661.80	\$ 457,151.96	\$ 28,060.02	\$ (128,550.18)
Jun-08	\$ 1,799,430.30	\$ 1,746,835.94	\$ 36,764.49	\$ 15,829.87
Jul-08	\$ 795,634.35	\$ 585,717.57	\$ 75,743.83	\$ 134,172.95
Aug-08	\$ 748,462.80	\$ 905,972.81	\$ 24,703.11	\$ (182,213.12)
Sep-08	\$ 868,490.40	\$ 697,933.86	\$ 58,732.85	\$ 111,823.69
Oct-08	\$ 1,200,622.65	\$ 988,457.08	\$ 39,552.06	\$ 172,613.51
6 Month Totals:	\$ 5,769,302.30	\$ 5,382,069.22	\$ 263,556.36	\$ 123,676.72

Month/Year:	Sales	Cost of Goods Sold	Expenses	Total
May-09	\$ 406,332.80	\$ 302,954.63	\$ 30,952.07	\$ 72,426.10
Jun-09	\$ 807,328.30	\$ 747,094.65	\$ 42,818.03	\$ 17,415.62
Jul-09	\$ 556,893.62	\$ 395,673.99	\$ 78,037.77	\$ 83,181.86
Aug-09	\$ 688,618.42	\$ 660,724.99	\$ 28,525.27	\$ (631.84)
Sep-09	\$ 648,012.90	\$ 782,852.10	\$ 34,914.29	\$ (169,753.49)
Oct-09	\$ 1,251,647.60	\$ 1,281,821.26	\$ 35,606.59	\$ (65,780.25)
6 Month Totals:	\$ 4,358,833.64	\$ 4,171,121.62	\$ 250,854.02	\$ (63,142.00)

Month/Year:	Sales	Cost of Goods Sold	Expenses	Total
May-10	\$ 199,227.24	\$ 351,809.04	\$ 18,376.91	\$ (170,958.71)
Jun-10	\$ 952,283.69	\$ 978,646.06	\$ 62,407.09	\$ (88,769.46)
Jul-10	\$ 171,739.55	\$ 12.08	\$ 37,880.14	\$ 133,847.33
Aug-10	\$ 104,288.20	\$ 80,369.48	\$ 15,853.09	\$ 8,065.63
Sep-10	\$ 158,124.05	\$ 281,387.92	\$ 16,080.45	\$ (139,344.32)
Oct-10	\$ 1,025,360.63	\$ 968,855.42	\$ 38,870.53	\$ 17,634.68
6 Month Totals:	\$ 2,611,023.36	\$ 2,661,080.00	\$ 189,468.21	\$ (239,524.85)

BP/GCCF Payment

BP/GCCF Payment: \$ 316,970.00

2010 Total: \$ 77,445.15

Based on the above information, it appears as though the Claimant turned a profit of \$77,445.15 for the 6 months after the oil spill when you take into consideration the compensation received by the responsible party for which the Claimant failed to divulge at the time the claim was presented to the NPFC. Looking at the same data provided by the Claimant for 2009, Venice Seafood actually lost profit of \$63,142.00. The overall financials provided by the Claimant show unstable profit and loss recordings during the same 6 month span going back to 2008. Therefore, the Claimant has not met his burden in demonstrating that the loss of profits or impairment of earning capacity was due to the injury, destruction or loss of real property, personal property, or natural resources.

It should also be noted that two of the three shareholders, [REDACTED] and [REDACTED] filed loss of earnings claims with the GCCF and were compensated \$24,400.00 and \$21,100.00, respectively.

Furthermore, the Claimant did not provide the NPFC with trip tickets or landings received to assist in determining the type of product sold at [REDACTED]. The Claimant stated "seafood" in the optional OSLTF form but never provided a more detailed description of the product.

The Claimant, as evidenced above, has not demonstrated that the loss of profits or impairment of earning capacity was due to the injury, destruction or loss of real property, personal property, or natural resources or that the alleged loss exceeds the amount compensated by the RP in the total dollar amount of \$316,970.00. Additionally, based on information gathered from the GCCF, it appears the Claimant did not meet the presentment requirements set forth in 33 C.F.R. § 136.103 by failing to submit the same claim to the responsible party and the NPFC. The claim submitted to the RP was for \$800,000.00 and the claim presented to the NPFC was for \$1,200,000.00. The Claimant also failed to meet the requirements set forth in 33 C.F.R. § 136.113 by not including all other compensation received, applied for, or potentially available as a consequence of the incident. Therefore, the NPFC has determined that the claim is denied.

Claim Supervisor: [REDACTED]

Date of Supervisor's review: *3/28/11*

Supervisor Action: *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

Fax: 202-493-6937

5890  
5/5/2011

**CERTIFIED MAIL – RETURN RECEIPT REQUESTED**

Number: [REDACTED]

[REDACTED]

RE: Claim Number: N10036-0455

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 N10036-0455 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,

[REDACTED]

Chief, Claims Adjudication Division  
U.S. Coast Guard

Encl: Claim Summary / Determination Form

## CLAIM SUMMARY / DETERMINATION FORM

Date	: 5/5/2011
Claim Number	: N10036-0455
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$9,900.00

### ***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. 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 10 January 2011, [REDACTED] (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Funds Center (NPFC) seeking \$9,900.00 in lost wages resulting from the Deepwater Horizon incident.<sup>1</sup>

The Claimant asserted that he was laid off from [REDACTED] restaurant in Pensacola, FL in November 2009. The Claimant asserted that he was scheduled to return to Crabs at his hourly rate of \$15.00 in spring 2010. He alleged that [REDACTED] could not offer him his position back in Spring 2010 because of a decrease in sales resulting from the impact of the Deepwater Horizon incident.

### ***REQUEST FOR RECONSIDERATION:***

On March 21, 2011, the Claimant sent a letter via regular mail requesting reconsideration of the NPFC's initial denial dated February 18, 2011. The NPFC denied the claim originally because the Claimant failed to demonstrate that he had an alleged loss of profits in the amount of \$9,900.00 and the Claimant failed 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. On reconsideration, the Claimant provided a written statement refuting the NPFC's description of the Claimant's residential address in Fort Walton Beach during 2007, 2008 and 2010. The Claimant provided four written statements from four different people attesting to his residence locations from 2009 to 2010.

The basis for the Claimant's reconsideration is that the Claimant asserts that he feels he was denied because of a misconception of his residential address therefore with clarifying the fact that all of his mail went to his Grandmother's Fort Walton Beach address, and the fact that he

<sup>1</sup> OSLTF claim form dated 26 December 2010.  
09/14/11

really never actually lived there for any extended periods of time, he hopes that we will reconsider his claim because he feels he did have a loss due to the oil spill.

### **RECONSIDERATION CLAIM ANALYSIS:**

The claimant requested reconsideration via a letter sent regular mail and received by the NPFC on March 21, 2011. To support his request for reconsideration, the claimant provided four written statements from four different people attesting to his residence locations from 2009 to 2010 as well as an explanation of how he arrived at his alleged loss of \$9,900.00 and desires that the NPFC reconsider the 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.

On reconsideration, the Claimant provided clarifying residential information although none of the information provided was associated with proving that his alleged loss of profits and earnings was due to the Deepwater Horizon incident. The Claimant called [REDACTED] of the NPFC on April 28, 2011, in order to explain his situation. After clarifying the residential information, [REDACTED] informed the Claimant that she would correct the misstated residential information on reconsideration although the denial was based on his inability to show that the Deepwater Horizon incident caused his loss of profits as alleged. [REDACTED] advised the Claimant she would contact his previous employer, [REDACTED], again in order to get a better understanding of why he was unable to be rehired.

It is important to note that the Claimant feels that the residential information has relevance because after being laid off from [REDACTED] the Claimant transferred to another restaurant, [REDACTED] located in Destin, FL resulting in a 120 mile round trip commute. The Claimant did ultimately resign from that employment simply because that employer paid him less per hour than he made at [REDACTED] and the Claimant's commute was burdensome and costly.

With respect to the NPFC's original description of the Claimant's address, the initial denial stated that based upon the records provided, the Claimant lived in Fort Walton Beach, FL during all of 2007, 2008 and most of 2010 and that the Claimant apparently lived in Pensacola, FL for only a few months in the second half of 2009. The denial further stated that the records showed that the Claimant moved back to Fort Walton Beach, FL sometime in early 2010.

Based on the statements provided on reconsideration, the Claimant utilized his Grandmother's residence address for all mail. The statements provided on reconsideration state the following: (1) that the Claimant lived in Fort Walton Beach, FL from April 2009 to June 2009 (as stated by his mother, [REDACTED]); (2) Claimant's wife, [REDACTED], stated that the Claimant moved in with his mother in March 2009 in Fort Walton Beach, FL and lived there for only three months and then did not move back to Fort Walton Beach again until November 2010; (3) [REDACTED] stated that the Claimant lived in Pensacola, FL with his girlfriend, [REDACTED] from April 2009 until October 2010; and (3) the Claimant's girlfriend, [REDACTED] stated that the Claimant lived with her in Pensacola, FL from April 2009 until November 2010.

While there are overlaps of time associated with these statements, the bottom line was to establish that the Claimant lived in Pensacola, FL at the time he was laid off from [REDACTED] and therefore commuted to Destin, FL while working for [REDACTED]

On May 4, 2011, the NPFC made contact with the Manager of [REDACTED] [REDACTED] advised the NPFC that the letter he wrote for the Claimant back on November 19, 2010, where he stated that the Claimant was a seasonal employee of [REDACTED] was accurate. The letter further stated that the Claimant was laid off in November 2009 until the spring of 2010 because seasonal employees are routinely laid off during the slow season while employees with longer tenure are kept on staff as permanent personnel. [REDACTED] said he didn't rehire his summer cooks simply because the business revenues were down resulting in the permanent staff being sufficient to cover the business needs during the time the Claimant was trying to return to work as a summer cook.

[REDACTED] has confirmed to the NPFC that business is now better than in 2009 and 2010 therefore will likely rehire seasonal help again this year should they apply.

Upon another review of the Claimant's Income Tax information provided, the Claimant's 2007 Income Tax Form indicates adjusted gross earnings of \$28,936.00, the 2008 Income Tax Form indicates adjusted gross earnings of \$29,457.00, and 2009 Income Tax Form indicates adjusted gross earnings of \$21,553.00. The Claimant has not provided any W2 income information to support overall earnings for 2010. While the Claimant's adjusted gross income for 2009 is less than what he made in 2008, there is no way for the NPFC to determine the reason for the reduction in income prior to the spill and without annual income for 2010, the NPFC cannot determine what the decrease in income for 2010 was when compared to prior years or whether the decrease, if one had occurred, was due to the Deepwater Horizon incident.

The NPFC again denies the claim because (1) the Claimant has failed to demonstrate a loss of profits, (2) the Claimant has failed to demonstrate the amount of his alleged loss as requested, and (3) the Claimant has failed to demonstrate that his 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.

Claim Supervisor: [REDACTED]

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

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

Fax: 202-493-6937  
5890  
3/22/2011

BY EMAIL AND FIRST CLASS MAIL

[REDACTED]

[REDACTED]

RE: Claim Number: N10036-0456

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 N10036-0456 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 N10036-0456.

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  
09/14/11

FOIA2011-3380-00001812

## CLAIM SUMMARY / DETERMINATION FORM

Date	: March 21, 2011
Claim Number	: N10036-0456
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$10,010.00

### **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 January 11, 2011, the National Pollution Funds Center (NPFC) received a claim from [REDACTED] (Claimant) for lost profits and earnings in the amount of \$10,010.00. The Claimant was a waitress and short-order cook at [REDACTED] in Panama City Beach, Florida at the time of the incident. The Claimant asserted that she was working 40 to 60 hours a week and also received \$550.00 to \$900.00 in tips a week prior to the oil spill. Post-spill, the Claimant asserted that her hours dropped down to 25- 35 hours a week and her tips were in the \$100.00 to \$200.00 a week range.

The Claimant filed a claim with the GCCF and was given claim # [REDACTED]. The claim was subsequently denied on November 12, 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(e).

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 documents:

- NPFC Optional OSLTF Claim Form, 29 Nov 2010
- Letter from GCCF, dated 12 Nov 2010
- Invoice from Gulf Power Company, dated 27 Oct 2010
- Lease Agreement between Claimant and Landlord, dated 16 July 2010.
- Weekly earnings statements from [REDACTED] dated 17 Mar 2010 through 03 Dec 2010.
- 2007 U.S. Income Tax Return Transcript
- 2008 U.S. Income Tax Return Recap
- 2009 U.S. Income Tax Return Transcript
- 2010 U.S. Income Tax Return Transcript

#### **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 requested the following documents from the Claimant in order to assist in determining a loss of profits and earnings due to the oil spill:

- Any and all W-2 Wage and Tax Statements for 2007, 2008 and 2009.
- Provide copies of all pay stubs, pay checks, direct deposit advices, or earnings statements for all payroll periods during 2009 and 2010.
  - If earnings statements are not available, please provide copies of monthly bank statements indicating which deposits related to payroll.
- If you were employed in a job where you received tip or gratuity income, please provide documentation supporting any tips or gratuity earned. This documentation may be in the form of, but is not limited to, weekly tip income statements or reports prepared by your employer or bank statements. If bank statements are presented, please indicate which deposits include tip or gratuity income.
- If your claim is based on reduced work hours, provide the following documents:
  - Copies of you work schedules prior to and after the Deepwater Horizon incident showing your decline in scheduled hours.
  - Written confirmation from your employer verifying that your hours were reduced as a direct result of the Deepwater Horizon incident and not due to other business factors or personnel issues.
- If your claim is based on termination of employment, provide written confirmation from your employer describing in detail, the reason(s) for termination, as well as the termination or separation notice.
- If you have received unemployment benefits from 2009 through the present, provide copies of payments received and statements of benefits.

The Claimant did not provide any of the requested information; therefore the Claimant has not established that the alleged loss of profits and earnings was due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of discharge of oil. Additionally, the Claimant has failed to meet her burden in demonstrating she has a loss of profits. As such, the claim for lost profits or earnings capacity is denied.

Claim Supervisor 

Date of Supervisor's review: *3/22/11*

Supervisor 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

Fax: 202-493-6937  
5890  
1/12/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]

[REDACTED]

RE: Claim Number: N10036-0457

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number N10036-0457 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 N10036-0457.

Mail reconsideration requests to:

Director (ca)  
NPFC CA MS 7100  
US COAST GUARD

[REDACTED]

Sincerely,

[REDACTED]

Claims Manager  
U.S. Coast Guard

CLAIM SUMMARY / DETERMINATION FORM

Date	: 1/12/2011
Claim Number	: N10036-0457
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$42,849.00

**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 11 January 2011, [REDACTED] (Claimant), presented a lost profits & earnings claim in the amount of \$42,849.00 to the National Pollution Funds Center (NPFC) for reimbursement. [REDACTED] is asserting that he was released from his employment on 21 April 2010 as a result of the Deepwater Horizon incident. Claimant has requested equivalent to his annual salary reported on his 2009 tax return.

**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:***

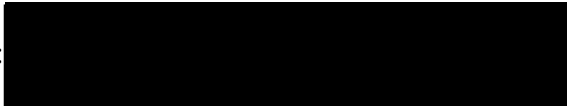
#### **Claimant's Submission**

To support his claim, the Claimant submitted the NPFC OSLTF Claim Form which was undated, a copy of a personal statement explaining his situation, a copy of a letter from his previous employer dated 24 May 2010 which states he was released on 21 April 2010 due to lack of work, miscellaneous pay stubs, and 2008 and 2009 1040 Income Tax Returns. Claimant's OSLTF Claim Form states he submitted his claim to the GCCF on or about September 2010 although the Claimant has not provided his claim identification number from the GCCF.

#### **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 \$42,849.00 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 employer's business decision to terminate his employment due to lack of work.

Claim Supervisor: 

Date of Supervisor's review: *1/12/11*

Supervisor Action: *Denial approved*

Supervisor's Comments:



CLAIM SUMMARY / DETERMINATION FORM

Date : 3/1/2011  
Claim Number : N10036-0460  
Claimant : [REDACTED]  
Type of Claimant : Private (US)  
Type of Claim : Loss of Profits and Earning Capacity  
Claim Manager : [REDACTED]  
Amount Requested : \$300,000.00

**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:**

The claimant owns 24% of [REDACTED] Seafood LLC and is also an employee of the company. The claimant did not provide details of [REDACTED] Seafood's business. The claimant seeks \$300,000 for losses allegedly suffered due to the shutdown of the business and being laid off as an employee.

The claimant states that the responsible party did not reimburse her for loss of income. The claimant's GCCF claim number is [REDACTED]. GCCF records available to the NPFC indicate that the claimant requested \$36,000 in an emergency advance payment and on September 11, 2010, the GCCF paid her \$24,400.00 for her emergency advance payment claim.

**APPLICABLE LAW:**

The Oil Pollution Act of 1990 (OPA) provides that the responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters, adjoining shorelines or the exclusive 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 or personal property or natural resources which shall be recoverable by any claimant. 33 U.S.C. § 2702(b)(2)(E).

With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713. If the claim is not settled by any person by payment within 90 days after the date 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 implementing OSLTF 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.

**DETERMINATION:**

The claimant alleged that the oil in the Gulf destroyed the seafood, which is the company's product, but she provided no description of what the company's business is. The claimant provided the Optional OSLTF Claim Form, her 2009 W-2, and her 2009 Schedule K-1 as part owner of [REDACTED] Seafood LLC. She provided no other documentation, including documentation relating to income in 2010. By letter dated January 28, 2011, the NPFC requested additional information from the claimant, but has not received a reply.

There are several issues and deficiencies with this claim. First, GCCF records indicate that the claimant sought \$36,000 from them and GCCF records indicate that the claimant was paid \$24,400.00 as compensation for her emergency advance payment claim. Second, the claimant presented this claim for \$300,000 to the NPFC yet there is no evidence that the claim for \$300,000 has been presented to the GCCF; thus, proper presentment has not been proven.

Third, it appears that the claimant seeks at least a portion of the \$300,000 as a loss of profits as a shareholder of [REDACTED] Seafood LLC. GCCF records show that [REDACTED] Seafood received an emergency advance payment of \$181,300. The claimant failed to report this payment to the NPFC, and stated that the RP did not reimburse her for lost income. Though the claimant failed to report this compensation from the RP, the claimant would likely be entitled to some portion of that compensation as a shareholder of the corporation.

Finally, the claimant provided no documentation as required by 33 CFR 136.233 (b) and (c) showing that she suffered damages, no evidence of the value of those alleged damages, and no evidence that she suffered damages due to the injury or destruction of property or natural resources by the oil spill.

In conclusion, the NPFC finds that the claimant provided no evidence of a loss of profits resulting from the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of discharge of oil into navigable waters. The claim is denied.

Claim Supervisor:	[REDACTED]
Date of Supervisor's review:	3/10/11
Supervisor Action:	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: 202-493-6937  
5890  
3/9/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

[REDACTED]  
Belle Chasse, LA 70037

RE: Claim Number: N10036-0460

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number N10036-0460 involving Deepwater Horizon incident. Compensation is denied for the reasons stated in 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 or within 30 days of the date of your receipt of this letter, whichever date is earlier, 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 N10036-0460.

