

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# N10036-0700
01 June 2011



RE: Claim Number: N10036-0700

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 N10036-0700 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination Form for further explanation.

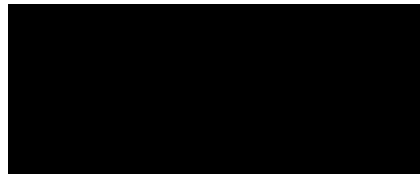
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-0700.

Mail reconsideration requests to:

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

Sincerely,



National Pollution Funds Center
Claims Manager

Enclosure: Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00002739

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	N10036-0700
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
Amount Requested	\$25,000.00

FACTS

On or about 20 April 2010, the Mobile Offshore Drilling Unit Deepwater Horizon (Deepwater Horizon) exploded and sank in the Gulf of Mexico. As a result of the explosion and sinking, oil was discharged. 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 April 2011, [REDACTED] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$25,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

Claimant works as a childcare provider for [REDACTED] in Gulfport, MS. Claimant alleged that the parent of a child she watched was laid off at the [REDACTED] due to the Deepwater Horizon oil spill. Claimant indicated that as a result of this layoff, the parent pulled her child from daycare and the Claimant lost wages.

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

To support her claim, Claimant submitted the following documentation:

- 1) Optional OSLTF claim form dated 19 April 2011;
- 2) Letter from Southern Mississippi Planning and Development District;
- 3) 2008 Form 1099 from Southern Mississippi Planning and Development District;
- 4) 2009 Form 1099 from Southern Mississippi Planning and Development District;
- 5) 2010 Form 1099 from Southern Mississippi Planning and Development District;
- 6) Cover letter for fax from Claimant stating it has been 90 days since GCCF submission;
- 7) SMPDD provider payments by month for July, August and October 2010;
- 8) SMPDD provider payments by month for January, February, March, April, May, July, August, September, October, November, and December; and
- 9) Letter from Claimant in response to request for additional information.

Prior to presentment to the NPFC, Claimant presented a Final Payment claim for \$9,550.00 in lost profits and earnings with the RP/GCCF. She was assigned GCCF Claimant ID [REDACTED] and Claim [REDACTED]. On 10 May 2010, the GCCF denied her claim.¹

On 20 April 2011, Claimant presented the subject claim to the NPFC for \$25,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

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 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,

¹ GCCF denial letter Re: Claimant's Final Payment claim dated 10 May 2011.

information, and documentation deemed necessary by the Director, NPFC, to support her claim. The NPFC considered all the documentation submitted by the Claimant.

Under 33 C.F.R. § 136.103(a), all claims for removal costs or damages must be presented first to the responsible party (RP). Claimant presented a Final Payment Claim for \$9,550.00 in lost profits and earnings to the GCCF. Claimant then presented a loss of profits and impairment of earnings capacity claim of \$25,000.00 to the NPFC. Any claimed amount of damages exceeding \$9,550.00 was not properly presented to the RP/GCCF pursuant to 33 C.F.R. § 136.103(a) and is therefore denied.

The remainder of this claim is also denied because the Claimant's evidence does not demonstrate that the alleged loss in the amount of \$9,550.00 is due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil.

Claimant alleged lost wages because the parent of the child she watched was laid off from the [REDACTED] due to the oil spill. On 26 May 2011, the NPFC contacted the parent.² The parent stated that because of the oil spill, business slowed down and she was laid off. The NPFC asked her for contact information for the restaurant/buffet she worked in and a supervisor's contact information. The parent was unable to provide any contact information. On 31 May 2011, the NPFC contacted employee relations for the [REDACTED] and [REDACTED] but the Casino would not provide the NPFC with any information other than the parent worked for the Casino.³

Because the Claimant has not demonstrated that her alleged loss in the amount of \$9,550.00 is due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil, this claim is denied.

Claim Supervisor: NPFC [REDACTED] Division

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

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

² PHONECON with parent on 26 May 2011.

³ PHONECON with [REDACTED] HR on 31 May 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
5/23/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number [REDACTED]

[REDACTED]

RE: Claim Number: N10036-0701

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act of 1990, U.S.C. § 2701 et seq. (OPA) and the associated regulations at 33 C.F.R. Part 136, denies payment on the claim number N10036-0701 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 N10036-0701.

Mail reconsideration requests to:

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

Signature [REDACTED]

Name [REDACTED]
U.S. Coast Guard

Encl: (1) Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00002743

CLAIM SUMMARY / DETERMINATION FORM

Date	: May 20, 2011
Claim Number	: N10036-0701
Claimant	[REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: \$53,270.00

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 April 22, 2011, [REDACTED] (Claimant) presented a lost profits & earnings capacity claim in the amount of \$53,270.00 to the National Pollution Funds Center (NPFC) for reimbursement. The Claimant is an Office Manager at [REDACTED] Florida. The Claimant provided a letter from [REDACTED], [REDACTED] stating, "the BP oil spill caused real estate contracts and closings to be cancelled, with little business in the real estate market. As a result, [REDACTED] only works on an as needed basis, a few hours per week to finish up open files."¹ The Claimant stated in her response to a question posed by the NPFC that, "after the oil spill, due to a lack of business, the company has closed and I have tried to find other employment, which has been either part time or temporary."²

The Claimant did not provide any correspondence for claims with the GCCF but stated on the Optional OSLTF Form that her claim had been denied. The NPFC checked with the GCCF to ensure that the Claimant met presentment requirements pursuant to 33 C.F.R. § 136.103(a). Based on our research it has been determined that the Claimant only presented a claim in the amount of \$13,216.00 to the responsible party.

APPLICABLE LAW:

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

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

¹ Letter from [REDACTED] dated August 12, 2011

² Letter in response to NPFC questions, dated May 4, 2011

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

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

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

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

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

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

DETERMINATION OF LOSS

Claimant's Submission

To support the claim, the Claimant submitted the following documentation:

- NPFC OSLTF Form, dated April 7, 2011;
- Hardship letter from employer [REDACTED], dated August 12, 2010;
- Hardship letter from employer [REDACTED] housekeeping, undated;
- 2008, 2009, & 2010 W-2 Wage and Tax Statements;
- 2008, 2009, & 2010 Income Tax Returns.

NPFC Determination

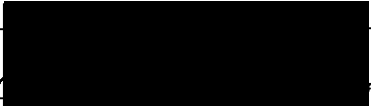
Under 33 C.F.R. § 136.105(a) and 136.105(e)(6), the claimant bears the burden of providing to the NPFC all evidence, information and documentation deemed necessary by the director, NPFC, to support the claim. The NPFC considered all documentation presented by Claimant.

Under 33 C.F.R. § 136.103(a), all claims for removal costs or damages must be presented first to the responsible party (RP). Claimant presented a Final claim for \$13,216.00 in lost wages/earnings to the GCCF. Claimant then presented a loss of profits and impairment of earnings capacity claim of \$53,270.00 to the NPFC. Any claimed amount of damages exceeding \$13,216.00 was not properly presented to the RP/GCCF pursuant to 33 C.F.R. § 136.103(a) and is therefore DENIED.

The remainder of this claim is DENIED because the Claimant's evidence does not demonstrate (1) the alleged loss in the amount of \$13,216.00 or (2) that this alleged loss is due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil.

It is also important to note that the Claimant has provided NO comparable financial documentation pursuant to the governing claims regulations at 33 CFR 136.233 (c) which states "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."

Because the Claimant has failed to (1) make proper presentment of some of the costs claimed to the NPFC pursuant to 33 C.F.R. § 136.103(a), (2) demonstrate the alleged loss in the amount of \$13,216.00, and (3) demonstrate that the alleged loss is due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil, this claim is DENIED.