Mail reconsideration requests to:

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

Sincerely [REDACTED]

[REDACTED]  
Claims Manager  
U.S. Coast Guard

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  
3/30/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]

VIA EMAIL [REDACTED]

RE: Claim Number: N10036-0461

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 N10036-0461 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 N10036-0461.

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  
09/14/11

FOIA2011-3380-00001823

CLAIM SUMMARY / DETERMINATION FORM

Date	: 3/30/2011
Claim Number	: N10036-0461
Claimant	: [REDACTED]
Type of Claimant	: Corporate (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$3,215,000.00

**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 January 11, 2011 [REDACTED] (Claimant), president, sole stockholder and owner of [REDACTED] presented a lost profits and earnings claim to the National Pollution Funds Center (NPFC) in the amount of \$3,215,000.00 for reimbursement. [REDACTED] OSLTF claim form states that the nature of the damages claimed are for penalties and interest, loss of award winning boutique, and negative press.<sup>1</sup> It is important to note that the Claimant's submission does not actually articulate the nature of the penalties and interest although the NPFC assumes it is associated with the mortgage note for [REDACTED]. Additionally, the Claimant stated the claim includes damages for the loss of award winning boutique.<sup>2</sup>

Claimant submitted documentation with the claim evidencing that the property was purchased on April 30, 2004 and a commercial loan in favor of [REDACTED] was executed by [REDACTED] on the same date. This loan provided that if certain conditions were met, i.e., evidence of two years of positive profit and loss statement conforming to Claimant's debt-service requirements, Claimant could obtain a future advance loan term. Subsequently, on or about May 31, 2007, [REDACTED] executed a Mortgage and Security Agreement in the amount of \$1,215,000 to modify the April 30, 2004 note and mortgage. In July 2008 Claimant requested reorganization, modification and forbearance on the [REDACTED] commercial loan due to nonperformance of the future advance loan term.

In the Claimant's submission to the NPFC, there is a letter from one of the Claimant's referenced attorneys, [REDACTED] dated July 7, 2010 to [REDACTED] BP Claims Service Center. The letter explains the Claimant's financial situation with respect to two boutique hotels she owns which are the subject of two separate claims with the NPFC.<sup>3</sup> The

<sup>1</sup> See, OSLTF Claim form, page 2, question 9. Claim form dated 1/11/11.  
<sup>2</sup> The NPFC notes that [REDACTED] is included in foreclosure proceedings for the [REDACTED] and Claimant may be claiming a speculative loss of [REDACTED] related to those proceedings. While the two properties are separate and Claimant has presented a separate claim for the [REDACTED] property, the two properties are financially related because of cross collateralization and the foreclosure proceedings.  
<sup>3</sup> [REDACTED] presented a second claim to the NPFC for [REDACTED] on February 23, 2011. This claim will be adjudicated separately.

letter states in relevant part... "Both of these have had financial problems created by the banking crisis followed by the economic downturn which has now been exacerbated by the Deepwater Horizon oil spill in the Gulf."<sup>4</sup>

The letter goes on to say that the Claimant had negotiated a workout with her lenders whereby a new lender [REDACTED] would be taking over the loans and would be taking out the position of [REDACTED] (first mortgage holder) as it relates to the Claimant's other property [REDACTED] which is not the subject of this claim). The letter further states that at the eleventh hour, [REDACTED] lender [REDACTED] received a letter from [REDACTED] [REDACTED] indicating that they were canceling their financing due to the Deepwater Horizon oil spill crisis.<sup>5</sup>

As a result, [REDACTED] asserts on behalf of the Claimant, that she now faces a substantial probability of losing both of the properties in foreclosure. The submission asserts that had [REDACTED] [REDACTED] followed through with the refinance of her mortgage of the other property, [REDACTED] it would have enabled the Claimant to divest herself of ownership of [REDACTED] without any personal liability. The Claimant asserts that [REDACTED] holds a first mortgage in the approximate amount of \$1.2 million and a second mortgage held by [REDACTED] in the amount of \$400,000.00 for the [REDACTED]. Closing arguments in [REDACTED] letter further asserts ... "while one can live through a recession and hope to come out the other end, one cannot overcome a loss of property and foreclosure caused by an oil spill." The letter also states that the Claimant lost her "only" opportunity to refinance this property."

The breakdown of the Claimant's sum certain is as follows:<sup>7</sup>

\$1,900,000.00 in lost value/equity if the property is foreclosed;  
\$1,200,000.00 in past due loan payment for the mortgage on [REDACTED]  
\$30,000.00 in past due accounts;  
\$60,000.00 in past due property taxes;  
\$25,000.00 in legal fees.

**TOTAL = \$3,215,000.00**

Claimant presented an Emergency Advance Claim to the GCCF on August 23, 2009, and was paid \$31,000, on November 26, 2010. Claimant did not disclose this amount to the NPFC; NPFC assumes this was for a loss of profits or revenue for the [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,

<sup>4</sup> See, letter from [REDACTED] dated 7/7/10.

<sup>5</sup> *Id*

<sup>6</sup> *Id*

<sup>7</sup> See, email from Claimant to [REDACTED] (NPFC) dated January 11, 2011, page two, under Section entitled REAL PROPERTY/LOSS EARNINGS which itemizes the breakdown of the Claimant's requested sum certain.

<sup>8</sup> Claimant also presented two other claims to the GCCF: an emergency advance payment for [REDACTED] [REDACTED] and a real and personal property damage for [REDACTED]. Claimant was paid \$162,000 for the former claim and was denied on the latter. None of this information was disclosed to the NPFC.



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:**

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.

To receive compensation from the OSLTF for lost profits and earnings, the Claimant MUST establish that her 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 the basis for her claim is that had [REDACTED] not backed out of refinancing the mortgage on her other property, known as [REDACTED] due to the oil spill, then she would have been able to divest herself of [REDACTED] the property subject of this claim.

In this case, the Claimant provided evidence showing that she had financial and loan problems at least three years prior to the incident. She attempted to modify loans for the [REDACTED] property in 2007 and was denied modification because of nonperformance of conditions, i.e., a two year record of profit and loss statements meeting her debt-service ratios. The evidence presented by the Claimant does not substantiate the Claimant's assertions that (1) [REDACTED] failure to refinance her other property has resulted in potential lost profits associated with the [REDACTED] hotel location or (2) that she was guaranteed the refinance by [REDACTED] and that they pulled out at the eleventh hour due to the oil spill. The Claimant produced a copy of a letter dated June 22, 2010 from [REDACTED] (the first mortgage holder of the [REDACTED] property) which states that they have elected not to move forward with the 'proposed' acquisition of [REDACTED] loan on the [REDACTED] Resort property due to concerns over the continually deteriorating conditions within the Gulf as a result of the Deepwater Horizon incident and to consider the letter a formal withdrawal of their offer.<sup>9</sup>

The NPFC contacted [REDACTED] to discuss the cancellation of the debt restructure negotiations associated with the [REDACTED] property. [REDACTED] stated that [REDACTED] considered many factors with respect to the risk associated with this transaction<sup>10</sup> and that the Deepwater Horizon incident was one factor they considered but was not the sole reason why the negotiations ended.

The Claimant also provided an unexecuted copy of a 'Letter of Intent' for prospective restructuring of debt for the Claimant's other hotel property [REDACTED]. The Letter of Intent is dated May 11, 2010 and addressed to the Claimant. This letter states that it acknowledges their mutual interest in proceeding forward with a debt restructuring transaction between [REDACTED] and the Claimant's business [REDACTED] relating to certain existing debt secured by the [REDACTED]. The letter goes on to say that the terms and concepts expressed in the letter are subject to the review and approval of all due diligence items and issues that [REDACTED] deems necessary and that the letter is further subject to the parties further negotiating and fully executing formal agreements memorializing the terms of the prospective Restructured Loan.

It is clear in this letter that at the time of its issuance on May 11, 2010, there were not any formal agreements in place and that the negotiations were preliminary and therefore not official until executed. The Letter of Intent includes the following at the end of the letter..."As referenced above, this non-binding LOI is only a list of proposed points that are intended to be included within the restructuring documentation. Neither party shall be bound by any agreement until both agree to and sign formal agreements memorializing the restructuring transaction contemplated herein, and no party may reasonable rely on any promises inconsistent with this paragraph."

It is important to note that the Claimant has NOT produced a copy of any signed formal agreements ratifying the proposed restructure loan therefore the Claimant has not demonstrated

<sup>9</sup> See, letter from [REDACTED] dated June 22, 2010.

<sup>10</sup> [REDACTED] noted that [REDACTED] engages in the purchase of distressed property acquisitions.

that there was ever a binding formal agreement with [REDACTED]. Based on the evidence, [REDACTED] walked away from acquisition negotiations.

The Claimant itemized the sum certain into several subparts. The first amount requested is \$1,900,000.00; the Claimant asserted that it is the potential lost equity and value should the property be foreclosed upon. However, as noted above, the Claimant has not established that foreclosure of the property and a potential loss of the equity was due to the injury or destruction of the real or personal property or the natural resource. The property was not damaged or injured by the oil.

The NPFC disagrees with the Claimant that the injury or destruction of the real or personal property or the natural resource is the cause of her alleged loss. Even if the Claimant could demonstrate that she had a loss due to the injury or destruction of the real or personal property or natural resource, the Claimant has not demonstrated she has an OPA compensable loss of profits and earnings.

Further, as discussed above [REDACTED] financial problems with the property began at least three years prior to the discharge of oil. Should the Claimant's property end in foreclosure, the Claimant produced documentation that evidences foreclosure proceedings in progress which is not the result of the Deepwater Horizon incident but evidence of a pre-existing issue prior to the incident and only compounded by the fact that she has not been able to acquire proceeds to either refinance or restructure her debts. The letter written by her attorney [REDACTED] on July 7, 2010 states that ... "Both of these [properties] have had financial problems created by the banking crisis followed by the economic downturn which has now been exacerbated by the Deepwater Horizon oil spill in the Gulf"<sup>11</sup>, demonstrates there were financial problems that were not the result of the Deepwater Horizon incident.

The second amount requested by the Claimant is \$1,200,000.00 for the past due balance of the Claimant's mortgage on the property associated with this claim. Mortgage payments are not OPA-compensable damages. The Claimant purchased the property years before the Deepwater Horizon incident and was bound by the terms of the mortgage note and failure to meet the terms and conditions of that note is the sole responsibility of the Claimant as she is bound by those terms regardless of the oil spill or not.

The third amount requested by the Claimant is \$30,000.00 for past due accounts. While the NPFC is unsure what accounts were past due, how long they have been past due, and why they were past due, it is evident that the past due accounts preceded the oil spill and are the responsibility of the Claimant and are not an OPA compensable damage.

The fourth amount requested by the Claimant is \$60,000.00 in past due property taxes. The Claimant sent an email to [REDACTED] at the NPFC dated January 11, 2011 that states ... "we have not been able to pay 2007, 2008, nor 2009 for a total of approximately \$60,000 (\$20k per year)." The Claimant is responsible for paying taxes on real property she owns and are not OPA compensable damages.<sup>12</sup> Failure to pay taxes since 2007 is further evidence that the Claimant's properties were in financial distress at least three years prior to the incident.

The fifth and final amount requested by the Claimant is \$25,000.00 for legal fees. Legal fees are not OPA compensable damages. In accordance with the governing claims regulations found at 33

<sup>11</sup> See, letter from [REDACTED] dated 7/7/10.

<sup>12</sup> Claimant's failure to pay property taxes from 2007 is further evidence that her property was in financial difficulties at least three years prior to the incident.

CFR 136.105(e)(8) it states in part..." The reasonable costs incurred by the claimant in assessing the damages claimed [can be requested for compensation]. This includes the reasonable costs of estimating the damages claimed, but not attorney's fees."

This claim is denied because (1) the Claimant has failed to demonstrate that her loss of profits and earnings was a result of the injury, destruction or loss of property or natural resources and the resulting discharge or substantial threat of discharge of oil, (2) the Claimant has failed to prove a loss of profits, and (3) mortgage, past due accounts, property taxes and legal fees are not OPA compensable.

Claim Supervisor

Date of Supervisor's review: *3/30/11*

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  
4200 Wilson Blvd. Suite 1000  
Arlington, VA 20598-7100  
Staff Symbol: (CA)

Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ  
Claim# N10036-0462  
31 January 2011

RE: Claim Number: N10036-0462

Dear Mr. [REDACTED],

The National Pollution Funds Center (NPFC), in accordance with 33 C.F.R. Part 136, denies payment on the claim number N10036-0462 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 N10036-0462.

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

09/14/11

FOIA2011-3380-00001830

CLAIM SUMMARY / DETERMINATION FORM

Date	: 02 February 2011
Claim Number	: N10036-0462
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$38,400.00

**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 January 2011, [REDACTED] (Claimant) presented an Oil Spill Trust Fund (OSLTF) claim form seeking \$38,400.00 in lost profits and earnings capacity resulting from the Deepwater Horizon incident.

Claimant is an oyster fisherman in Mississippi. He holds Mississippi commercial boat license # [REDACTED]. The license indicates that claimant captains the vessel [REDACTED] for [REDACTED] [REDACTED] (owner/employer). In a phone conversation with NPFC, claimant asserted that [REDACTED] [REDACTED] is an oyster dredging vessel and that he dredges Areas [REDACTED] and [REDACTED] off the Pass Christian coast.

Claimant alleges that all oyster reefs were closed due to the Deepwater Horizon incident, and that he could not dredge during the 2010-2011 oyster season.<sup>1</sup> The \$38,400.00 claim represents his lost profits for the season.

**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

<sup>1</sup> Optional OSLTF claim form.



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 the following documentation:

- optional OSLTF claim form;
- copy of his Mississippi commercial boat license # [REDACTED];
- copy of his Mississippi of Boat registration Certificate (illegible);
- copy of Mississippi Identification card (illegible);
- copy of claimant social security card;
- copy of claimant's Department of Veterans Affairs card;
- copy of claimant's [REDACTED] card;
- fax cover page to [REDACTED];
- Pass Purchasing Vendor Quick Report for [REDACTED] from 06 January to 01 May 2010;

- Certified letter from [REDACTED] Re: Correspondence Received 15 December 2010;
- Email to [REDACTED] with claimant address;
- Email to [REDACTED] with claimant statement that he has not heard back from BP on his claim;
- Email to [REDACTED] stating that the oyster season is still closed down;
- Email to [REDACTED] stating claimant's loss is \$60,000.00 or more;
- Email to [REDACTED] stating "re.evaluation [sic] claim";
- Handwritten letter from claimant stating, among other things, that he did not file for taxes in 2008 and 2009;
- Copy of check [REDACTED] paid to [REDACTED];
- Copy of check [REDACTED] paid to [REDACTED];
- Copy of check [REDACTED] paid to [REDACTED];
- Copy of check [REDACTED] paid to [REDACTED];
- Copy of check [REDACTED] paid to [REDACTED];
- Copy of check [REDACTED] paid to [REDACTED];
- Letter from [REDACTED] stating that [REDACTED] is a commercial fisherman;
- Copy of check [REDACTED] paid to [REDACTED];
- Fax to NPFC with hand-drawn map of oyster dredging areas; and
- Fax to NPFC of calculation of claimant's loss profits.

On 23 August, 2010, claimant filed a claim for an Emergency Advance Payment with GCCF for lost profits and earning capacity as a result of the Deepwater Horizon incident.<sup>2</sup> GCCF assigned claimant ID # [REDACTED] and requested additional information from claimant on 15 September 2010. After claimant submitted additional information, GCCF reevaluated his claim. This re-evaluation is still on-going.<sup>3</sup>

On 15 December 2010, claimant attempted to present his claim to NPFC, but he failed to provide a sum certain and proof of Responsible Party (RP) presentment. NPFC informed claimant of this deficiency via certified letter dated 20 December 2010, and on 12 January 2011, claimant properly filed a \$38,400.00 claim for lost profits and earning capacity resulting from the Deepwater Horizon incident with NPFC.<sup>4</sup> On 17 January 2011, in response to an NPFC request, claimant presented a map of oyster areas in Mississippi and a calculation of his lost profits. Claimant's claim is before the NPFC because over ninety days has elapsed since he presented his claim to the GCCF.

#### **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 NPFC, all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim. Although Claimant has established that he suffered an economic loss from the closure of oyster areas to dredging,<sup>5</sup> he does not provide evidence to support the allegation that this loss resulted from the Deepwater Horizon incident.

<sup>2</sup> Optional OSLTF claim form.

<sup>3</sup> Claimant also has an interim payment claim under review with GCCF.

<sup>4</sup> We note that GCCF has not settled claimant's claim for emergency advance payment within 90 days after the claim was presented to GCCF. In accordance with 33 C.F.R. § 136.103(c)(2), claimant can present his claim to NPFC.

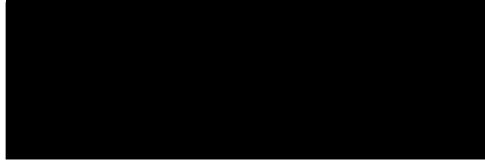
<sup>5</sup> On 01 November 2010, the Mississippi Department of Marine Resources issued News Release 10-140-LDJ, which announced the opening of the Mississippi oyster season to tonging only on 08 November, 2010 only in Areas II "A," "B," and "C". In other words, no dredging was permitted in these areas.

In an official new release, the Mississippi Department of Marine Resources (Mississippi DMR) explained the reason for the closure of oyster areas during the 2010-2011 oyster season to dredging:

In response to requests from commercial oyster dredgers attending the Oct. 19, 2010, meeting of the Mississippi Commission on Marine Resources (CMR), the CMR recommended that the DMR executive director open the 2010-2011 oyster season to tonging only, and not dredging, in an effort to conserve the oyster resource in Mississippi waters.

The decision by the Mississippi DMR to close oyster areas to dredging was done to conserve oyster resources in Mississippi. The evidence presented does not show that it was the result of the Deepwater Horizon incident. Claimant's losses therefore did not result from the Deepwater Horizon incident and his claim is denied.

Claim Supervisor:



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

Supervisor's Actions: DENIED ALL ROSES

Supervisor's Comments:

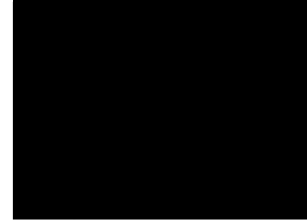
U.S. Department of  
Homeland Security

**United States  
Coast Guard**



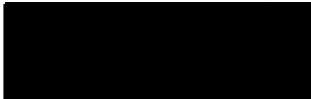
Director  
National Pollution Funds Center  
United States Coast Guard

NPFC CA MS 7100  
US COAST GUARD



5890  
2/2/2011

VIA MAIL AND EMAIL: 



RE: Claim Number: N10036-0463

Dear 

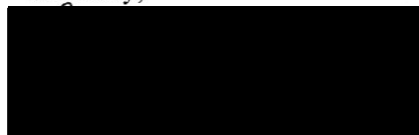
The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number N10036-0463 involving Deepwater Horizon. Please see the attached Claim Summary / Determination Form for an explanation regarding this denial.