Claim Supervisor: 

Date of Supervisor's review: *5/23/11*

Supervisor Action: *Denial approved*

Supervisor's Comments:

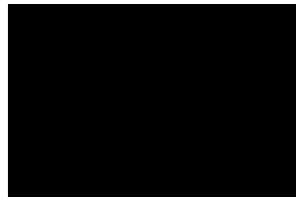
U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
National Pollution Funds Center
United States Coast Guard

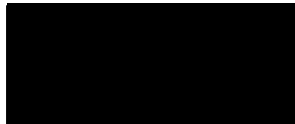
NPFC CA MS 7100
US COAST GUARD



Fax: 202-493-6937

CERTIFIED MAIL - RETURN RECEIPT REQUESTED
Number: [REDACTED]

5890/DWHZ
Claim# N10036-0702
11 May 2011



Claim Number N10036-0702



Dear [REDACTED]

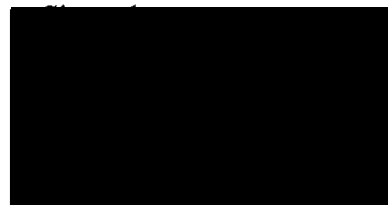
The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq. (OPA) and the associated regulations at 33 C.F.R. Part 136, denies payment on claim number N10036-0702 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination 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 N10036-0702.

Mail reconsideration requests to:

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



U. S. Coast Guard
Claims Manager

Enclosure: Claim Summary/Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Date	09 May 2011
Claim Number	N10036-0702
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
Claim Manager	[REDACTED]
Amount Requested	\$22,700.00

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 21 April 2011, [REDACTED] (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Funds Center (NPFC) for \$22,700.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

In 2009, the Claimant worked as a secretary/hostess¹ at the [REDACTED] ([REDACTED] where she earned \$13,236.85 through 26 December 2009.² She stated she left [REDACTED] prior to the Deepwater Horizon oil spill³ and returned to Gulf Shores, Alabama to look for better work. The Claimant went to work for [REDACTED] in Gulf Shores from 03 to 12 May 2010 and earned \$1,232.00.⁴ She indicated that [REDACTED] had no more work for her so she searched for other work but could not find any. Claimant alleged that her loss of earnings was due to the Deepwater Horizon oil spill.⁵

APPLICABLE LAW

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

¹ Form 1040 US Individual Tax Return for 2009.

² Earning statements (pay stub) from [REDACTED] week ended 26 December 2009.

³ Claimant's hand-written letter to NPFC of 09 May 2011 explaining her claim.

⁴ Copy of check from [REDACTED] Claimant dated 12 May 2011.

⁵ Included in Claimant's alleged loss is \$1,700.00 in moving expenses.

- (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 her claim, Claimant submitted the following documents to the NPFC:

1. OSLTF claim form, signed 10 April 2011 (plus sum certain attachment);
2. Form 1040 US Individual Tax Return for 2009;
3. Earning statements (pay stub) from [REDACTED] week ended 26 December 2009;
4. Claimant's hand-written letter to NPFC of 09 May 2011 explaining her claim;
5. Copy of check from [REDACTED] to Claimant dated 12 May 2011;
6. Claimant's hand-written letter to NPFC of 09 May 2011 explaining her claim;
7. IRS Form 8812 Additional Child Tax Credit for 2009 and 2010;
8. US Schedule EIC Earned Income Credit Worksheet for 2010;
9. GCCF Letter of Denial of Interim Payment/Final Payment Claim dated 01 April 2011;
10. Unsigned and undated statement of employment from [REDACTED];
11. Claimant's Florida drivers license;
12. E-Mail from NPFC call center requesting NPFC information; and
13. W-2 from [REDACTED] for 2009 for wages of \$412.00.

On 24 January 2011, Claimant presented an Interim Payment claim to the GCCF for \$10,000.00 in lost profits and earnings. She was assigned GCCF Claimant ID [REDACTED] and Claim # [REDACTED]. On 01 April 2011, this claim was denied by the GCCF.⁶

On 21 April 2011, Claimant presented this claim for \$22,700.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

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 Claimant's evidence fails to demonstrate (1) her alleged loss in the amount of \$22,700.00, as claimed, or (2) that this alleged loss is due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil.