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 N10036-0463.

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

09/14/11

FOIA2011-3380-00001835



## CLAIM SUMMARY / DETERMINATION FORM

Date	: 1/31/2011
Claim Number	: N10036-0463
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$5,000.00

### ***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 January 2011, [REDACTED] (Claimant) presented a claim to the National Pollution Fund Center (NPFC) on an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form seeking \$5,000.00 in lost profits and earning capacity resulting from the Deepwater Horizon incident. Claimant asserted the due to the Deepwater Horizon incident, her employer, 20/20 [REDACTED] was unable to purchase seafood, pay employees and run the restaurant. [REDACTED] was released from her employment with [REDACTED] on September 14, 2010 due to downsizing, the rising cost of the economy and the effects that the BP oil spill had on the cost of purchasing seafood products.<sup>1</sup>

### ***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 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 Optional OSLTF Claim Form dated 20 December 2010, a copy of a five day notice to vacate by landlord dated July 20, 2010, a copy of an invoice from [REDACTED] dated December 15, 2010, a copy of pay stub from Gymboree Operations, Inc. for November 21, 2010 through December 4, 2010, a copy of benefit listing from the Department of Social Services dated September 23, 2010 showing Claimant receives food stamps, a copy of Monetary Determination letter from the Louisiana Workforce Commission dated October 27, 2010, a copy of an undated termination from [REDACTED] of 20/20 [REDACTED], a copy of a letter from the Office of Community Services regarding a report of suspected child neglect or abuse for Claimant's three children, a copy of Louisiana Driver License, a copy of miscellaneous childcare receipts, a copy of Claimant's water bill dated July 20, 2010 indicating it is a cutoff notice, a copy of a past due gas bill dated July 29, 2010, a copy of W-2 for 2009 from 20/20 [REDACTED] which shows Claimant made gross wages of \$2,460.00, and a copy of two weekly time sheets that are undated, unsigned, and employer not listed of form.



Claimant asserted that her income ended with 20/20 [REDACTED] as a result of the Deepwater Horizon incident and stated she has obtained other part time work in order to try to keep her family off of the streets.

### **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.

Under 33 U.S.C. § 2702(b)(2)(E) and 33 C.F.R. Part 136, a claimant must prove that her 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.

Based on the documentation provided from Claimant, she indicated that her income was reduced and ultimately ended on September 14, 2010 as a result of the Deepwater Horizon incident.

The claim is denied because the alleged loss in the amount of \$5,000 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. Claimant's alleged financial loss is a result of her employer's business decision to terminate her employment on September 14, 2010. Additionally, the Claimant has failed to meet her burden in establishing a loss of profits and earnings as a direct result of the Deepwater Horizon incident and the Claimant has failed to provide comparable financial information that demonstrates she has proven a loss of profits therefore this claim is denied.

Claim Supervisor: [REDACTED] c

Date of Supervisor's review: *February 1, 2011*

Supervisor Action: *Denial approved*

Supervisor's Comments:

## CLAIM SUMMARY / DETERMINATION FORM

Date : 3/10/2011  
Claim Number : N10036-0464  
Claimant : ██████████  
Type of Claimant : Private (US)  
Type of Claim : Loss of Profits and Earning Capacity  
Claim Manager : ██████████  
Amount Requested : \$700,000.00

### 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:

The claimant owns 51% of ██████████ and claims to be an employee of the company. The claimant did not provide details of ██████████ business. The claimant owns 50% of ██████████ and claims to be an employee of the company. The claimant did not provide details of ██████████ business. The claimant seeks \$700,000 for losses allegedly suffered due to the shutdown of the businesses and being laid off as an employee.

The claimant states that the responsible party did not reimburse him for loss of income. The claimant's GCCF claimant number is ██████████ GCCF records available to the NPFC indicate that the claimant requested \$54,000 in an emergency advance payment claim and \$18,000 for an interim claim. GCCF records indicate that the emergency advance payment claim was denied and the interim claim is under review.

### APPLICABLE LAW:

The Oil Pollution Act of 1990 (OPA) provides that the responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters, adjoining shorelines or the exclusive 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 or personal property or natural resources which shall be recoverable by any claimant. 33 U.S.C. § 2702(b)(2)(E).

With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713. If the claim is not settled by any person by payment within 90 days after the date 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 implementing OSLTF 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.

**DETERMINATION:**

The claimant alleged that the oil in the Gulf destroyed the seafood, which is the company's product, but he provided no description of what the companies' business is. The claimant provided the Optional OSLTF Claim Form, his 2009 Schedule K-1 as part owner of [REDACTED] and his 2009 Schedule K-1 as part owner of [REDACTED]. He provided no other documentation, including documentation relating to income in 2010. By letter dated February 1, 2011, the NPFC requested additional information from the claimant, but has not received a reply.

There are several issues and deficiencies with this claim. First, GCCF records indicate that the claimant sought \$72,000 from them. Second, the claimant presented this claim for \$700,000 to the NPFC yet there is no evidence that the claim for \$700,000 has been presented to the GCCF; thus, proper presentment has not been proven.

Third, it appears that the claimant seeks at least a portion of the \$700,000 as a loss of profits as a shareholder of [REDACTED] and [REDACTED]. GCCF records show that [REDACTED] received an emergency advance payment of \$181,300. GCCF records show that [REDACTED] received \$10,000 from BP and an emergency advance payment of \$100,000 from the GCCF. The claimant failed to report these payments to the NPFC, and stated that the RP did not reimburse him for lost income. Though the claimant failed to report this compensation from the RP, the claimant would likely be entitled to some portion of that compensation as a shareholder of the corporations.

Finally, the claimant provided no documentation as required by 33 CFR 136.233 (b) and (c) showing that he suffered damages, no evidence of the value of those alleged damages, and no evidence that he suffered damages due to the injury or destruction of property or natural resources by the oil spill.

In conclusion, the NPFC finds that the claimant provided no evidence of a loss of profits resulting from the injury, destruction or loss of property or natural resources as a result of a discharge or substance into navigable waters. The claim is denied.

Claim Supervisor: [REDACTED]

Date of Supervisor's review: 3/10/11

Supervisor Action: Denial Attached

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

5890  
3/10/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

RE: Claim Number: N10036-0464

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number N10036-0464 involving the Deepwater Horizon incident. Compensation is denied for the reasons stated in the enclosed Claim Summary/Determination.

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 or within 30 days of your receipt of this letter, whichever date is earlier, 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 N10036-0464.

Mail reconsideration requests to:

Director (ca)  
NPFC CA MS 7100  
US COAST GUARD

[REDACTED]  
U.S. Coast Guard

CLAIM SUMMARY / DETERMINATION FORM

Date : 3/16/2011  
Claim Number : N10036-0465  
Claimant : ██████████  
Type of Claimant : Private (US)  
Type of Claim : Loss of Profits and Earning Capacity  
Claim Manager : ██████████  
Amount Requested : \$300,000.00

**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:**

The claimant owns 25% of ██████████ and is also an employee of the company. The claimant did not provide details of ██████████ business. The claimant seeks \$300,000 for losses allegedly suffered due to the shutdown of the business and being laid off as an employee.

The claimant states that the responsible party did not reimburse him for loss of income. The claimant's GCCF claim number is ██████████. GCCF records available to the NPFC indicate that the claimant requested \$126,400.00 for emergency advance payments and the GCCF paid him \$21,100.00.

**APPLICABLE LAW:**

The Oil Pollution Act of 1990 (OPA) provides that the responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters, adjoining shorelines or the exclusive 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 or personal property or natural resources which shall be recoverable by any claimant. 33 U.S.C. § 2702(b)(2)(E).

With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713. If the claim is not settled by any person by payment within 90 days after the date 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 implementing OSLTF 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.

**DETERMINATION:**

The claimant alleged that the oil in the Gulf destroyed the seafood, which is the company's product, but he provided no description of what the company's business is. The claimant provided the Optional OSLTF Claim Form, his 2009 W-2, and his 2009 Schedule K-1 as part owner of [REDACTED]. He provided no other documentation, including documentation relating to income in 2010. By letter dated February 1, 2011, the NPFC requested additional information from the claimant, but has not received a reply.

There are several issues and deficiencies with this claim. First, GCCF records indicate that the claimant sought \$126,400.00 from them and GCCF records indicate that the claimant was paid \$21,100.00 as compensation for his emergency advance payment claim, which the claimant did not report to the NPFC. Second, the claimant presented this claim for \$300,000 to the NPFC yet there is no evidence that the claim for \$300,000 has been presented to the GCCF; thus, proper presentment has not been proven.

Third, it appears that the claimant seeks at least a portion of the \$300,000 as a loss of profits as a shareholder of [REDACTED]. GCCF records show that Venice Seafood received an emergency advance payment of \$181,300.00 and that BP paid the company \$135,670.00. The claimant failed to report these payments to the NPFC, and stated that the RP did not reimburse him for lost income. Though the claimant failed to report this compensation from the RP, the claimant would likely be entitled to some portion of that compensation as a shareholder of the corporation.

Finally, the claimant provided no documentation as required by 33 CFR 136.233 (b) and (c) showing that he suffered damages, no evidence of the value of those alleged damages, and no evidence that he suffered damages due to the injury or destruction of property or natural resources by the oil spill.

In conclusion, the NPFC finds that the claimant provided no evidence of a loss of profits resulting from the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of discharge of oil into navigable waters. The claim is denied.

Claim Supervisor



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

Supervisor Action: Decision APPROVED

Supervisor's Comments:

U.S. Department of  
Homeland Security

United States  
Coast Guard

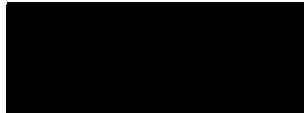


Director  
National Pollution Funds Center  
United States Coast Guard

NPFC CA MS 7100  
US COAST GUARD

[REDACTED]  
Fax: 202-493-6937  
5890  
3/16/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED



RE: Claim Number: N10036-0465

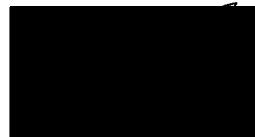
Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number N10036-0465 involving the Deepwater Horizon incident. Compensation is denied for the reasons stated in 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 or within 30 days of the date of your receipt of this letter, whichever date is earlier, 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 N10036-0465.

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

## CLAIM SUMMARY / DETERMINATION FORM

Date : 3/16/2011  
Claim Number : N10036-0466  
Claimant : [REDACTED]  
Type of Claimant : Private (US)  
Type of Claim : Loss of Profits and Earning Capacity  
Claim Manager : [REDACTED]  
Amount Requested : \$150,000.00

### **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:**

The claimant owns 100% of [REDACTED] and is also an employee of the company. The claimant did not provide details of [REDACTED] business. The claimant seeks \$150,000 for losses allegedly suffered due to the shutdown of the business and being laid off as an employee.

The claimant states that the responsible party did not reimburse him for loss of income. The claimant's GCCF claim number is [REDACTED]. GCCF records available to the NPFC indicate that the claimant requested \$80,000 in emergency advance payments and on September 12, 2010, the GCCF paid him \$20,300.00 for his emergency advance payment claim. GCCF records also indicate that the claimant received \$5,000 from BP.

### **APPLICABLE LAW:**

The Oil Pollution Act of 1990 (OPA) provides that the responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters, adjoining shorelines or the exclusive 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 or personal property or natural resources which shall be recoverable by any claimant. 33 U.S.C. § 2702(b)(2)(E).

With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713. If the claim is not settled by any person by payment within 90 days after the date 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 implementing OSLTF 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.

**DETERMINATION:**


The claimant alleged that the oil in the Gulf destroyed the seafood, which is the company's product, but he provided no description of what the company's business is. The claimant provided the Optional OSLTF Claim Form, his 2009 W-2, and his 2009 Schedule K-1 as owner of [REDACTED]. He provided no other documentation, including documentation relating to income in 2010. By letter dated February 1, 2011, the NPFC requested additional information from the claimant, but has not received a reply.

There are several issues and deficiencies with this claim. First, GCCF records indicate that the claimant sought \$80,000 from them and GCCF records indicate that the claimant was paid \$20,300.00 as compensation for his emergency advance payment claim and BP paid him \$5,000.00. The claimant failed to report these payments to the NPFC. Second, the claimant presented this claim for \$150,000 to the NPFC yet there is no evidence that the claim for \$150,000 has been presented to the GCCF; thus, proper presentment has not been proven.

Third, it appears that the claimant seeks at least a portion of the \$150,000 as a loss of profits as a shareholder of [REDACTED]. GCCF records show that [REDACTED] received an emergency advance payment of \$80,800.00 from the GCCF and \$60,000.00 from BP. The claimant failed to report these payments to the NPFC, and stated that the RP did not reimburse him for lost income. Though the claimant failed to report this compensation from the RP, the claimant would likely be entitled to some portion of that compensation as the sole shareholder of the corporation.

Finally, the claimant provided no documentation as required by 33 CFR 136.233 (b) and (c) showing that he suffered damages, no evidence of the value of those alleged damages, and no evidence that he suffered damages due to the injury or destruction of property or natural resources by the oil spill.

In conclusion, the NPFC finds that the claimant provided no evidence of a loss of profits resulting from the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of discharge of oil into navigable waters. The claim is denied.

Claim Supervisor: 

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

Supervisor Action: Denial - approved

Supervisor's Comments:



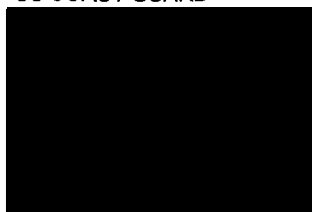
U.S. Department of  
Homeland Security

United States  
Coast Guard



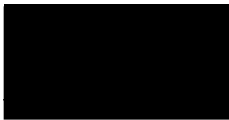
Director  
National Pollution Funds Center  
United States Coast Guard

NPFC CA MS 7100  
US COAST GUARD




5890  
3/16/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED



RE: Claim Number: N10036-0466

Dear 

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number N10036-0466 involving the Deepwater Horizon incident. Compensation is denied for the reasons stated in 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 or within 30 days of the date of your receipt of this letter, whichever date is earlier, 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 N10036-0466.

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

CLAIM SUMMARY / DETERMINATION FORM

Date : 3/16/2011  
Claim Number : N10036-0467  
Claimant : [REDACTED]  
Type of Claimant : Private (US)  
Type of Claim : Loss of Profits and Earning Capacity  
Claim Manager : [REDACTED]  
Amount Requested : \$100,000.00

**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:**

The claimant owns 50% of [REDACTED] and is also an employee of [REDACTED]. The claimant did not provide details of [REDACTED] or [REDACTED]. The claimant seeks \$100,000 for losses allegedly suffered due to the shutdown of the businesses and being laid off as an employee.

The claimant states that the responsible party did not reimburse her for loss of income. The claimant's GCCF claim number is [REDACTED]. GCCF records available to the NPFC indicate that the claimant requested \$15,000 in an emergency advance payment claim and on November 2, 2010, the GCCF paid her \$9,600.00 for her emergency advance payment claim. GCCF records also indicate that BP paid the claimant \$8,166.00.

**APPLICABLE LAW:**

The Oil Pollution Act of 1990 (OPA) provides that the responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters, adjoining shorelines or the exclusive 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 or personal property or natural resources which shall be recoverable by any claimant. 33 U.S.C. § 2702(b)(2)(E).

With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713. If the claim is not settled by any person by payment within 90 days after the date 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 implementing OSLTF 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.

**DETERMINATION:**

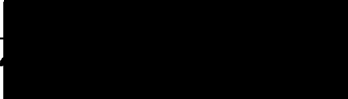
The claimant alleged that the oil in the Gulf destroyed the seafood, which is the companies' product, but she provided no description of what either company's business is. The claimant provided the Optional OSLTF Claim Form, her 2009 W-2 from [REDACTED] and her 2009 Schedule K-1 as part owner of [REDACTED]. She provided no other documentation, including documentation relating to income in 2010. By letter dated February 1, 2011, the NPFC requested additional information from the claimant, but has not received a reply.

There are several issues and deficiencies with this claim. First, GCCF records indicate that the claimant sought \$15,000 from them and GCCF records indicate that the claimant was paid \$9,600.00 as compensation for her emergency advance payment claim and that BP paid her \$8,166.00. The claimant failed to report these payments. Second, the claimant presented this claim for \$100,000 to the NPFC yet there is no evidence that the claim for \$100,000 has been presented to the GCCF; thus, proper presentment has not been proven.

Third, it appears that the claimant seeks at least a portion of the \$100,000 as a loss of profits as a shareholder of [REDACTED]. GCCF records show that [REDACTED] received an emergency advance payment of \$100,000.00 and that BP paid [REDACTED] \$10,000.00. The claimant failed to report these payments to the NPFC, and stated that the RP did not reimburse her for lost income. Though the claimant failed to report this compensation from the RP, the claimant would likely be entitled to some portion of that compensation as a shareholder of the corporation.

Finally, the claimant provided no documentation as required by 33 CFR 136.233 (b) and (c) showing that she suffered damages, no evidence of the value of those alleged damages, and no evidence that she suffered damages due to the injury or destruction of property or natural resources by the oil spill.

In conclusion, the NPFC finds that the claimant provided no evidence of a loss of profits resulting from the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of discharge of oil into navigable waters. The claim is denied.

Claim Supervisor: 

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

Supervisor Action: Denial advised

Supervisor's Comments:

U.S. Department of  
Homeland Security

United States  
Coast Guard



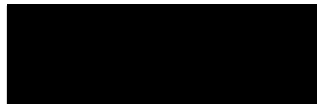
Director  
National Pollution Funds Center  
United States Coast Guard

NPFC CA MS 7100  
US COAST GUARD



3/16/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED



RE: Claim Number: N10036-0467

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number N10036-0467 involving the Deepwater Horizon incident. Compensation is denied for the reasons stated in 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 or within 30 days of the date of your receipt of this letter, whichever date is earlier, 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 N10036-0467.

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

CLAIM SUMMARY / DETERMINATION FORM

Date : 3/2/2011  
Claim Number : N10036-0468  
Claimant : [REDACTED]  
Type of Claimant : Corporate (US)  
Type of Claim : Loss of Profits and Earning Capacity  
Claim Manager : [REDACTED]  
Amount Requested : \$150,000.00

**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:**

The claimant apparently is a salon and spa based on its name. The owner claims that sales declined and there was a lack of work. No evidence was provided besides a partially filled out Optional OSLTF Claim Form. GCCF records indicate that the claimant submitted a claim for \$45,762.49 to the GCCF under claim [REDACTED] and was apparently denied.

**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 U.S.C. § 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 U.S.C. § 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 U.S.C. § 2702(b)(2)(E).

Pursuant to the implementing OSLTF 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.

**DETERMINATION:**

The claimant provided no evidence to support her claim. The NPFC requested additional information from the claimant on February 1, 2011 and received no reply within the 14-day deadline. Therefore, the NPFC finds no evidence of loss or damage to the claimant resulting from the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of discharge of oil. Since there is no evidence of such a loss, much less any loss at all, the claim is denied.