Claimant alleged \$21,000.00 in lost wages and \$1,700.00 in moving expenses for a total of \$22,700.00. Claimant indicated that she calculated her lost wages by "[f]irst two weeks \$14 HR then \$16 HR all 40 HR."⁷ It is unclear how the Claimant arrived at these figures. Her earnings statement from [REDACTED] for period ending 26 December 2009 indicated that she earned \$10.30 an hour. Additionally, when the Claimant worked for [REDACTED], she earned \$1,232.00 from 03 to 11 May 2010. It is unclear how this lump sum correlates to an hourly wage.

Additionally, the Claimant failed to demonstrate how her alleged loss resulted from the Deepwater Horizon oil spill. It is unclear how the Claimant's lack of work at [REDACTED] or her inability to find employment elsewhere 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.

Because the Claimant failed to demonstrate (1) her alleged loss in the amount of \$22,700.00, as claimed, or (2) that this alleged loss is due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil, this claim is DENIED.

Claim Supervisor [REDACTED]

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

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

⁶ GCCF Letter of Denial of Interim Payment/Final Payment Claim, dated 01 April 2011.

⁷ Claimant's hand-written letter to NPFC of 09 May 2011 explaining her claim.

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
National Pollution Funds Center
United States Coast Guard

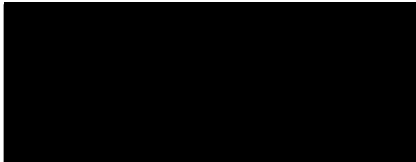
NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim # N10036-0703
22 June 2011



Re: Claim Number: N10036-0703

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 N10036-0703 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 N10036-0703.

Mail reconsideration requests to:

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

Sincerely,



National Pollution Funds Center
U.S. Coast Guard

Enclosure: Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00002751

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	N10036-0703
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$84,150.00

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 22 April 2011, [REDACTED] (Owner) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) on behalf of [REDACTED] (Claimant) for \$137,543.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.¹

Claimant is a restaurant in Birmingham, AL, that specialized in seafood from the Gulf of Mexico. The Claimant received almost daily deliveries of fresh seafood until Gulf seafood prices and availability affected its operations and profitability. The Owner indicated that, in late July 2010, the Claimant's core [business] which they had established, the seafood market, had been lost.²

APPLICABLE LAW

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

The OSLTF which is administered by the NPFPC, 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

¹ Optional OSLTF Claim Form received 22 April 2011, signed on 19 April 2011.

² Cover letter to Claimant's addition information booklet received from Owner on 2 May 2011.

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 this claim, Claimant submitted a large amount of documentation, listed in Enclosure (2).

Prior to presentment to the NPFC, Claimant presented an Emergency Advance Payment Claim for \$2,500.00 in lost profits and earnings to the RP/GCCF on 30 August 2010. Claimant then presented an Interim Payment Claim for \$21,031.04 in lost profits and earnings to the RP/GCCF on 5 January 2011.

While these GCCF claims were pending, on 22 April 2011, the Claimant presented this claim to the OSLTF for \$137,543.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

On 16 May 2011, the Claimant was paid \$2,500.00 in compensation from the GCCF on the EAP claim.³ Additionally, on 20 May 2011, the Claimant reportedly received payment of \$18,143.00 from GCCF on the Interim Claim.⁴

On 23 May 2011, the Claimant advised the NPFC by an unsigned fax that the claim amount to the NPFC was being revised to \$84,150.00, to be effective upon the sale of the business, scheduled for 6/1/2011. The request for changing the sum certain was confirmed by phone call with the Owner.⁵

To date, Claimant has received a total of \$20,643.00 from the RP/GCCF.

³ GCCF Notice of Determination on Claimant's EAP Claim, dated 16 May 2011.

⁴ PHONECON with Owner on 23 May 2011.