Claim Supervisor: 

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

Supervisor Action: DENIED APPROVED

Supervisor's Comments:

U.S. Department of  
Homeland Security

United States  
Coast Guard

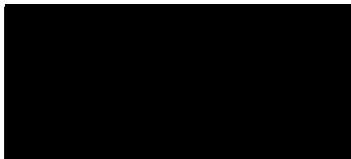


Director  
National Pollution Funds Center  
United States Coast Guard

NPFC CA MS 7100  
US COAST GUARD

5890  
3/2/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED



RE: Claim Number: N10036-0468

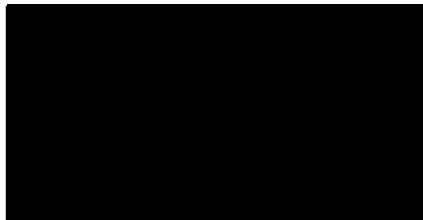
Dear 

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number N10036-0468. Compensation is denied for the reasons set forth in the Claim Summary/Determination Form attached.

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 or within 30 days of your receipt of this letter, whichever date is earlier, 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 N10036-0468.

Mail reconsideration requests to:

Director (ca)  
NPFC CA MS 7100  
US COAST GUARD



Claims Manager  
U.S. Coast Guard

## CLAIM SUMMARY / DETERMINATION FORM

Date : 3/2/2011  
Claim Number : N10036-0469  
Claimant : ██████████  
Type of Claimant : Corporate (US)  
Type of Claim : Loss of Profits and Earning Capacity  
Claim Manager : ██████████  
Amount Requested : \$150,000.00

### 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:

The claimant apparently is a business related to vacation rentals based on the claim form, but it is not clear what the business does. The claimant stated that the, "Economy affected by oil spill creating vacant rental properties!" No evidence was provided besides a partially filled out Optional OSLTF Claim Form. GCCF records indicate that the claimant submitted a claim for \$15,990.00 to the GCCF under claim ██████████ and was apparently denied.

### 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 U.S.C. § 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 U.S.C. § 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 U.S.C. § 2702(b)(2)(E).

Pursuant to the implementing OSLTF 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.

**DETERMINATION:**

The claimant provided no evidence to support her claim. The NPFC requested additional information from the claimant on February 1, 2011 and received no reply within the 14-day deadline. Therefore, the NPFC finds no evidence of loss or damage to the claimant resulting from the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of discharge of oil. Since there is no evidence of such a loss, much less any loss at all, the claim is denied.

Claim Supervisor

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

Supervisor Action: Denial allowed

Supervisor's Comments:

U.S. Department of  
Homeland Security

United States  
Coast Guard

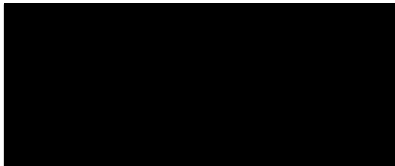


Director  
National Pollution Funds Center  
United States Coast Guard

NPFC CA MS 7100  
US COAST GUARD

5890  
3/2/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED



RE: Claim Number: N10036-0469

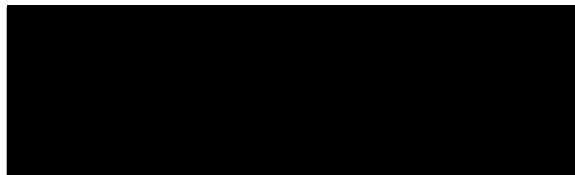
Dear 

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number N10036-0469. Compensation is denied for the reasons set forth in the Claim Summary/Determination Form attached.

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 or within 30 days of your receipt of this letter, whichever date is earlier, 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 N10036-0469.

Mail reconsideration requests to:

Director (ca)  
NPFC CA MS 7100  
US COAST GUARD



Claims Manager  
U.S. Coast Guard

CLAIM SUMMARY / DETERMINATION FORM

Date : 3/18/2011  
Claim Number : N10036-0470  
Claimant : [REDACTED]  
Type of Claimant : Corporate (US)  
Type of Claim : Loss of Profits and Earning Capacity  
Claim Manager : [REDACTED]  
Amount Requested : \$800,000.00

**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:**

The claimant is a wholesale seafood business whose product is shrimp and fish. [REDACTED] and [REDACTED] are the shareholders of the business, each owning 50% of the company. The business states that seafood was not available to purchase from fishermen, forcing docks to close; and, when areas reopened seafood was limited and prices tripled. The claimant seeks \$800,000 for losses of profit allegedly suffered due to the shutdown of the business.

The claimant states that the responsible party did not provide enough money to cover its loss of income. The claimant's GCCF claimant number is [REDACTED]. GCCF records available to the NPFC indicate that the claimant requested \$100,000 in an emergency advance payment claim. GCCF records also indicate that the claimant was paid the full \$100,000 for the emergency advance payment claim and that BP paid the claimant an additional \$10,000.

**APPLICABLE LAW:**

The Oil Pollution Act of 1990 (OPA) provides that the responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters, adjoining shorelines or the exclusive 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 or personal property or natural resources which shall be recoverable by any claimant. 33 U.S.C. § 2702(b)(2)(E).

With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713. If the claim is not settled by any person by payment within 90 days after the date 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 implementing OSLTF 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.

**DETERMINATION:**

The claimant alleged that the oil in the Gulf destroyed the seafood, which is the company's product. The claimant provided the Optional OSLTF Claim Form, the 2009 federal tax form 1120S, the 2008 federal tax form 1120S, a Louisiana Sales Tax Return form for May 2010, Income Statements for June-October 2010, Income Statements for May-October 2009, and Income Statements for May-October 2008. It provided no other documentation. By letter dated February 1, 2011, the NPFC requested additional information from the claimant, but has not received a reply.

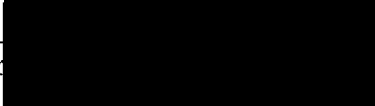
There are several issues and deficiencies with this claim. First, GCCF records indicate that the claimant sought \$100,000 from them for which it was fully compensated in addition to the \$10,000 it received from BP. Second, the claimant presented this claim for \$800,000 to the NPFC yet there is no evidence that the claim for \$800,000 has been presented to the GCCF; thus, proper presentment has not been proven.

Third, GCCF records show that [REDACTED] received an emergency advance payment of \$100,000, exactly the amount it claimed. GCCF records also show that [REDACTED] received \$10,000 from BP. The claimant failed to report these payments to the NPFC, and stated that the RP did not reimburse enough funds to cover lost income, even though between BP's payment and the GCCF payment, the claimant was reimbursed more than it claimed from the GCCF.

Finally, the claimant provided no documentation as required by 33 CFR 136.233 (b), and insufficient documentation under 136.233 (c), showing that it suffered damages, no evidence of the value of those alleged damages, and no evidence that it suffered damages due to the injury or destruction of property or natural resources by the oil spill. The supplied financial records do not demonstrate any effect of the oil spill on the claimant's income.

In conclusion, the NPFC finds that the claimant provided no evidence of a loss of profits resulting from the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of discharge of oil into navigable waters. The claim is denied.

Claim Supervisor



Date of Supervisor's review: 3/19/11

Supervisor Action: Denial addressed

Supervisor's Comments:

U.S.  
Department of  
Homeland  
Security



Director  
National Pollution Funds Center  
United States Coast Guard

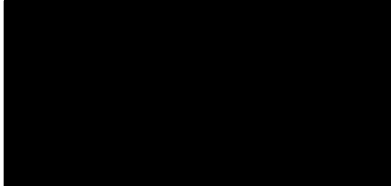
NPFC CA MS 7100  
US COAST GUARD

**United States  
Coast Guard**



5890  
3/18/2011

CERTIFIED MAIL - RETURN RECEIPT REQUESTED



RE: Claim Number: N10036-0470

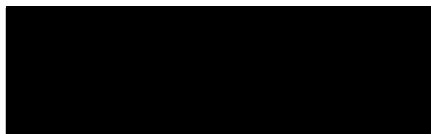
Dear 

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number N10036-0470 involving the Deepwater Horizon incident. Compensation is denied for the reasons stated in the enclosed Claim Summary/Determination.

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 or within 30 days of your receipt of this letter, whichever date is earlier, 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 N10036-0470.

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

CLAIM SUMMARY / DETERMINATION FORM

Date : 3/18/2011  
Claim Number : N10036-0471  
Claimant : [REDACTED]  
Type of Claimant : Corporate (US)  
Type of Claim : Loss of Profits and Earning Capacity  
Claim Manager : [REDACTED]  
Amount Requested : \$800,000.00

**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:**

The claimant is a wholesale seafood business whose product is shrimp and fish. [REDACTED] is the sole shareholder of the company. The business states that seafood was not available to purchase from fishermen, forcing docks to close; and, when areas reopened seafood was limited and prices tripled. The claimant seeks \$800,000 for losses of profit allegedly suffered due to the shutdown of the business.

The claimant states that the responsible party did not provide enough money to cover its loss of income. The claimant's GCCF claimant number is [REDACTED] GCCF records available to the NPFC indicate that the claimant requested \$750,000 in an emergency advance payment claim. GCCF records also indicate that the claimant was paid \$80,800.00 for the emergency advance payment claim and that BP paid the claimant an additional \$60,000.

**APPLICABLE LAW:**

The Oil Pollution Act of 1990 (OPA) provides that the responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters, adjoining shorelines or the exclusive 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 or personal property or natural resources which shall be recoverable by any claimant. 33 U.S.C. § 2702(b)(2)(E).

With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713. If the claim is not settled by any person by payment within 90 days after the date 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 implementing OSLTF 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.

**DETERMINATION:**

The claimant alleged that the oil in the Gulf destroyed the seafood, which is the company's product. The claimant provided the Optional OSLTF Claim Form, the 2009 federal tax form 1120S, Income Statements for April-October 2010, Income Statements for April-October 2009, and Income Statements for August-October 2008. It provided no other documentation. By letter dated February 1, 2011, the NPFC requested additional information from the claimant, but has not received a reply.

There are several issues and deficiencies with this claim. First, GCCF records indicate that the claimant sought \$750,000 from them for which it was paid \$80,800.00 in addition to the \$60,000.00 it received from BP. Second, the claimant presented this claim for \$800,000 to the NPFC yet there is no evidence that the claim for \$800,000 has been presented to the GCCF; thus, proper presentment has not been proven.

Third, GCCF records show that [REDACTED] received an emergency advance payment of \$80,800.00. GCCF records also show that [REDACTED] received \$60,000 from BP. The claimant failed to report these payments to the NPFC, and stated that the RP did not reimburse enough funds to cover lost income.

Finally, the claimant provided no documentation as required by 33 CFR 136.233 (b), and insufficient documentation under 136.233 (c), showing that it suffered damages, no evidence of the value of those alleged damages, and no evidence that it suffered damages due to the injury or destruction of property or natural resources by the oil spill. The supplied financial records do not demonstrate any effect of the oil spill on the claimant's income.

In conclusion, the NPFC finds that the claimant provided no evidence of a loss of profits

resulting from the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of discharge of oil into navigable waters. The claim is denied.

Claim Supervisor

Date of Supervisor's review: 3/28/11

Supervisor Action: denial allowed

Supervisor's Comments:



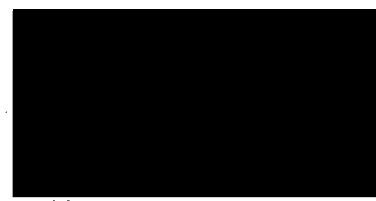
U.S. Department of  
Homeland Security

United States  
Coast Guard



Director  
National Pollution Funds Center  
United States Coast Guard

NPFC CA MS 7100  
US COAST GUARD



5890  
3/18/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED



RE: Claim Number: N10036-0471

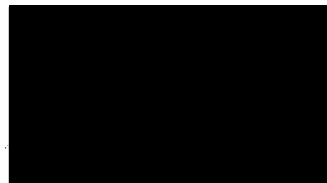
Dear 

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number N10036-0471 involving the Deepwater Horizon incident. Compensation is denied for the reasons stated in the enclosed Claim Summary/Determination.

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 or within 30 days of your receipt of this letter, whichever date is earlier, 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 N10036-0471.

Mail reconsideration requests to:

Director (ca)  
NPFC CA MS 7100  
US COAST GUARD



Claims Manager  
U.S. Coast Guard

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  
1/20/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]

[REDACTED]

RE: Claim Number: N10036-0472

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number N10036-0472 involving Deepwater Horizon. Please see the attached Claim Summary / Determination Form for the 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 N10036-0472.

Mail reconsideration requests to:

Director (ca)  
NPFC CA MS 7100  
US COAST GUARD

[REDACTED]

Sincerely,

[REDACTED]

Claims Manager  
U.S. Coast Guard

Encl: Claim Summary / Determination Form

09/14/11

FOIA2011-3380-00001869

CLAIM SUMMARY / DETERMINATION FORM

Date	: 1/20/2011
Claim Number	: N10036-0472
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 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 January 14, 2011, [REDACTED] (Claimant) presented a lost profits & earnings claim in the amount of \$10,000.00 to the National Pollution Funds Center (NPFC) for reimbursement. The Claimant has only provided an Oil Spill Liability Trust Fund (OSLTF) claim form, a copy of the GCCF denial letter, a copy of 2 payroll stubs from [REDACTED] for the period of April 30, 2010 and May 14, 2010 and an illegible copy of a 2009 W-2 form. The Claimant's submission fails to support the amount requested nor does the claim submission have any explanation or rationale on what the Claimant is seeking and why. Claimant's OSLTF Claim Form states she could not work beach house on the weekend with her sister but no other information regarding, where, how long, proof of income, etc. has been provided to establish that the Claimant has lost profits and earnings as a direct result 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***

##### **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 Claimant has failed to meet her burden of proof by providing supporting documentation for the claim and has also failed to establish a loss of profits or impairment of earnings as a direct result of the Deepwater Horizon incident.

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



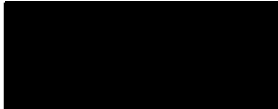
Director  
National Pollution Funds Center  
United States Coast Guard

NPFC CA MS 7100  
US COAST GUARD

Fax: 202-493-6937

CERTIFIED MAIL - RETURN RECEIPT REQUESTED  
Number: [REDACTED]

5890/DWHZ  
Claim# N10036-0473  
14 March 2011



RE: Claim Number: N10036-0473

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 N10036-0473 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination Form for further explanation.

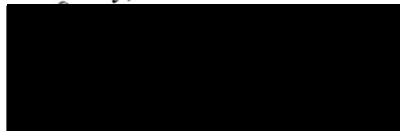
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-0473.

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

09/14/11

FOIA2011-3380-00001872



## CLAIM SUMMARY / DETERMINATION FORM

Date	10 March 2011
Claim Number	N10036-0473
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
Claim Manager	[REDACTED]
Amount Requested	\$23,000.00

### ***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 13 January 2011, [REDACTED] (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Funds Center (NPFC) seeking \$20,000.00 in lost profits and earnings capacity allegedly resulting from the Deepwater Horizon oil spill.

Claimant asserted that oil washed up on Panama City Beach and his clients canceled listings with his company as a result.<sup>1</sup>

### ***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.

<sup>1</sup> OSLTF claim form.  
09/14/11



- (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 his claim, Claimant submitted an OSLTF claim form; Credit Card Merchant Statements for August, September and October 2010 for ██████████ Chase Payment Tech Statements for June 2010 for ██████████ Transaction Snapshot from ██████████ ██████████ of Durango from 01 January 2010 to 11 January 2011; and various news articles and photos.

Claimant seeks \$23,000.00 in lost profits and earnings capacity allegedly resulting from the Deepwater Horizon oil spill.

On 17 November 2010, Claimant filed a six-month Emergency Advance Payment claim for \$43,000.00 in lost profits and earnings with the GCCF.<sup>2</sup> He was assigned GCCF Claimant ID # ██████████ and Claim ██████████ On 07 December 2010, his claim was denied by the GCCF.<sup>3</sup>

### **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 \$23,000.00 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.

<sup>2</sup> Claimant filed under the business name ██████████

<sup>3</sup> GCCF denial letter dated 07 December 2010.

After an initial review of the claim submission, the NPFC sent the Claimant a letter requesting additional information to further evaluate his claim. The letter requested, among other things, financial documentation to support Claimant's loss, including P&L statements and tax return filings, and a detailed explanation of how the Deepwater Horizon oil spill resulted in Claimant's loss of \$23,000.00. To date, no response has been received by the NPFC.<sup>4</sup>

The NPFC adjudicated the claim with the documentation that the Claimant originally submitted. The evidence presented does not demonstrate that the Claimant lost \$23,000.00 in profits and earnings capacity 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 therefore this claim is denied.

Claim Supervisor 

Date of Supervisor's Review: *3/12/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

<sup>4</sup> The letter was sent to Claimant's address on record on 08 February 2011.

09/14/11

FOIA2011-3380-00001875

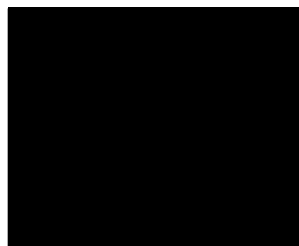
U.S. Department of  
Homeland Security

United States  
Coast Guard



Director  
National Pollution Funds Center  
United States Coast Guard

NPFC CA MS 7100



5890  
1/24/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]



RE: Claim Number: N10036-0474

Dear [REDACTED]

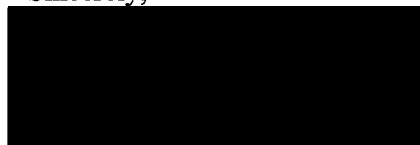
The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number N10036-0474 involving Deepwater Horizon. Please see the attached Claim Summary / Determination Form for an explanation regarding this denial.

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 N10036-0474.

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

09/14/11

FOIA2011-3380-00001876

## CLAIM SUMMARY / DETERMINATION FORM

Date	: 1/24/2011
Claim Number	: N10036-0474
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$28,000.00

### **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 January 13, 2011, [REDACTED] (Claimant) presented lost profits & earnings claim in the amount of \$13,000.00 to the National Pollution Funds Center (NPFC) for reimbursement and also stated on her OSLTF Claim Form that she claims \$15,000.00 for Health for a total amount claimed amount of \$28,000.00. The Claimant has only provided an Oil Spill Liability Trust Fund (OSLTF) claim form. The Claimant's submission fails to support the amount requested and the submission contains no supporting documentation.

### **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***

#### **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 Claimant has failed to meet her burden of proof by providing supporting documentation for the claim and has also failed to establish a loss of profits or impairment of earnings. Lastly, personal injury is not an OPA compensable damage therefore any and all costs associated with health issues is denied.

Claim Supervisor: 

Date of Supervisor's review: *1/24/11*

Supervisor Action: *Denial approved*

Supervisor's Comments:



U.S. Department of  
Homeland Security

United States  
Coast Guard



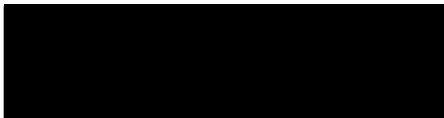
Director  
National Pollution Funds Center  
United States Coast Guard

NPFC CA MS 7100  
US COAST GUARD

Fax: 202-493-6937  
5890  
3/02/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]



RE: Claim Number: N10036-0475

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 N10036-0475 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 Claimant, be deemed final agency action. All correspondence should include claim number N10036-0475.

Mail reconsideration requests to:

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

Sincerely,

[REDACTED SIGNATURE]  
Claims Manager  
U.S. Coast Guard

Encl: Claim Summary / Determination Form

09/14/11

FOIA2011-3380-00001879



CLAIM SUMMARY / DETERMINATION FORM

Date	: 3/02/2011
Claim Number	: N10036-0475
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. 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 December 28, 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 she incurred a reduction of wages as a waitress in a restaurant, as a direct result 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:

- NPFC Optional OSLTF Claim Form dated January 10, 2011;
- Pay checks for pay periods ending November 7, 2010 through December 19, 2010;
- Employee Earnings Detail report, from [REDACTED] from January 1, 2009 through December 31, 2009 for employee Amber Stacey;
- Letter from [REDACTED] dated July 14, 2010;
- Letters from The Restaurant at the [REDACTED] dated November 12, 2010 and November 27, 2010;
- Personal statement/letter from Claimant, dated November 9, 2010;
- A copy of Claimant's Alabama Driver's License and Social Security Card.

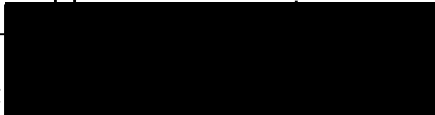
#### **NPFC Determination**

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 Claimant.

Based on the documentation provided by Claimant, she indicated that her earnings were reduced as a result of the Deepwater Horizon incident. On January 28, 2011, the NPFC sent via certified mail a request for additional information to Claimant in order to obtain the necessary information

to be able to adjudicate the claim.<sup>1</sup> To date, the Claimant has failed to respond to the request for additional information in support of her claim.


Since the Claimant has not provided the additional documentation as requested by the NPFC nor has she answered any of the questions to support her claim in order to demonstrate she has a loss of profits and earnings, the claim is denied. Furthermore, the Claimant has failed to meet her burden of demonstrating 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.

Claim Supervisor:  *g*

Date of Supervisor's review: *3/2/11*

Supervisor Action: *Denial approved*

Supervisor's Comments:

<sup>1</sup> See USPS Certified Mail Receipt Number   
09/14/11

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

[REDACTED]

Fax: 202-493-6937  
5890  
1/31/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]

[REDACTED]

RE: Claim Number: N10036-0477

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number N10036-0477 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 N10036-0477.

Mail reconsideration requests to:

Director (ca)  
NPFC CA MS 7100  
US COAST GUARD

[REDACTED]

Sincerely, [Signature]

[REDACTED]

Claims Manager  
U.S. Coast Guard

Encl: Claim Summary / Determination Form

09/14/11

FOIA2011-3380-00001883

## CLAIM SUMMARY / DETERMINATION FORM

Date	: January 26, 2011
Claim Number	: N10036-0477
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$130,000.00

### ***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 January 4, 2011, [REDACTED] (Claimant) presented a lost profits & earnings claim in the amount of \$130,000.00 to the National Pollution Funds Center (NPFC) for reimbursement. The Claimant asserted that he lost wages from his business, [REDACTED] in Foley, Alabama as a result of the Deepwater Horizon incident.

The Claimant did not provide correspondence or documentation pertaining to his claim with the GCCF, but stated his claim was subsequently denied.

### ***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 received January 14, 2011
- List of creditors and amount due to each
- Breakdown of moving and travel expenses
- Comparison of Accounts Receivable from May to August in 2008 & 2009
- Payroll register dated July 20, 2010
- 2009 W-2 from Women's Wellness Center
- Copy of GCCF denial
- Invoice from [REDACTED]
- Various delinquency notices from creditors



## 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 operated a health care practice in Foley, Alabama specializing in OB/GYN care. According to the claimant, he closed his practice in September 2010 and moved to Des Moines, Iowa to take at job at an existing OB/GYN practice in that area. The Claimant filed a claim for lost profits totaling \$130,000.00. The Claimant's total wages earned from the practice were approximately \$166,618.00 in 2009<sup>1</sup>. Correspondence from the Claimant indicates that he believes his medical practice suffered a decrease in gross charges and cash collections after the Deepwater Horizon Incident, or May through August 2010. The average gross charges for the 6 and 9 months prior to the incident were \$44,839 and \$44,265, respectively. The average monthly gross charges after the incident, from May to August 2010, increased to \$49,025. The average cash collections for the 6 and 9 months prior to the incident were \$28,532 and \$28,661, respectively. The average monthly cash collections from May to August 2010 increased to \$28,810. The Claimant's cash collections, as a percentage of revenue, were 58.4% for the pre-incident period of January 2009 to April 2010. The percentage of collections increased from May to August 2010 to 58.8%.

Contrary to representations made in the claim, the actual amount of gross charges, cash collections, and the percentage collected increased after the incident.

Based on the documents and information presented, the Claimant has not established that a loss of profits or earnings capacity occurred as a direct result of the Deepwater Horizon nor did he meet his burden that the losses were a direct result of the Deepwater Horizon incident.

Claim Supervisor: 

Date of Supervisor's review: *1/31/11*

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  
5890  
3/24/2011

**CERTIFIED MAIL -- RETURN RECEIPT REQUESTED**

Number: [REDACTED]

[REDACTED]

RE: Claim Number: N10036-0478

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number N10036-0478 involving Deepwater Horizon. Please see the attached Claim Summary / Determination Form for an explanation 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 N10036-0478.

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

09/14/11

FOIA2011-3380-0001887



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 Optional (OSLTF) Claim Form, dated 31 December 2010;
- U.S. Individual Income Tax Return, Form 1040, 2008, 2009, and 2010;
- Photocopy of Florida state driver's license;
- GCCF claim denial letter, dated 29 November 2010;
- Correspondence from claimant dated 15 December 2010;
- Department of Workforce Development, Division of Unemployment Insurance, Madison, Wisconsin, unemployment benefits statements, 1/19/10 to 1/3/11;
- 2009 and 2010 [REDACTED] paycheck stubs;

- 2010 [REDACTED] paycheck stubs;
- Photocopy of ADC Commercial Diver Certification card;
- Photocopy of TWIC card;
- 5 year gross earnings bar graph;
- Copy of articles from *Underwater Magazine* explaining the current state of affairs in the Gulf of Mexico for divers and ROV's. (NPFC noted that both articles point to the moratorium as the reason for lack of work).

### **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.

Based on the documentation provided by the Claimant, the Claimant has been working as a commercial diver for the past 15 years. Although the Claimant noted that he was told by Veolia ES that he would return to work on May 1, 2010, he also stated that the job subsequently fell through due to [REDACTED] losing a contract with Chevron that they were expecting. The Claimant also asserted that his current employer, [REDACTED] is unable to place him offshore for diving work due to the oil spill but provided no documentation from the employer to support his assertion.

The claim is denied because the evidence provided by the Claimant, as described above, does not demonstrate that the loss of profits and earnings was 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.

Claim Supervisor [REDACTED]

Date of Supervisor's review: *3/24/11*

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

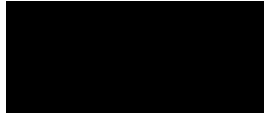
NPFC CA MS 7100  
US COAST GUARD

Fax: 202-493-6937

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ  
Claim# N10036-0479  
07 March 2011



RE: Claim Number: N10036-0479

Dear [REDACTED]

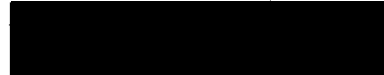
The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq. (OPA) and the associated regulations at 33 C.F.R. Part 136, denies payment on claim number N10036-0479 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination 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.

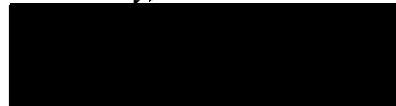
Reconsideration of the denial will be based upon the information provided. A claim may be reconsidered only once. Disposition of that reconsideration in writing will constitute final agency action. Failure of the NPFC to issue a written decision within 90 days after receipt of a timely request for reconsideration shall, at the option of the claimant, be deemed final agency action. All correspondence should include claim number N10036-0479.

Mail reconsideration requests to:

Director (ca)  
NPFC CA MS 7100  
US COAST GUARD



Sincerely,



Marine Science Technician 1  
U. S. Coast Guard  
Claims Manager

Enclosure: Claim Summary/Determination Form



CLAIM SUMMARY / DETERMINATION FORM

Date	22 February 2011
Claim Number	N10036-0479
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
Claim Manager	[REDACTED]
Amount Requested	\$2,075.00

**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 January 2011, [REDACTED] (Claimant) presented a claim to the National Pollution Funds Center (NPFC) seeking \$2,075.00 in lost profits and earnings allegedly resulting from the Deepwater Horizon oil-spill.

Claimant works for [REDACTED]. He asserted that "he normally receive[s] a 4% [raise] on June 1<sup>st</sup> each year and [has] done so for the past 12-years of [his] employment with [REDACTED]." Claimant alleged that he did not receive his raise in 2010 because of the Deepwater Horizon oil-spill. He also seeks the loss of a 15% bonus on his salary totaling \$275.00.

**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 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.

<sup>1</sup> Claimant letter explaining loss dated 05 January 2011.

- (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 the OSLTF**

To support his claim, Claimant submitted a letter explaining his loss, dated 05 January 2011; letter to whom it may concern, dated 14 October 2010; GCCF denial letter, dated 23 November 2010; spreadsheet titled an overview of basic pay showing bonuses from 2004 to 2009 and annual salary for respective years; and paystubs dated 15 January 2010, 29 January 2010, 12 February 2010, 26 February 2010, 15 March 2010, 31 March 2010, 31 December 2010, and W-2s for 2007, 2008, and 2009.

Claimant seeks \$2,075.00 in lost earnings allegedly resulting from the Deepwater Horizon oil-spill.

On 14 October 2010, Claimant filed a six-month Emergency Advance Payment claim for \$2,019.01 with the GCCF. He was assigned GCCF Claimant ID [REDACTED] and Claim [REDACTED]. On 23 November 2010, his claim was denied by the GCCF.

#### **NPFC Determination**

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 the claim. The NPFC considered all documentation presented by the Claimant.

After an initial review of the claim, the NPFC sent the Claimant a letter requesting additional information in order to further evaluate the claim.<sup>2</sup> The letter requested, among other things, a statement from the Claimant's employer, Premiere, explaining the decision not to grant the Claimant a four percent raise and 15% bonus and how that relates to the Deepwater Horizon incident. To date, the Claimant has not responded to the request.<sup>3</sup> The NPFC therefore proceeded to evaluate the claim with the documentation Claimant submitted.

The evidence does not demonstrate that the Claimant lost \$2,075.00 in earnings as a result of the Deepwater Horizon oil-spill. There is no evidence that the Claimant has a contractual right or guarantee to a four percent raise and/or a 15% bonus from his employer annually.<sup>4</sup> Even if the Claimant had provided evidence establishing an entitlement to such incentives, there is no evidence that his employer's decision not to pay his four percent raise and/or 15% bonus 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, therefore the claim is denied.

Claim Supervisor: 

Date of Supervisor's Review: *3/4/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

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<sup>3</sup> The letter was delivered to Claimant's address on record on 26 January 2011.

<sup>4</sup> The loss of a discretionary raise or bonus is speculative.

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

1/20/2011

VIA MAIL and EMAIL: [REDACTED]

[REDACTED]  
Pensacola, FL 32503

RE: Claim Number: N10036-0480

Dear Mr. [REDACTED]:

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number N10036-0480 involving Deepwater Horizon. Please see the attached Claim Summary / Determination Form for the explanation 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 N10036-0480.

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

09/14/11

FOIA2011-3380-00001895

## CLAIM SUMMARY / DETERMINATION FORM

Date	: 1/20/2011
Claim Number	: N10036-0480
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.

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<sup>1</sup>. 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.

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 14 January 2011, Mr. [REDACTED] (Claimant) presented an Oil Spill Liability Trust Fund (OSLTF) claim form seeking \$60,000.00 in lost earnings resulting from the Deepwater Horizon

<sup>1</sup> 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.

incident. Mr. [REDACTED] worked as a deckhand and then moved up to Able Body Seaman in the oil industry. Mr. [REDACTED] worked for [REDACTED] prior to the Deepwater Horizon incident and was laid off on or about April 12, 2010 due to a slowdown in work. Mr. [REDACTED] contends that shortly thereafter, the Deepwater Horizon incident occurred thereby preventing him from being able to obtain employment in his field of work and is claiming lost wages as an ultimate result of the drilling moratorium.

Mr. [REDACTED] provided a typed statement regarding his personal situation and how as a direct result of the drilling moratorium he ended up not being able to work in his primary field of expertise and has worked minimally as well as received unemployment compensation but desires to be paid the difference of what he would normally have received.

### ***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 submitted the following documentation: NPFC OSLTF Claim form dated 11 Jan 2011; a personal statement that is undated, a copy of his Merchant Mariners Document, a copy of his TWIC worker identification card, a copy of his Merchant Mariner license dated 18 November 2008, a copy of his monetary determination form for unemployment compensation benefits, a copy of his 2009 Wage and Income Transcript, a copy of a document on [REDACTED] Agency letterhead dated 6 January 2011 that indicates the Claimant has paid \$4,599.00 in placement fees, a copy of year end wages provided by [REDACTED] Agency for 2010, and a copy of a recent unemployment benefit payments for Claimant from November and December 2010.

Claimant has been denied by GCCF under claimant identification number [REDACTED]. GCCF referred the Claimant to the GCRF although he called them and they informed him that the GCRF was for rig workers only and not boat workers so he presented his claim to the OSLTF seeking compensation for his lost earnings related to his position in the offshore oil industry.

### **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 NPFC reviewed all of the documentary evidence submitted by the Claimant.

The claim is denied because all of the documentary evidence indicates that his lost earnings resulted primarily from his employer laying him off prior to the Deepwater Horizon incident and then later 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 he was laid off before the incident and then later 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.<sup>2</sup>

Claim Supervisor: [REDACTED]

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

Supervisor Action: *Denial approved*

Supervisor's Comments:

<sup>2</sup> 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  
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  
1/20/2011

VIA MAIL and EMAIL: [REDACTED]

[REDACTED]  
Mobile, AL 36608

RE: Claim Number: N10036-0481

Dear Ms. [REDACTED]:

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number N10036-0481 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 N10036-0481.

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

09/14/11

FOIA2011-3380-00001899

## CLAIM SUMMARY / DETERMINATION FORM

Date	: 1/20/2011
Claim Number	: N10036-0481
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$58,000.00

### ***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 11 January 2011, Ms. [REDACTED] (Claimant), presented a lost profits & earnings claim in the amount of \$58,000.00 to the National Pollution Funds Center (NPFC) for reimbursement. Ms. [REDACTED] asserted that her employment for the oil-spill recovery ended and that she was promised employment for at least two years. Ms. [REDACTED] asserted that she spent money to purchase equipment to perform her job that she was hired to do. Ms. [REDACTED] only provided some email correspondence and a copy of an Office Depot statement of account which shows purchases in the amount of \$856.63 with no further details or itemization. Ms. [REDACTED] has not provided any comparable financial records to support her claim submission nor does she provide an explanation as to how she derived at the amount she requested.

### ***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 on-line Claim Form which is undated although received by our office on January 11, 2011, a copy of the denial email from the Gulf Coast Claims Facility (GCCF) dated November 16, 2010, a copy of Claimant's Office Depot account print out showing balance, a copy of miscellaneous email correspondence with the GCCF, Ms. [REDACTED], Ms. [REDACTED] and [REDACTED] of the NPFC. The GCCF assigned Claimant identification # [REDACTED] to Ms. [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 claim is denied because the alleged loss in the amount of \$58,000.00 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 is the result of her employer's business decision to terminate her employment. Additionally, Ms. [REDACTED] has failed to meet her burden by providing comparable financial documentation to demonstrate a loss of profits and earnings which was the direct result of the Deepwater Horizon incident therefore this claim is denied.

Claim Supervisor: [REDACTED]

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  
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

2/7/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]



Carriere, MS 39426

RE: Claim Number: N10036-0482

Dear Mr. [REDACTED]:

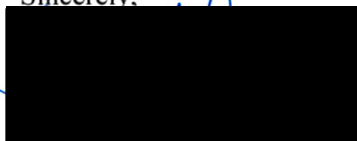
The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number N10036-0482 involving Deepwater Horizon. Please see the attached Claim Summary / Determination Form for an explanation regarding the denial.

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 N10036-0482.

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  
09/14/11

FOIA2011-3380-00001903



CLAIM SUMMARY / DETERMINATION FORM

Date	: February 2, 2011
Claim Number	: N10036-0482
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$207,000.00

**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.

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<sup>1</sup>. 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 July 12, 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 October 12, 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.

<sup>1</sup> 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 August 2, 2010, [REDACTED] (Claimant) presented a claim to the responsible party, BP/GCCF with Claimant Identification Number # [REDACTED]. That original claim was denied on September 23, 2010. The Claimant presented a subsequent claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$207,000.00 for lost profits and earning capacity resulting from the Deepwater Horizon oil-spill.

Claimant operates a transportation and equipment business specializing in large industrial cranes for certain companies involved in the oil and gas industry. Based on the Claimant's correspondence, it indicates that they provide crane services to two primary customers, [REDACTED] and [REDACTED].

Our research indicates that [REDACTED] is a large corporation with many business segments. The business segment specializing in seismic services is called [REDACTED]. [REDACTED] is the world's largest geophysical services company, providing a full range of services to the oil and gas industry. We understand that these marine seismic studies are required in order to drill in deepwater areas such as the Gulf of Mexico.

Additional research indicates that [REDACTED] provides a wide range of downhole well logging technology and services, including formation evaluation, production and reservoir engineering, and downhole seismic services. In the area of seismic evaluation, [REDACTED] would appear to be a competitor of [REDACTED], providing similar services in support of drilling in deepwater areas such as the Gulf of Mexico.

**APPLICABLE LAW:**

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).

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:**

**Claimant's Submission**

To support the claim, the Claimant submitted the following documents.

1. Optional OSLTF Claim Form, received January 14, 2011;
2. Photocopy of [REDACTED] Driver's License;
3. 2008 & 2009 I.R.S. Form 1120S;
4. 2009 I.R.S. Form 4562;
5. Personal hardship letter dated November 2, 2010;
6. Two (2) GCCF denial letters;
7. Payroll journal from March 15, 2010 to July 30, 2010;
8. Payroll journal from August 8, 2010 to November 29, 2010;
9. Profit and Loss Statements from January 1, 2009 to July 31, 2010;

**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 as a direct result of the Deepwater Horizon Incident. The NPFC considered all the documentation submitted by the Claimant.