⁵ *Id.*

NPFC Determination

Under 33 C.F.R. § 136.103(a), all claims for removal costs or damages must be presented first to the responsible party (RP). Although the Claimant has presented an EAP and Interim Payment Claim for lost profits and earnings to the RP/GCCF, the claimed loss amounts presented for either claim does not amount to the \$84,150.00 requested by the Claimant to the NPFC. The larger of the two claimed loss amounts presented to the RP/GCCF is \$21,031.04 for the Claimant's Interim Payment Claim. \$21,031.04 of claimed loss is properly before the NPFC pursuant to 33 C.F.R. § 136.103(a). \$63,118.96 of the Claimant's sum certain exceeds the amount presented by the Claimant to the RP/GCCF therefore that amount is denied for lack of proper presentment to the RP/GCCF.

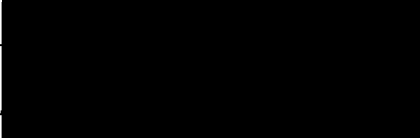
The amount of the Claimant's alleged loss (\$21,031.04) that the NPFC had determined has been properly presented to the RP is addressed below.

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.

Documentation provided indicated that the damages sought by the Claimant were calculated by summing outstanding liabilities of the company, such as a long-term note, the unpaid liabilities on the property lease, payroll liabilities, sales taxes payable, and accounts payable. The Claimant also provided profit and loss documentation for the period March 2009 through January 2011. It is these profit and loss documents which, with other documentation, are the basis for the NPFC's independent analysis of the Claimant's loss. By phone conversation with the NPFC on 17 June 2011, the Owner confirmed that a sale of the business had taken place the previous day. Sale of the business had been a contingency in the Owner's revision of the Claimant's sum certain.

Upon completion of the NPFC's adjudication of this claim, the NPFC has determined that the Claimant has received full compensation from the RP/GCCF for the losses claimed which were determined to have been properly presented to the RP/GCCF. The NPFC's calculation of total lost profits/earnings, less payments received from the RP/GCCF and saved expenses and taxes, for the period of May 2010 through December 2010, came to an amount less than what the RP/GCCF has paid the Claimant to date.

Therefore, this claim is denied because the NPFC has determined that the Claimant has been fully compensated by the RP (BP/GCCF) for all potential losses incurred from May 2010 through December 2010 that were properly presented to the RP/GCCF.

Claim Supervisor: NP  n

Date of Supervisor's Review: 6/22/11

Supervisor's Action: *Denial approved*

Supervisor's Comments:

Claimant presented the following documentation to support the claim:

- Optional OSLTF Claim Form received 22 April 2011 and signed 19 April 2011.
- ██████████ Seafood Company, LLC Balance Sheet, as of 19 April 2011.
- GCCF Deficiency Letter on Interim Payment/Final Payment letter of 7 April 2011.
- GCCF Claimant Status reports printed 5 April 2011 and 6 April 2011.
- ██████████ Seafood Company undated Hardship Letter to GCCF.
- GCCF Interim Payment Claim Form dated 5 January 2011.
- ██████████ Seafood Company's Summary of GCCF Submittals (undated).
- ██████████ Seafood Company's Profit & Loss Prev Year Comparison sheets for March 2010, April 2010, May 2010, June 2010, July 2010, August 2010, September 2010, October 2010, November 2010, and December 2010,
- 2009 Federal Tax Form 1065 for ██████████ Seafood Company, LLC, with supporting schedules and attachments.
- Cover letter to Claimant's addition information booklet received from Owner on 2 May 2011.
- GCCF Status Report on Alabama Program Statistics as of April 05, 2011.
- Claimant's Hardship Letter received on 2 May 2011
- Claimant's Profit & Loss sheets for January 2010, February 2010, March 2010, April 2010, May 2010 and June 2010,
- Sales & Use tax confirmations from Alabama Department of Revenue, filed 2/22/2010, 3/19/2010, 4/20/2010, 5/20/2010, 6/21/2010 and 7/20/2010.
- Email 4-25-2011 from ██████████ of ██████████ to ██████████.
- ██████████, Inc. Shipping Invoices dated 12/14/2009, 3/1/2010, 6/21/2010, 7/12/2010 and 12/13/2010.
- 'Post-Spill Seafood Market' article from The Times-Picayune based on Louisiana Department of Wildlife and Recreation, undated.
- Commercial Lease dated 30 December 2008 for premises at ██████████ AL.
- Attachments for Claim, including Blog printouts and Seafood Recipes, Reviews, Price Increases/Supply (attached to ██████████ email above), Marketing Expenses (description only), Perception and Uncertainty (articles and blogs), Last Resort, Switching Gears to Beach Burgers (description), Correspondence with BP (discussion and reference to hardship letters), mental Duress/Stress (discussion only), and Effects on Family (description and pictures).
- ██████████ Seafood Company's Revised Claim Amount Calculation.
- Email from ██████████ to Owner dated 11 May 2011.
- Offer to Purchase Assets, signed by ██████████, as buyer, and ██████████, as individual and officer of ██████████ Seafood Company, and dated 19 May 2011.
- GCCF Determination Letter dated 17 May 2011 on Interim Payment/Final Claim Payment Claim on ██████████ Seafood Company, LLC.
- Copy of GCCF Check ██████████ dated 17 May 2011.
- Fax cover sheet with after-sale address, received 17 June 2011.
- HUD-1 Closing Statement dated 16 June 2011.

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
7/7/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]



RE: Claim Number: N10036-0705

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 N10036-0705 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

ENCL: Claim Summary / Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-0705
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: \$24,000.00

FACTS:

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

CLAIM AND CLAIMANT:

On 25 April 2011, [REDACTED] (Owner) on behalf of J [REDACTED] (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Funds Center (NPFC) for \$72,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

Claimant is a trucking company that supplies white beach sand, wash out rocks, gravel, and asphalt to customers on Pensacola Beach.¹ Claimant has been in operation since January 2009. Claimant's customers include [REDACTED]. Claimant indicated that these customers are located on the beachfront and sea walls.

Claimant asserted that, as a start-up company, it grossed \$38,125.00 in 2009, which exceeded its performance benchmark of \$30,000.00. Claimant projected its gross earnings in 2010 to be \$90,000.00; however, the Claimant indicated that it only grossed \$24,000.00 through 2010. Claimant further alleged that it did not meet its projected gross earnings for 2010 as a result of the Deepwater Horizon oil spill.²

REQUEST FOR RECONSIDERATION:

On July 6, 2011, the Claimant sent a request for reconsideration to the NPFC stating he would like the NPFC to reconsider his claim.

The NPFC denied the claim originally on May 9, 2011 on the grounds that the Claimant failed to (1) make proper presentment of some of the costs claimed to the NPFC pursuant to 33 C.F.R. § 136.103(a), to (2) demonstrate the alleged loss in the amount of \$72,000.00, as claimed; (3) demonstrate that the alleged loss is due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil, and (4) demonstrate that his reduction in business is a direct result of the injury, destruction or loss of property or

¹ Claimant letter "To whom it may concern" (denial letter), fax dated 25 April 2011.

² Claimant letter "To whom it may concern," fax dated 25 April 2011.

natural resources as a result of a discharge or substantial threat of a discharge of oil as opposed to his client's inability to financially utilize his services.

On reconsideration, the Claimant sent an email that stated he desired to reduce his alleged loss amount from \$72,000.00 to \$24,000.00 as he didn't realize the NPFC does not pay for future damages. The Claimant provided no new information in support of his reconsideration for \$24,000.00 in alleged damages.

Prior to presentment to the NPFC, the Claimant presented an Interim Payment claim for \$36,000.00 in lost profits and earnings to the GCCF. Claimant was assigned GCCF Claimant ID [REDACTED] and Claim [REDACTED]. On 22 April 2011, this claim was denied by the GCCF.³

RECONSIDERATION CLAIM ANALYSIS:

The Claimant requested reconsideration which was received by the NPFC on July 6, 2011. To support the request for reconsideration the Claimant submitted a letter that amended his alleged damage to \$24,000.00 for past damages experienced. The Claimant provided no new information in support of his request for reconsideration.

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 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.

Since the Claimant provided no new information, the NPFC performed another review of the Claimant's Schedule C's from 2009 and 2010 as well as Profit and Loss Statements (P&L's) from 2009 and 2010. According to the Claimant's Schedule C's, the Claimant grossed \$38,125.00 in 2009 and \$24,000.00 in 2010. However, the Claimant's P&L's indicated that the Claimant grossed \$60,800.00 in 2009 and \$34,800.00 in 2010. The NPFC originally challenged the Claimant to explain this discrepancy, but the Claimant could not provide an explanation.⁴

The Claimant again on reconsideration provided no explanation of the noted discrepancies on his Schedule C forms as identified in the NPFC's initial denial determination. Additionally, the Claimant amended his alleged loss amount but provided no details with respect to how he arrived at this calculation vice the original calculation of 72,000.00.

Furthermore, the NPFC contacted the Claimant's reported customers, i.e., [REDACTED] to verify the impact of the Deepwater Horizon oil spill on their decision to reduce or discontinue use of the Claimant's services. Two customers

³ GCCF Denial Letter Re: Claimant's Interim Payment claim, dated 22 April 2011.

⁴ PHONECON between the NPFC and Claimant on 28 April 2011.

responded and indicated that to varying degrees, their business slowed after the Deepwater Horizon oil spill, which prompted the decision to postpone use of the Claimant's services although no evidence has been presented to indicate that the oil spill in fact had any effect on the revenues as opposed to other economic factors therefore their decisions to discontinue use of the Claimant's services has not been proven to be the 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.⁵

Based on the foregoing information, the NPFC again denies the claim because (1) the Claimant has failed to demonstrate that he had an alleged loss of profits in the amount claimed and (2) the Claimant has failed to demonstrate a loss of profits in the amount of \$24,000.00 was due to the destruction or injury to real or personal property or natural resources as a result of a discharge or substantial threat of a discharge of oil.




This claim is denied upon reconsideration.

Claim Supervisor: 

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

Supervisor Action: *Denial on reconsideration approved*

Supervisor's Comments:

⁵ PHONECON between the NPFC and Dr.  of  of  on 27 April 2011.

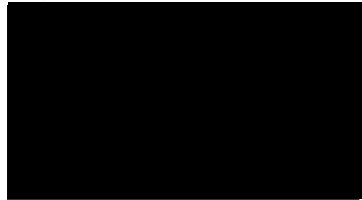
U.S. Department of
Homeland Security

United States
Coast Guard



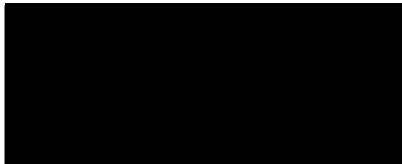
Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD



Fax: 202-493-6937

BY MAIL AND EMAIL



5890
5/13/2011

RE: Claim Number: N10036-0706

Dear [Redacted]

The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act of 1990, U.S.C. § 2701 et seq. (OPA) and the associated regulations at 33 C.F.R. Part 136, denies payment on the claim number N10036-0706 involving Deepwater Horizon. Please see the attached Claim Summary/Determination Form for further explanation.

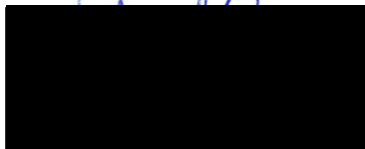
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-0706.

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: (1) Claim Summary/Determination Form
09/14/11

FOIA2011-3380-00002760

CLAIM SUMMARY / DETERMINATION FORM

Date	: May 13, 2011
Claim Number	: N10036-0706
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$9,460.00

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 April 25, 2011 [REDACTED] presented a lost profits & earnings capacity claim on behalf of her company, [REDACTED] Entertainment (Claimant), in the amount of \$9,460.00 to the National Pollution Funds Center (NPFC) for reimbursement. The Claimant stated that a hip-hop artist that she hired to perform at [REDACTED] in Mobile, Alabama cancelled his performance as a result of the oil spill. The Claimant provided a signed cancellation document from [REDACTED] that refers to section E, paragraph four (4) of the agreement between [REDACTED] and [REDACTED] that states, "Neither Artist, nor Purchaser shall be liable for failure to appear or perform its obligations under this Agreement in the event that such failure is caused or due to the act of regulation of public authorities, labor difficulties, civil tumult, inclement weather, strike, or any legitimate cause beyond the control of the Artist or Purchaser."¹

The Claimant provided a copy the GCCF final claim denial letter dated April 22, 2011.

APPLICABLE LAW:

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

The OSLTF, which is administered by the NPFC, is available to pay claims for uncompensated damages pursuant to 33 U.S.C. §§ 2712(a)(4) and 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136. With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person

¹ Agreement between [REDACTED] and [REDACTED] dated May 12, 2010
09/14/11 FOIA2011-3380-00002761

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:

- Optional OSLTF Claim Form;
- Copy of agreement between [REDACTED] and [REDACTED];
- Denial letter from the GCCF;
- Profit and Loss statements from January 2010 through December 2010;
- Business license for [REDACTED];
- Cancellation email from [REDACTED] dated June 3, 2010;
- 2008 and 2009 Income Tax Returns;
- Copy of agreement between [REDACTED] and [REDACTED];
- Copy of agreement between [REDACTED] and [REDACTED];

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 documentation presented by Claimant.

Upon review of the Claimant's submission, the Claimant provided a copy of the agreement between [REDACTED] and [REDACTED] to which the Claimant references section E, paragraph four (4) under cancellations. Although there was no money lost between [REDACTED] and [REDACTED] because the cancellation was sent prior to the two (2) week deadline, the Claimant stated that her ability to make a profit was diminished. When the NPFC contacted the Claimant to determine how the profits would be made, the Claimant stated she would make profits by throwing a block party and selling t-shirts, food, and drinks. At that time, the NPFC requested financial comparables from past performances in order to determine how the Claimant made a profit on similar events. To date, the Claimant has not provided that information. Additionally, the Claimant has not addressed what the overall saved expenses were since the event did not take place.

Furthermore, the NPFC confirmed with the GCCF that the Claimant has presented a claim for \$7,267.00 to the GCCF. It is unclear why the sum certain associated with the GCCF claim differs from the claimed amount to the NPFC. The NPFC cannot consider any amount in excess of \$7,267.00 for alleged loss of profits because the Claimant has not made proper presentment of such costs to the RP as required by the Oil Pollution Act of 1990 at 33 U.S.C. § 2713(a) and the claims regulations at 33 C.F.R. § 136.103(a), which state that all claims for removal costs and damages must be presented first to the Responsible Party or guarantor. If the claim is not settled by payment by any person within 90 days the Claimant may present the claim to the NPFC.

This claim is denied because the Claimant's evidence does not demonstrate (1) the alleged loss of profits in the amount of \$9,460.00, as claimed, (2) that this alleged loss is 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, and (3) that presentment requirements were met as stated in 33 C.F.R. § 136.103(a).

Claim Supervisor [REDACTED]

Date of Supervisor's review: *5/13/11*

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
Natural Resource Damage (NRD)
Claims Division

U.S. Coast Guard Stop 7100

16480

18 May 2011

CERTIFIED MAIL Number: [REDACTED]

RE: Claim Number: N10036- 0707

Dear [REDACTED]

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

Background

On or about 20 April 2010, the Mobile Offshore Drilling Unit Deepwater Horizon exploded and sank in the Gulf of Mexico. As a result, oil was discharged and the federal government