Our review of the financial information provided by the Claimant revealed that that actual cash inflows / receipts (cash basis revenue) prior to the incident decreased significantly in the middle of 2009. Presumably, this was due to the highly recessionary economy.

For the 6 months prior to the incident, average monthly revenue was \$67,371. For the 12 months preceding the incident, average monthly revenue was \$55,311. This compares to average monthly revenue after the incident of \$76,352. As such, based on the records provided, there is no apparent decline in average monthly revenue after the incident.

Furthermore, the aforementioned seismic and downhole services would have been impacted by the drilling moratorium. Related support services, such as crane equipment offered by the claimant, would similarly be impacted. As such, any loss sustained by the claimant would be a result of the drilling moratorium and not the direct result of the Deepwater Horizon incident.

The claim is denied because the Claimant failed to demonstrate a loss of profits or impairment of earnings capacity as a direct result of the Deepwater Horizon Incident.

Claim Supervisor: [REDACTED]

Date of Supervisor's review: 243/11

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

5890  
3/02/2011

CERTIFIED MAIL -- RETURN RECEIPT REQUESTED

Number [REDACTED]



RE: Claim Number: N10036-0484

Dear [REDACTED]

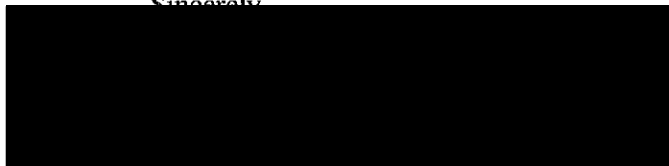
The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq. (OPA) and the associated regulations at 33 C.F.R. Part 136, denies payment on claim number N10036-0484 involving the Deepwater Horizon oil-spill. Please see the enclosed Claim Summary/Determination 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 Claimant, be deemed final agency action. All correspondence should include claim number N10036-0484.

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

09/14/11

FOIA2011-3380-00001907

## CLAIM SUMMARY / DETERMINATION FORM

Date	: 3/02/2011
Claim Number	: N10036-0484
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$4,000.00

### **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 January 18, 2011, [REDACTED] (Claimant) presented a lost profits & earnings claim in the amount of \$4,000.00 to the National Pollution Funds Center (NPFC) for reimbursement. Claimant asserted that she incurred lost wages as a waitress in a restaurant, as a direct result 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:

1. NPFC Optional OSLTF Claim Form (undated);
2. Pay checks for pay periods ending September 16, 2009 through November 4, 2009, the pay period ending December 23, 2009, pay periods ending March 3, 2010 through April 7, 2010, and the pay period ending June 9, 2010;
3. H&R Block Advantage Tax Return Summary providing income detail for years 2008 and 2009;
4. Handwritten worksheet titled "Profit and Loss Statement" (without reference to the name of the individual or business entity that this document pertains);
5. Photocopy of her Social Security card;
6. Photocopy of her Mississippi state drivers license.

### **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 Claimant.

Based on the documentation provided by Claimant, she indicated that her earnings were reduced as a result of the Deepwater Horizon incident. On January 28, 2011, the NPFC sent via certified mail a request for additional information to the Claimant in order to obtain the necessary



information to be able to adjudicate the claim.<sup>1</sup> To date, the Claimant has failed to respond to the request for additional information in support of her claim despite speaking with the NPFC on February 1, 2011 whereby the NPFC reminded her of the requirement to provide the requested documentation.


Since the Claimant has not provided the additional documentation as requested by the NPFC nor has she answered any of the questions to support her claim in order to demonstrate she has a loss of profits and earnings, the claim is denied. Furthermore, Claimant has failed to meet her burden of establishing a loss of profits and earnings 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: *3/2/11*

Supervisor Action: *Denial approved*

Supervisor's Comments:

<sup>1</sup> See USPS Certified Mail Receipt Number   
09/14/11

U.S. Department of  
Homeland Security

United States  
Coast Guard



Director  
National Pollution Funds Center  
United States Coast Guard

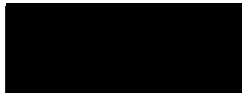
NPFC CA MS 7100  
US COAST GUARD

Fax: 202-493-6937

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ  
Claim# N10036-0485  
24 February 2011



RE: Claim Number: N10036-0485

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with 33 C.F.R. Part 136, denies payment on claim number N10036-0485 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination Form for further explanation.

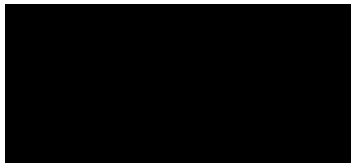
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-0485.

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	21 February 2011
Claim Number	N10036-0485
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
Claim Manager	[REDACTED]
Amount Requested	\$2,500.00

### ***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 14 January 2011, [REDACTED] (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Funds Center (NPFC) seeking \$2,500.00 in lost profits and earning capacity allegedly resulting from the Deepwater Horizon oil-spill.

Claimant works as a cook at the [REDACTED] in New Orleans. Claimant asserted that as a result of the Deepwater Horizon oil-spill, she lost wages because her hours were cut. Claimant submitted an undated handwritten letter which indicated that the [REDACTED] reduced the hours of its culinary staff, including the Claimant, from 40 hours to between 24 hours and then to 32 hours per week because of a lack of business. The same letter further indicated that the Claimant used her accumulated vacation time to offset the loss.

### ***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 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:

- OSLTF claim form dated 14 January 2011;
- five earnings statements from the Hilton for pay periods 30 May through 12 June 2010, 13-26 June 2010, 27 June through 19 July 2010, 11-24 July 2010, and 26 December 2010 through 08 January 2011;
- Claimant's 2007 W-2's from [REDACTED] of Texas & [REDACTED];
- Claimant's 2008 & 2009 W-2 from [REDACTED];
- Claimant's U.S. Individual income tax returns for 2007, 2008, and 2009;
- An unsigned handwritten letter from kitchen coworkers stating that hours were reduced for the whole staff due to lack of business;
- Copy of Claimant's LA driver's license;
- Claimant handwritten letter to the GCCF;
- GCCF denial letter dated 06 December 2010; and
- Five [REDACTED] kitchen work schedules.

Claimant seeks \$2,500.00 in lost wages allegedly resulting from the Deepwater Horizon oil-spill.

On 11 October 2010, Claimant filed a six-month Emergency Advance Payment (EAP) claim for \$2,500.00 in lost wages with the GCCF. She was and issued GCCF Claimant ID [REDACTED] and Claim [REDACTED]. On 06 December 2010, her claim was denied by the GCCF. This information was verified by the NPFC.<sup>1</sup>

<sup>1</sup> Claimant has a Final Payment claim under review at the GCCF.

## 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.

Claimant alleged that her hours were reduced as a result of the Deepwater Horizon oil-spill. Claimant further alleged that she was forced to use her saved Paid Time Off (PTO) to offset her losses. To support these assertions, Claimant submitted five earnings statements, five [REDACTED] work schedules, and her tax information. Even assuming that this documentation supports a loss, Claimant has not provided evidence indicating that her reduction in hours resulted directly from the Deepwater Horizon oil-spill.

On 21 January 2011, the NPFC sent the Claimant a letter requesting, among other things, “[an explanation as to] how the Deepwater Horizon incident reduced your hours of work. This is very important. Provide as much detail as possible.” In response, Claimant provided an unsigned and undated handwritten letter indicating that all the culinary staff for [REDACTED] experienced a reduction in hours “due to a lack of business.” The letter does not reference the Deepwater Horizon oil-spill.

The claim is denied because the alleged loss in the amount of \$2,500.00 is not due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil.

Claim Supervisor: [REDACTED]

Date of Supervisor's Review: 2/24/11

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

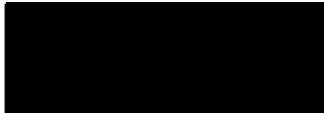
NPFC CA MS 7100  
US COAST GUARD

Fax: 202-493-6937

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ  
Claim# N10036-0486  
31 March 2011



RE: Claim Number: N10036-0486

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 N10036-0486 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: Claim Summary/Determination Form



CLAIM SUMMARY / DETERMINATION FORM

Date	29 March 2011
Claim Number	N10036-0486
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
Claim Manager	[REDACTED]
Amount Requested	\$27,750.00

**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 14 January 2011, [REDACTED] (Claimant) presented an Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC), seeking \$27,750.00 in lost profits and earnings capacity allegedly caused by the Deepwater Horizon oil spill.

Claimant owns and publishes two bi-monthly magazines: [REDACTED] and [REDACTED] *Review*, which showcase dining and culture in and around Santa Rosa Beach, FL and Atlanta, GA, respectively. The Claimant asserted that his sole income from both magazines derives from advertising sales, and that Santa Rosa Beach-based businesses comprise a large portion of advertisers in both magazines.<sup>1</sup>

Claimant asserted that tourism in Florida's coastal communities along Highway 30-A significantly declined as a result of the Deepwater Horizon oil spill, in turn causing a significant number of tourist-related businesses to cancel their preexisting advertising orders.<sup>2</sup> The Claimant's alleged loss of \$27,750.00 encompasses the cancellation of eleven such orders for varying amounts, evidenced by email correspondence between the Claimant and the subject businesses.

**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

<sup>1</sup> Letter from Claimant, dated 06 December 2010 ("My revenue is based solely on advertising placed by my clients."). Although [REDACTED] is based in Atlanta, Claimant asserts that many of his advertisers "want to reach Atlantans to come down to their vacation spots and businesses."

<sup>2</sup> Id.

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 the OSLTF**

In support of his claim, Claimant submitted the following documentation to the NPFC:

- OSLTF claim form, unsigned and undated;
- GCCF denial letter, dated 23 November 2010;
- Letter from Claimant explaining the nature of his business and alleged loss, dated 21 July 2010;
- Email correspondence between Claimant and eleven (11) customers indicating that they wish to withdraw their advertising;
- Advertising rates for [REDACTED] and [REDACTED];
- State of Georgia Driver's License;
- Letter from Claimant explaining the nature and seasonality of his business, and also describing his alleged loss, dated 06 December 2010;
- Sales receipts June, July and August, 2007 – 2009;
- Federal income tax returns (Form 1040s) for 2008 and 2009 with accompanying Schedule Cs;

- Two (2) copies of [REDACTED] (July/August 2010, November/December 2010 issues);
- 2010 Profit and Loss statement for [REDACTED]
- 2010 Advertising Kit and Rates; and
- Invoices to [REDACTED] advertisers.

On 01 September 2010, Claimant filed a six-month Emergency Advance Payment claim for \$26,450.00 in lost profits and earnings with the GCCF. He was assigned Claimant ID # [REDACTED] and Claim [REDACTED]. On 23 November 2010, this claim was denied by the GCCF.<sup>3</sup>

### 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 \$27,750.00 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 entire alleged loss results from the Claimant's advertisers' decisions not to continue purchasing advertising space in the Claimant's magazines. Email correspondence between these advertisers and the Claimant indicated that cancellations generally resulted from business decisions to forgo the cost of advertising in light of reduced tourism in the Gulf. Claimant cites the Deepwater Horizon oil spill as the cause of this reduced tourism and by extension his lost revenue from cancelled advertising.

His loss, however, resulted from independent business decisions on the part of the Claimant's advertisers' to forgo advertising to save costs which is not a direct 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 therefore this claim is denied.<sup>4</sup>

Claim Supervisor: [REDACTED]

Date of Supervisor's Review: 3/31/11

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

<sup>3</sup> GCCF denial letter Re: Emergency Advance Payment claim, dated 23 November 2010.

<sup>4</sup> Additionally, in spite of Claimant's alleged loss, his 2010 net income from the [REDACTED] significantly increased from 2009, and remained comparable to 2008. [REDACTED] Income Statement for 2010 (reporting total revenues of \$281,822.51 and net annual income of \$165,756) and 1040 Schedule C for 2009 (reporting gross sales of \$260,573 and net profit of \$109,386) and 1040 Schedule C for 2008 (reporting gross sales of \$323,508 and net profit of \$172,290).

U.S. Department of  
Homeland Security

United States  
Coast Guard



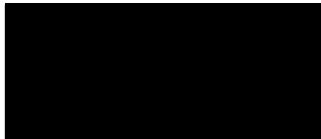
Director  
National Pollution Funds Center  
United States Coast Guard

NPFC CA MS 7100  
US COAST GUARD

Fax: 202-493-6937  
5890  
1/24/2011

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Number: [REDACTED]



RE: Claim Number: N10036-0487

Dear [REDACTED]

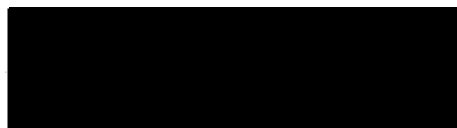
The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number N10036-0487 involving Deepwater Horizon. Please see the attached Claim Summary / Determination Form for an explanation regarding this denial.

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 N10036-0487.

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  
09/14/11

FOIA2011-3380-00001919

## CLAIM SUMMARY / DETERMINATION FORM

Date	: 1/24/2011
Claim Number	: N10036-0487
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$6,000.00

### ***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 December 2010, [REDACTED] (Claimant) presented a lost profits & earnings claim in the amount of \$6,000.00 to the National Pollution Funds Center (NPFC) for reimbursement. [REDACTED] asserted that his employer had a reduction in business as a direct result 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 his claim, the Claimant submitted the NPFC OSLTF Claim Form dated December 28, 2010, a copy of a W-2 from ██████████ for 2009 which shows total wages as \$27,963.11, a copy of a W-2 from ██████████ for 2008 which shows total wages as \$28,074.21, and a copy of various pay stubs from ██████████ for periods ranging from January 2009 through December 2010. It is important to note that the pay stub for period December 3, 2010 through December 15, 2010 showed year to date earnings of \$28,296.81 which is more than his year to date earnings the preceding year with the same employer.

### **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 \$6,000 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 has failed to meet his burden of proof in demonstrating that (1) he has lost profits and earnings which are the direct result of the Deepwater Horizon incident and (2) he has failed to provide an explanation as to how he derived at his requested loss amount therefore this claim is denied.



Claim Supervisor: 

Date of Supervisor's review: *1/24/11*

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  
Arlington, VA 20598-7100  
Staff Symbol: (CA)

Phone: [REDACTED]

E-mail: [REDACTED]

Fax: 202-493-6937

5890

3/17/2011

**CERTIFIED MAIL – RETURN RECEIPT REQUESTED**

Number: [REDACTED]

[REDACTED]  
Panama City Beach, FL 32407

RE: Claim Number: N10036-0488

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 N10036-0488 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,

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

ENCL: Claim Summary / Determination Form

## CLAIM SUMMARY / DETERMINATION FORM

Date	: 3/17/2011
Claim Number	: N10036-0488
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$5,000.00

### ***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 January 14, 2011, [REDACTED] (Claimant) presented an Oil Spill Liability Trust Fund (OSLTF) claim form seeking \$5,000.00 in lost profits and earning capacity resulting from the Deepwater Horizon oil spill.<sup>1</sup>

[REDACTED] provided a copy of his income tax filing for 2009 which indicated his income for the year was from unemployment benefits in the total amount of \$6,648.00 although he also provided a copy of his 2009 1099-G which indicated a total of \$9,048.00 in unemployment compensation for the year. Additionally, [REDACTED] provided a copy of his income tax filing for 2008 which indicated he earned \$3,864.00 from [REDACTED] Leasing and he also earned \$5,908.00 in unemployment benefits. Finally, [REDACTED] provided a copy of his 2007 income tax filing which indicated gross wages as \$16,674.00.

The Claimant submitted a claim to GCCF and received Claim # [REDACTED]. The Claimant received an Emergency Advance Payment on September 29, 2010 in the amount of \$2,000.00 and a Quick (final) Payment some time during the month of December 2010 in the amount of \$5,000.00. The total received from GCCF is \$7,000.00<sup>2</sup>.

### ***REQUEST FOR RECONSIDERATION:***

On March 16, 2011, the Claimant sent a letter requesting reconsideration of the NPFC's initial denial dated January 24, 2011. The NPFC denied the claim originally because the Claimant had received two payments from the RP with the final payment being a "final quick pay payment" whereby the RP received an executed release. In the Claimant's letter dated March 4, 2011, the Claimant advised the NPFC that he was forced to accept that final payment of \$5,000.00 offered by the GCCF because ... "I was forced to take this as a matter of life or death."

<sup>1</sup> The Claimant's OSLTF submission dated 30 December 2010.

<sup>2</sup> See Claimant letter dated December 30, 2010.

**RECONSIDERATION CLAIM ANALYSIS:**

The claimant requested reconsideration via a letter dated March 4, 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.

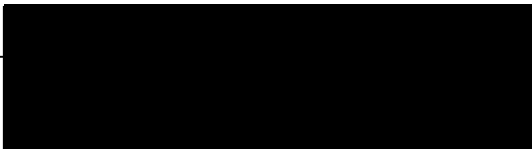
The NPFC received confirmation from the GCCF via an email dated February 18, 2011, whereby they have confirmed that they possess a signed release from the Claimant in exchange for the \$5,000.00 final payment they issued the Claimant therefore the Claimant has been fully compensated by the RP for his alleged losses and is therefore not eligible for compensation from the OSLTF. In the Claimant's letter requesting reconsideration, he has confirmed receipt of the final \$5,000.00 payment but stated he was hoping the NPFC would pay him the amount he was shorted by the GCCF.

The NPFC again denies the claim because the Claimant has been fully compensated for his losses by the GCCF and has signed a release in exchange for the final payment of \$5,000.00.

Determination amount: \$0.00

Amount denied: \$7,000.00

Claim Supervisor:



Date of Supervisor's review: 3/17/11

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]

5890/DWHZ  
Claim# N10036-0489  
14 February 2011

RE: Claim Number: N10036-0265

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with 33 C.F.R. Part 136, denies payment on the claim number N10036-0265 involving the Deepwater Horizon incident. Please see the enclosed Claim Summary / Determination Form for further explanation.

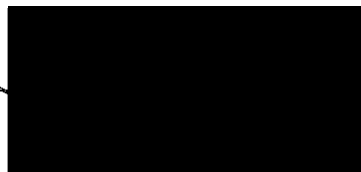
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-0265.

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

Enclosure: Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00001926

## CLAIM SUMMARY / DETERMINATION FORM

Date : 14 February 2011  
Claim Number : N10036-0265  
Claimant : [REDACTED]  
Type of Claimant : Private (US)  
Type of Claim : Loss of Profits and Earning Capacity  
Claim Manager : [REDACTED]  
Amount Requested : \$23,000.00

### **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 13 December 2010, [REDACTED] (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Funds Center (NPFC) seeking \$23,000.00 in lost profits and earning capacity resulting from the Deepwater Horizon incident.

In December 2009, claimant graduated from culinary arts school and started working for [REDACTED]. After working for nearly four and a half months, Claimant was let go because business slowed down at [REDACTED]. Claimant alleges that the Deepwater Horizon incident caused him to lose his job and is the reason for his inability to find work in the catering industry.

Claimant seeks lost earnings from being unemployed.

### **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. § 136.103(a) Except as provided in paragraph (b) of this section, all claims for removal costs or damages must be presented first to the responsible party.

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:

- Optional OSLTF Claim Form;
- Letter dated 02 December 2010 written by [REDACTED] on behalf of Claimant;
- Letter dated 13 December 2010 to GCCF from Claimant;
- Letter dated 13 December 2010 from Claimant explaining his reason for not filing taxes in 2008 & 2009;
- Photocopy of Claimant's driver's license and social security card; and
- Copies of pay stubs, including pay periods—
  1. 14-28 December 2009;
  2. 29 December 2009 through 11 January 2010;
  3. 12-25 January 2010;
  4. 26 January through 08 February 2010;
  5. 09-22 February 2010;
  6. 23 February through 08 March 2010;

7. 09-22 March 2010; and
8. 23 March through 05 April 2010.

Claimant seeks lost earnings from being unemployed.

On his OSLTF claim form, Claimant reports that he submitted an Emergency Advance Payment (EAP) to the GCCF on 13 October 2010 and that his claim was denied. The NPFC requested that the Claimant provide proof of presentment to the RP in an NPFC request for additional information sent by certified letter on 05 January 2010. The NPFC specifically requested a copy of the Claimant's GCCF denial letter as part of that request.

Claimant provided GCCF Claim [REDACTED] along with his documentation. This GCCF Claim # was forwarded to the GCCF to verify presentment but did not match either his GCCF Claimant ID # or Claim # on record with the GCCF. The GCCF provided Claimant ID [REDACTED] and GCCF EAP Claim [REDACTED]. Unlike the claim Claimant submitted to the NPFC, the information provided by the GCCF indicates that the EAP Claimant submitted to the GCCF was a subsistence claim in the amount of \$975.00.

### 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.

The claim is denied because the Claimant has not submitted proof of presentment of his lost profits and earnings claim to the RP. On 05 January 2010, the NPFC sent claimant a letter seeking clarification and additional documentation to assist in processing his claim. This letter was received at claimant's address on record, but to date, there has been no response. NPFC consequently proceeded on the evidence claimant had already submitted.

Further, even if the Claimant did submit his lost profits and earnings claim to the RP, the evidence provided by Claimant does not establish that he lost his job as a result of the Deepwater Horizon incident. Accordingly, his claim is denied.

Claim Supervisor: [REDACTED]

Date of Supervisor's Review: 2/5/11

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

[REDACTED]  
Fax: 202-493-6937  
5890  
2/3/2011

BY MAIL AND EMAIL [REDACTED]

[REDACTED]

RE: Claim Number: N10036-0490

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number N10036-0490 involving Deepwater Horizon. Please see the attached Claim Summary / Determination Form for an explanation 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 N10036-0490.

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

09/14/11

FOIA2011-3380-00001930

## CLAIM SUMMARY / DETERMINATION FORM

Date	: February 1, 2011
Claim Number	: N10036-0490
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$21,622.62

### 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.

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<sup>1</sup>. 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.

<sup>1</sup> 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 January 16, 2011, [REDACTED] (Claimant) presented a claim to the responsible party, BP/GCCF with Claimant Identification Number # [REDACTED]. That original claim was denied on November 1, 2010. The Claimant presented a subsequent claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$21,622.62 for lost profits and earnings capacity resulting from the Deepwater Horizon oil spill.

Claimant was laid off from his position at [REDACTED] on August 5, 2010. Correspondence dated August 5, 2010 from the Human Resource Director at [REDACTED] confirmed the termination. According to the Claimant, the reduction in force was due to the moratorium on all deepwater drilling.

**APPLICABLE LAW:**

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).

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:**

**Claimant's Submission**

To support the claim, the Claimant submitted the following documents.

1. Optional OSLTF Claim Form, received January 16, 2011
2. Separation Agreement and Release from [REDACTED] dated August 5, 2010
3. Hardship letter dated January 4, 2011
4. GCCF denial letter dated November 1, 2010
5. Confirmation receipt for unemployment benefits filed in Louisiana dated September 20, 2010
6. Copy of GCCF claim form
7. Pay stub from M-I Swaco dated June 25, 2010
8. Forty seven (47) pages of various past-due balances from creditors

## 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 as a direct result of the Deepwater Horizon Incident. The NPFC considered all the documentation submitted by the Claimant.

The claim is denied because the Claimant failed to demonstrate a loss of profits or impairment of earnings capacity as a direct result of the Deepwater Horizon Incident.

Furthermore, the NPFC spoke with [REDACTED] HR Manager for [REDACTED] and he confirmed that the Claimant was released from his position with the company due to a lack of work brought on by the moratorium.

Based on consideration of all documents and information presented, the Claimants assertion that his termination was based solely on the deepwater drilling moratorium and discussions with the [REDACTED] Human Resource manager, the Claimant has not established that any loss of profits or earnings capacity occurred as a direct result of the Deepwater Horizon incident. As such, this claim for lost profits and earnings capacity is denied.

Claim Supervisor [REDACTED]

Date of Supervisor's review: *2/1/11*

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# N10036-0491  
22 February 2011



RE: Claim Number: N10036-0491

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with 33 C.F.R. Part 136, denies payment on your claim, # N10036-0491. Please see the enclosed Claim Summary/Determination Form for further explanation.

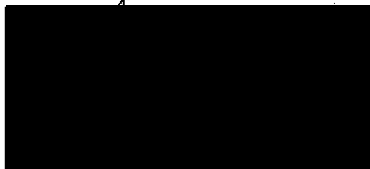
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-0491.

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

09/14/11

FOIA2011-3380-00001934

## CLAIM SUMMARY / DETERMINATION FORM

Date	17 February 2011
Claim Number	NI10036 0401
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Earning Capacity and Subsistence Use
Claim Manager	[REDACTED]
Amount Requested	\$17,793.88

### ***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 11 January 2011, [REDACTED] (Claimant) presented an Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Fund Center (NPFC) seeking \$16,593.88 in loss of profits and earnings, as well as, \$1,200.00 for loss of subsistence use of natural resources, that resulted from the Deepwater Horizon oil-spill. His combined loss is \$17,793.88.

With respect to his alleged loss of \$16,593.88 in lost profits and earnings, the Claimant asserted that he worked as a bus driver for [REDACTED] out of Mobile, Alabama, from July through September 2010. Colonial was sub-contracted to transport federal, state, and BP employees to and from the command center in Mobile, AL. Claimant asserted that “[he] was told that this job would last approx 1 to 2 years.”<sup>1</sup> This sub-contract was terminated on 17 October 2010. The Claimant seeks the lost earnings he would have made if he continued working under the sub-contract through the spring of 2011.

With respect to his alleged subsistence loss of \$1,200.00, the Claimant asserted that “[he] was not able to fish and crab alone [sic] the gulf coast during the oil spill . . . [and consequently he was] forced to purchased [sic] fish and other seafood from the grocery market. . . .”<sup>2</sup>

### ***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.

#### Loss of Earning Capacity

<sup>1</sup> Claimant handwritten letter dated 05 January 2011.

<sup>2</sup> Claimant handwritten letter titled “questions 9, 10, 11.”

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.

#### Loss of Subsistence Use

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

- (a) Be for lost subsistence use and submitted by an eligible claimant;
- (b) Identify and describe the actual subsistence use of each specific natural resource for which compensation is being claimed;
- (c) Describe how and to what extent the claimant's subsistence use was affected by injury to or loss of each specific natural resource;
- (d) Describe efforts to mitigate the subsistence use loss; and
- (e) Be based on the reasonable cost to replace the lost subsistence use of natural resources.

## ***DETERMINATION OF LOSS***

### **Claimant's Submission**

To support his claim, Claimant submitted the following documentation:

- OSLTF claim form dated 05 January 2011;
- Claimant handwritten answer to questions 1-6 dated 01 February 2011;
- 2010 W-2 for Claimant from Colonial;
- 2010 W-2 for Claimant from [REDACTED];
- Copies of Claimant's Alabama driver's license & his social security card;
- Claimant handwritten letter titled "questions 9, 10, 11;"
- Medication documentation;
- Claimant handwritten letter dated 05 January 2011;
- Colonial letter dated 15 December 2010;
- Claimant earnings statement from [REDACTED] for pay period ending 10 August 2001 & 25 August 2010;
- Earnings statement from [REDACTED] for pay period ending 09 April 2010;
- Earnings statement from Long's for week ending 24 October 2010 & 31 October 2010 & 07 November 2010, 14 November 2010, 21 November 2010, 28 November 2010 & 05 December 2010;
- [REDACTED] van schedule for Claimant;
- Mobile [REDACTED] shuttle times;
- 2008 W-2 for Claimant from [REDACTED];
- 2008 W-2 for Claimant from [REDACTED];
- 2008 W-2 for Claimant from County of Mobile; and
- Claimant Income Tax documentation for 2008 and 2009.

Claimant seeks \$16,593.88 in lost profits and earnings and \$1,200.00 in loss of subsistence use of natural resources for a total loss of \$17,793.88, allegedly resulting from the Deepwater Horizon incident.

On 27 August 2010, the Claimant filed a six-month Emergency Advance Payment (EAP) claim for \$1,200.00 in loss of subsistence use of natural resources with the GCCF. He was assigned GCCF Claimant ID [REDACTED] and Claim [REDACTED]. On 01 November 2010, the Claimant filed a one-month EAP claim for \$12,900.00 in lost earnings with the GCCF. He was assigned Claim [REDACTED]. On 07 December 2010, Claim [REDACTED] was denied by the GCCF. On 11 February 2011, Claim [REDACTED] was denied. This information was verified by the NPFC.<sup>3</sup>

### **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. The NPFC considered all of the documentation submitted by the Claimant.

### Loss of Earning Capacity

<sup>3</sup> Claimant has an Interim Payment and a Final Payment claim under review with the GCCF.

The claim is denied because the evidence presented by the Claimant does not demonstrate that he suffered an economic loss as a direct result of the Deepwater Horizon incident. The Claimant asserted that he was promised employment under [REDACTED] sub-contract to transport federal, state, and BP employees to and from the Mobile command center through at least the spring of 2011. Because this contract was terminated earlier than promised, the Claimant seeks the earnings he would have made had he been employed the entire duration.

On 24 January 2011, the NPFC sent the Claimant a letter requesting, among other things, a signed statement from Colonial explaining exactly how the Deepwater Horizon incident impacted its business and caused the Claimant's lost earnings. The Claimant could not provide this documentation. The Claimant previously submitted a letter verifying his employment with Colonial, and this letter indicated that although [REDACTED] was scheduled to be employed through the spring of 2011, the sub-contract was "suddenly terminated without explanation or reason."<sup>4</sup> This evidence does not support the allegation that the Claimant lost earnings as a result of the Deepwater Horizon incident but rather the business decision of the employer to terminate his employment therefore the lost profits and earnings claim is denied.

Loss of Subsistence Use

The claim is denied because the evidence presented by the Claimant does not prove that his alleged loss of subsistence use is due to the Deepwater Horizon incident. The Claimant submitted no statements or affidavits that address the frequency and amount of subsistence catch and consumption that he and/or his family relied upon to meet the minimum necessities of life. He has not provided a valid fishing license that would demonstrate that he is legally entitled to catch fish or game in the state of Alabama. He has provided no documentation to support the dollar amount of subsistence use claimed. The NPFC cannot determine the period of claimed loss or actual costs incurred to replace the fish that he would have caught and eaten if the spill had not occurred. Since the Claimant has not established that his loss of subsistence use resulted from the Deepwater Horizon incident, his subsistence claim is also denied.

Claim Supervi [REDACTED]

Date of Supervisor's Review: *2/22/10*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

<sup>4</sup> Colonial letter dated 15 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

1/24/2011

VIA MAIL and EMAIL: [REDACTED]

[REDACTED]  
Gulfport, MS 39503

RE: Claim Number: N10036-0492

Dear Ms. [REDACTED]:

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number N10036-0492 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 N10036-0492.

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

09/14/11

FOIA2011-3380-00001939



## CLAIM SUMMARY / DETERMINATION FORM

Date	: 1/24/2011
Claim Number	: N10036-0492
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$14,000.00

### ***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 19 January 2011, Ms. [REDACTED] (Claimant) presented a lost profits & earnings claim in the amount of \$14,000.00 to the National Pollution Funds Center (NPFC) for reimbursement. Ms. [REDACTED] asserted that her decrease in business while working at a nail salon resulted from the Deepwater Horizon incident because her clientele did not visit as often or tip as well as prior to 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.

## ***DETERMINATION OF LOSS***

### **Claimant's Submission**


To support her claim, the Claimant submitted the NPFC OSLTF Claim Form dated January 6, 2011, a copy of a letter from her employer, a personal statement supporting her current financial situation, a copy of income tax records for 2007, 2008, and 2009, a copy of her Alabama driver's license and social security card, witness statements, and a list of her 2010 gross pay. Claimant stated on her OSLTF Claim Form that she submitted a claim to the GCCF dated October 9, 2010 and received a denial letter December 4, 2010 although a copy of the denial letter has not been provided.

### **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 \$14,000 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 reduced business at the

nail salon where she works. Claimant has failed to establish that her reduction in clientele is a direct result of the Deepwater Horizon incident therefore this claim is denied.

Claim Supervisor: 

Date of Supervisor's review: *1/24/11*

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  
5890  
2/7/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]



RE: Claim Number: N10036-0493

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number N10036-0493 involving Deepwater Horizon. Please see the attached Claim Summary / Determination Form for a detailed explanation regarding the claim.

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 N10036-0493.

Mail reconsideration requests to:

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

Sincerely, [REDACTED]

[REDACTED]  
Claims Manager  
U.S. Coast Guard

Encl: Claim Summary / Determination Form

09/14/11

FOIA2011-3380-00001943

## CLAIM SUMMARY / DETERMINATION FORM

Date	: February 2, 2011
Claim Number	: N10036-0493
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$16,700.00

### ***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 January 18, 2011, [REDACTED] (Claimant) presented a lost profits & earnings claim on behalf of his company, Your [REDACTED] in the amount of \$16,700.00 to the National Pollution Funds Center (NPFC) for reimbursement. The Claimant asserted that he lost wages as a result of the Deepwater Horizon incident.

#### Claim Background:

- The claimant operated a coupon publication business in the Panama City and Destin Florida market areas.
- As we understand it, as the publisher, the Claimant earns income from the sale of fixed fee publishing rights in licensed market areas, as well as per page royalty rates for licensed publications in those areas.
- Claimant sold the publishing rights for the "[REDACTED]" to [REDACTED] on December 29, 2009. Contract terms were as follows:
  - Publishing rights were sold for two markets, Panama City and Destin, Florida, at \$10,000 each, \$20,000 total
  - A down payment of \$5,000 was required plus monthly installments of \$1,500 beginning April 1, 2010
  - A \$75.00 per page royalty rate was also included in the contract
  - The term of the contract was for 99 years
  - The parent company ([REDACTED]) retained right of first refusal for the resale of any markets covered in the contract



- The Panama City market was to be on line and in distribution by April 15, 2010. The Destin market was to be on line and in distribution by July 15, 2010.
  - The contract does not contain any termination or exit clause for the licensee. The licensor can terminate the contract due to immoral or other illegal behavior.
- Claimant explained in his claim letter that there is a two month lead time to print each coupon book
  - Claimant supplied advertising insertion documentation for the first publication on April 15, 2010 and the second publication on June 17, 2010 editions. Both editions contained a total of eight (8) individual advertising insertion orders from various customers. Although the claimant indicated a two-month lead time to print each book, the order dates signed by customers on the insertion orders were one to three weeks in advance of the related publication date.
  - On June 1, 2010, the contracted market owner [REDACTED] wrote a letter to the Claimant indicating he could not continue to make the contract payments and wished to terminate the contract. [REDACTED] indicated this was because sales and renewals were “slipping” for the next edition.
  - Other than the first two editions, no other editions were published. As indicated above, the first two editions appear to have equivalent advertising insertion orders from customers.
  - As of 30 June 2010, [REDACTED] still owed the claimant \$11,500 under the contract.
  - Claimant has made a claim for the remaining contract value with [REDACTED] of \$11,500, plus per page royalties for future publications (July through December 2010) totaling another \$7,200. Total lost revenue is \$18,700.
  - Saved travel and other business expenses totaling \$2,000 were deducted to arrive at a net claim of \$16,700.

The GCCF assigned Claimant identification [REDACTED] on June 12, 2010. The Claimant did not provide the GCCF denial letter.

***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 January 18, 2011
- Personal hardship letter explaining the claim
- Email from [REDACTED] dated November 19, 2010
- Four (4) pages listing distribution locations
- Production schedules for Panama City and Destin
- Sixteen (16) advertising insertion documents
- Copy of contract between Claimant and [REDACTED] dated December 29, 2010
- Letter from [REDACTED] to Claimant requesting to terminate contract dated June 1, 2010

- Letter from Claimant to [REDACTED] terminating contract dated June 14, 2010

### **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 denies the claim because the alleged financial 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 was caused by a contractual dispute between the Claimant and [REDACTED] dated December 29, 2010. No actual loss of advertising revenue was ever incurred as the contract was terminated after only the second publication. As indicated above, the first two publications were equivalently the same in terms of advertising insertions. No loss is being claimed for either of the first two publications. Such a loss is not a damage that may be compensated from the OSLTF.

Claim Supervisor: [REDACTED] *for*

Date of Supervisor's review: *2/4/11*

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

5890  
08 February 2011

VIA MAIL and EMAIL: [REDACTED]



RE: Claim Number: N10036-0494

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number N10036-0494 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 N10036-0494.

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	02 February 2011
Claim Number	N10036-0494
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
Claim Manager	[REDACTED]
Amount Requested	\$53,000.00

### ***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 20 January 2011, [REDACTED] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$53,000.00 in lost profits and earning capacity resulting from the Deepwater Horizon incident. Claimant advised that he worked for [REDACTED] as a Chief Engineer on production supply boats in the Gulf of Mexico. Claimant asserted that after being "off work from Feb, 1<sup>st</sup> 2010 to July 23 2010" for a surgical procedure, he returned to work on 01 September 2010 where he worked until 27 September 2010. Claimant further asserted that he "received a call from [REDACTED] on 04 November 2010 that they were going to have to lay me off due to no work for the vessels because of the BP oil-spill."<sup>1</sup>

### ***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.

<sup>1</sup> See Typed letter from Claimant dated 20 January 2011



- (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, Claimant presented the NPFC Optional OSLTF Claim Form on 20 January 2011, various W2 wage forms and IRS 1040 Forms as well as pay stubs for some of the time periods previously worked. Claimant also included a typed letter explaining his claim, a letter from his former employer dated 04 November 2010 accompanying the official personnel status form verifying dates worked and reason for separation as "lack of work".

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 07 December 2010.

#### **NPFC Determination**

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.

The NPFC reviewed the evidence presented by the Claimant and spoke with a representative from [REDACTED]. During this conversation, it was determined that the Claimant had previously spoken with [REDACTED] about the claim. [REDACTED] advised that the Claimant tried to get him and the company to write a letter advising that the lay-off was due to the oil-spill but that they, in good conscience, could not do so. As such, [REDACTED] proceeded to inform the NPFC that the company had actually filed Chapter 11 bankruptcy on 14 May 2010 due to preexisting mismanagement and economic concerns, changing from 15 vessels to 8 vessels and therefore many lay-offs followed. [REDACTED] did reiterate that the oil-spill didn't hurt their business and has actually helped in some ways but that certainly [REDACTED] did not incur a lay-off due to the oil-spill. As such, the Claimant has failed to meet his burden of proof in

establishing his loss of profits and earnings as a direct result of the Deepwater Horizon incident and therefore his claim is denied.

Claim Supervisor 

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

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

Fax: 202-430-6667  
5890  
2/9/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]



RE: Claim Number: N10036-0495

Dear [REDACTED]:

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number N10036-0495 involving Deepwater Horizon. Please see the attached Claim Summary / Determination Form for an explanation on 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 N10036-0495.

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

## CLAIM SUMMARY / DETERMINATION FORM

Date	: February 9, 2011
Claim Number	: N10036-0495
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$21,990.00

### ***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 January 21, 2011, [REDACTED] (Claimant) presented a loss of profits & earnings claim in the amount of \$21,990.00 to the National Pollution Funds Center (NPFC). The Claimant is asserting that her beauty and barber salon was not able to generate income as a direct result of the Deepwater Horizon incident.

The Claimant submitted a Quick Payment Final Claim to the GCCF. The Claimant was fully compensated after signing the Quick Payment Final Claim and Release.

### ***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 settled the claim with GCCF, acting on behalf of the responsible party. Claimant has been compensated for its claim under the GCCF Quick Payment Final Claim process and has released its rights to recover further from the responsible party. The Fund is not available to pay any additional amount for the compensated claim and the claim is denied.

Claim Supervisor



*for*

Date of Supervisor's review: *2/9/11*

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

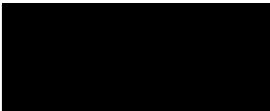
NPFC CA MS 7100  
US COAST GUARD  
4200 Wilson Blvd, Suite 1000

Fax: 202-493-6937

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ  
Claim# N10036-0496  
24 February 2011



RE: Claim Number: N10036-0496

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with 33 C.F.R. Part 136, denies payment on claim number N10036-0496 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 N10036-0496.

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	11 February 2011
Claim Number	N10036-0496
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
Claim Manager	[REDACTED]
Amount Requested	\$13,783.00

### ***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 January 2010, [REDACTED] (Claimant) presented a claim to the National Pollution Fund Center (NPFC) on an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form seeking \$13,783.00 in lost profits and earning capacity resulting from the Deepwater Horizon incident.

Claimant is a cook on a shallow-water oil rig in the Gulf of Mexico operated by [REDACTED]. The Claimant provides meals for the crew as part of his duties. The Claimant stated he works and lives on the rig. He normally works shifts of twenty-one days on and seven days off. The Claimant is employed by [REDACTED] (ESS), a catering service, out of Lafayette, Louisiana. ESS is under contract with [REDACTED]. Following the Deepwater Horizon incident, the Department of Interior's Materials Management Services (MMS) was more restrictive in issuing oil drilling permits. [REDACTED] the rig operator, then reduced the number of crew members on the rig. Since there was less crew to cook for, [REDACTED] reduced the Claimant's hours resulting in lost earnings. The Claimant still works on the oil rig.

### ***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 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 OSLTF Claim Form signed 18 January 2011, a hand-written letter to NPFC dated 18 January 2011, a break-down of the lost wages computation, a copy of his notice from GCCF dated 12 November 2010, copy of his W-2 for 2009, a copy of his US Individual Income Tax Return for 2008 and copies of pay check stubs from ESS for 2010.

Claimant is requesting lost earnings and wages in the amount of \$13,783.00.

Claimant presented an Emergency Advance Payment claim to the GCCF and was issued GCCF Claimant ID [REDACTED] and Claim [REDACTED]. On 15 November 2010 the GCCF denied his claim. This information was verified by the NPFC.

On 25 January 2011, NPFC sent a letter to the claimant requesting additional information in order to further evaluate the claim. On 10 February 2011, the Claimant faxed his response to the NPFC request for information. The Claimant presented type-written answers to questions in the letter requesting additional information, and copies of his W-2 for 2007 and 2008, US Individual



Tax Return for 2007 and 2008, a Transcript of his US Individual Tax Return for 2009 and ESS pay stubs for 2011.

### **NPFC Determination**

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 demonstrate that his alleged loss of earnings is a direct result of the Deepwater Horizon incident. Based on the Claimant's submission documentation, Chevron reduced the Claimant's hours which resulted in his reduced earnings.

Claim Supervisor 

Date of Supervisor's Review: *2/24/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

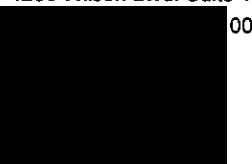
U.S. Department of  
Homeland Security

United States  
Coast Guard



Director  
National Pollution Funds Center  
United States Coast Guard

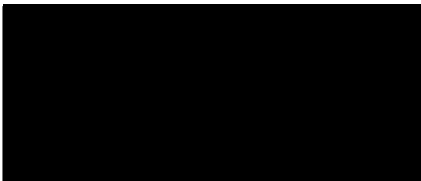
NPFC CA MS 7100  
US COAST GUARD  
4200 Wilson Blvd. Suite 1000



Fax: 202-493-6937

**CERTIFIED MAIL – RETURN RECEIPT REQUESTED**

Number: [REDACTED]



5890/DWHZ  
Claim # N10036-0497  
07 March 2011

Re: Claim Number: N10036-0497

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 the claim number N10036-0497 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 N10036-0497.

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

09/14/11

FOIA2011-3380-00001959

## CLAIM SUMMARY / DETERMINATION FORM

Date	: 22 February 2011
Claim Number	: N10036-0497
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$64,121.00

### ***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 January 2010, [REDACTED], Chairperson for [REDACTED], presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Funds Center (NPFC) seeking \$64,121.00 in lost profits allegedly resulting from the Deepwater Horizon oil-spill.

Claimant operates as a performing arts business, [REDACTED] doing business as [REDACTED] in Santa, Rosa Beach, Florida. The business is registered as a not-for-profit organization for income tax purposes.

Claimant's business earns income from two primary sources, earned income from the production and performance of live theatre productions and unearned income from grants, donations and other fundraising activities. Claimant indicated that there was an anticipated good growth year in 2010 due to projected business trends prior to the Deepwater Horizon oil-spill.<sup>1</sup>

The total claim amount is based on losses of both earned and unearned income. The earned income claim stems from two specific theatre productions that allegedly earned less income than budgeted. The claim associated with these two productions consists principally of ticket sales income, but also includes smaller components for related concession income and printing costs. The total claim for lost profits associated with earned or performance income is \$39,719.00.

The claimant has also made a claim for unearned income in the form of donations, grants and other fundraising activities. This portion of the claim was determined by comparing unearned income from May to September for 2010 and 2009. The total claim for lost unearned income in the form of donations, grants and other fundraising activities is \$24,402.00.

<sup>1</sup> Correspondence from claimant explaining the business and presenting the claim, dated 15 January 2011.

## ***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 the OSLTF**

To support the claim, Claimant submitted the following documentation to the NPFC:

1. OSLTF claim form dated 18 December 2010;
2. U.S. Individual Income Tax Return, Form 990, Return of Organization Exempt from Income Tax, 2007, 2008 and 2009. 2008 contains page 1 only; 2009 contains pages 1-4 only;

3. Correspondence from Claimant explaining the business and presenting the claim, dated 15 January 2011;
4. Correspondence on change of registered agent dated 19 April 2010;
5. Monthly Profit and Loss statements, January 2007 to October 2010;
6. Balance sheets as of 31 December 2007, 2008, 2009 and 31 October 2010;
7. Transaction Detail by Account, 01 January 2010 through 03 November 2010;
8. Correspondence from the Internal Revenue Service (IRS) confirming tax exempt status, dated 10 May 2001;
9. Consumer's Certificate of Exemption, effective 29 March 2007; and
10. "Vendini" ticket event reports, various dates.

Claimant seeks \$64,121.00 in lost profits from reduced attendance at two productions and reduced donations, grants and fundraising activities allegedly resulting from the Deepwater Horizon oil-spill.

On 30 June 2010, Claimant filed a claim with the responsible party, BP.

On 05 November 2010, Claimant filed a six-month Emergency Advance payment (EAP) claim for \$64,124.00 in lost profits with the GCCF. He was assigned Claimant ID [REDACTED] and Claim [REDACTED]. This claim was denied by the GCCF.<sup>2</sup>

### NPFC Determination

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 the claim. The NPFC considered all documentation presented by the Claimant.

As shown in the table below, Claimant's business had been experiencing a decline in total income during the twelve (12) months preceding the Deepwater Horizon oil-spill. As such, it remains uncertain how the Claimant expected substantial growth in 2010.

Description	12 Months Ending	
	31-Mar-09	31-Mar-10
Total Earned Income	\$ 130,955	\$ 162,727
<b>Percentage Change</b>		<b>24.3%</b>
Total Unearned Income	\$ 259,191	\$ 165,192
<b>Percentage Change</b>		<b>-36.3%</b>
<b>Total Income</b>	<b>\$ 390,147</b>	<b>\$ 327,919</b>
<b>Percentage Change</b>		<b>-15.9%</b>

**Table 1: Analysis of Earned and Unearned Income**

As noted, this claim consists of earned and unearned income components.<sup>3</sup> For the earned income portion, Claimant carved out two specific theatre productions that did not achieve independently budgeted income levels.

<sup>2</sup> The NPFC assumes this information to be accurate.

<sup>3</sup> In the Claimant's determination of the earned and unearned claim amounts, the NPFC notes that minimal consideration was given to year-over-year trends that may have occurred during the months or years prior to the

In order to measure any potential lost performance income, the NPFC reviewed the total earned income for the two years preceding the oil-spill and for the seven post-spill months ending 31 October 2010. October 2010 was the last month of financial information submitted and included in the claim.

As shown in Table 1 above, the year-over-year trend for earned income was favorable at 24.3%. The NPFC's projection of earned income for the period of April 2010 through October 2010 assumed this growth rate was sustainable for another seven months.

Using the growth trend above, The NPFC projected total earned income for the seven months ending 31 October 2010 to be \$117,953.00. Actual earned income during those seven months was \$137,236.00. As actual earned income exceeded projected levels by \$19,283.00, no loss of total earned income was calculated.

Although the Claimant only references two specific productions that purportedly fell below budgeted levels, those internal budgets may have been too aggressive although based on the information provided, the NPFC is unable to make a determination. Additionally, other productions may have exceeded their respective budgets although that information has not been provided for consideration. Regardless, the total earned income substantially exceeded projected levels, even using the favorable growth trend of 24.3%.

Again, as shown in Table 1 above, the year-over-year trend for unearned income was unfavorable at negative 36.3%. Similar to earned income, the projection of unearned income for the period of April 2010 through October 2010 incorporated this trend.

Using the trends noted, projected total unearned income for the seven months ending on October 31, 2010 is \$61,412.00. Actual unearned income during those seven months was recorded to total \$42,021.00. Although unearned income fell below projected levels by \$19,391.00, this shortfall is equally offset by earned income which exceeded the projection by approximately the same amount, \$19,283.00.

As a result, total actual income was within \$108.00, or 0.1%, of projected levels for the seven months ending on 31 October 2010. This nominal difference is well within any tolerable error level for a sales projection of this magnitude. As such, we have not calculated any amount of total lost income for the seven months ending on 31 October 2010.

Based on the above analyses, the claim is denied because the Claimant failed to demonstrate a loss of profits and earnings 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: 3/5/11

Supervisor's Comments: *Denial approved*

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Deepwater Horizon oil-spill. Further, no deductions for saved variable or other non-continuing expenses were included in the claim calculations presented.



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# N10036-0498  
07 March 2011

[REDACTED] e

RE: Claim Number: N10036-0498

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 N10036-0498 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 N10036-0498.

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

09/14/11

FOIA2011-3380-00001964

## CLAIM SUMMARY / DETERMINATION FORM

Date	25 February 2011
Claim Number	N10036-0498
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
Claim Manager	[REDACTED]
Amount Requested	\$5,000.00

### ***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 January 2011, [REDACTED] (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Funds Center (NPFC) seeking \$5,000.00 in lost profits and earning capacity allegedly resulting from the Deepwater Horizon oil-spill.

The Claimant worked for [REDACTED] in Covington, Louisiana and the Louisiana [REDACTED] in New Orleans during 2010. The Claimant does not explain her claim in the documents she submitted in support of her claim.

### ***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.

<sup>1</sup> On Claimant's OSLTF claim form for *Description of the nature and extent of damages claimed*, she indicates "came out of sink." Additionally, on the same form for *Description of how the incident caused the damage*, she states "stop the sink up and had to replace." These statements obfuscate her claim.

- (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 the OSLTF**

To support her claim, the Claimant submitted an OSLTF claim form, dated 06 December 2010; past-due notices from Utilities, Inc.; pay stubs for 2009 and 2010 from [REDACTED] in Covington, Louisiana; pay stubs for 2009 and 2010 from SMG (Louisiana Superdome) in New Orleans; and her 2009 W-2 from SMG.

Claimant seeks \$5,000.00 in lost profits and earnings capacity allegedly as a result of the Deepwater Horizon oil-spill.

27 October 2010, Claimant filed a six-month Emergency Advance Payment claim for \$4,600.00 in lost profits and earnings with the GCCF. She was assigned GCCF Claimant ID [REDACTED] and Claim [REDACTED]. Her claim was denied by the GCCF.

#### **NPFC Determination**

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 the claim. The NPFC considered all documentation presented by the Claimant.

After an initial review of the claim, the NPFC sent the Claimant a letter, dated 25 January 2011, requesting additional information in order to further evaluate her claim. The Claimant responded by faxing only a copy of her 2009 W-2 from [REDACTED]. She stated she would provide more information although to date, no additional information has been received.<sup>2</sup> The NPFC proceeded to evaluate her claim using the documentation she had originally submitted.

Accordingly, the claim is denied because the Claimant has failed to demonstrate that she lost \$5,000.00 in profits and earnings 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: [REDACTED]

Date of Supervisor's Review: 3/4/11

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

<sup>2</sup> The NPFC claims adjuster spoke with the Claimant on 01 February 2011. The Claimant stated that she felt she had submitted all the documentation necessary for her claim. She then stated she would look at the letter requesting additional information again and provide more information.

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

5890  
3/7/2011

BY ELECTRONIC MAIL AND FIRST-CLASS MAIL

[REDACTED]

[REDACTED]

RE: Claim Number: N10036-0499

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 N10036-0499 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 N10036-0499.

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  
09/14/11

FOIA2011-3380-00001968

## CLAIM SUMMARY / DETERMINATION FORM

Date	: March 2, 2011
Claim Number	: N10036-0499
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$320,000.00

### ***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 January 21, 2011, [REDACTED] (Claimant) presented a claim to the National Pollution Fund Center (NPFC) on an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form seeking \$320,000.00 in lost profits and earning capacity resulting from the Deepwater Horizon incident.

Claimant asserted that his business, Crossroads Seafood, which specializes in selling fresh shrimp from the Gulf of Mexico, was unable to continue due to damages sustained due to the injury to or destruction of natural resources.

The Claimant filed an Emergency Advance Payment (EAP) claim (Claim [REDACTED]) with the GCCF on August 24, 2010 and was subsequently denied.

### ***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 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 received 21 January 2011;
- Various letters provided by Claimant describing circumstances of claim;
- Gulf Coast Claims Facility Claim Form for Claimant [REDACTED];
- Letter from GCCF to Claimant dated 23 September 2010 to acknowledge receipt of claim for final payment;
- BP/ GCCF computation of loss for May through August 2010, dated 08 August 2010, totaling \$9,653 after consideration of prior payments of \$10,000;
- 1040 Individual Income Tax Return Filings from 2009. Note: There were two tax return filings provided for 2009, but the reported amounts are different;
- Bank Statements from [REDACTED] Bank for account ending in [REDACTED] from October 2009 through April 2010;
- Monthly Income and Expenses from September 2009 through July 2010;
- Operational documents including commercial lease for property at 20120 Plank Road, City of Zachary occupational license and various receipts/ estimates for build out costs;
- Receipts and invoices for shrimp purchased from [REDACTED] from February 2010 through June 2010. Purchases are predominantly for farm raised shrimp;
- Receipts and invoices for shrimp purchases from [REDACTED] from January 2010 through March 2010, including farm raised imports from Ecuador.

## 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.

Under 33 U.S.C. § 2702(b)(2)(E) and 33 C.F.R. Part 136, a claimant must prove that her 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.

Based on the documentation provided by the Claimant, he indicated that his income was reduced as a result of the Deepwater Horizon incident.

On February 2, 2011, the NPFC sent, via electronic mail, a request for additional information to the Claimant in order to obtain the necessary information to adjudicate the claim. The documentation requested consisted of the following:

- Quarterly Sales and Use Tax Return filings from 2009 through 2010.
- You provided Page 1 from you bank statements for October 2009 through April 2010. Although Page 1 contains the total deposits and expenses, the amounts do not correlate with your monthly financial statements.
  - If these bank statements are primarily used for your business, provide the complete bank statements from October 2009 through the current period.
  - If there are any transactions unrelated to the business, please identify those items.
- You provided various invoices and receipts for shrimp purchases from [REDACTED] and [REDACTED]. (See Documents Previously Provided Items #10 &11). The receipts only appear to be a small portion of the purchases you noted on your Profit and Loss statements. If additional invoices and receipts are available, please provide complete copies from October 2009 through July 2010, including all sources of seafood.
- If you personally filed for unemployment during 2010, provide associated documentation regarding your filing and any corresponding benefits received.
- Provide a detailed description and computation explaining how you estimated a loss totaling \$320,000.
- Identify the “satellite shrimp stands” and their locations.
  - Provide documentation to support the actual existence of a physical “stand” (i.e. build out costs, equipment, etc...)
  - Provide all required permitting obtained to sell shrimp from your stands.
  - If applicable, provide related documents for land lease and utility costs.

The NPFC also requested the Claimant answer the following questions:

- Explain how you account for and record your daily sales.
  - There are material differences between your reported monthly sales and the deposits shown on your bank statements. Please explain the differences.
- What documents do you retain in order to prepare your monthly profit and loss statements?
- Identify and name all your normal sources of seafood. If documentation supporting purchases from any of these sources were not previously provided, please submit the related documents.

- For each vendor, identify the source of the shrimp and whether it's originally sourced from the Gulf of Mexico, inland areas, farm raised or imported.
- Identify if you have filed for a final payment with GCCF. If so, what was the outcome?
- The claim documents you provided regarding your claim with GCCF indicates that you were paid up to \$10,000. Please confirm that actual payments your received from BP and/or the GCCF.

The Claimant has not provided the additional documentation nor answered any of the questions to support his claim in order to demonstrate a loss of profits and earnings. Therefore, this claim is denied because the Claimant has failed to meet his burden to demonstrated that his loss of 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: *March 5, 2011*

Supervisor Action: *Denial approved*

Supervisor's Comments: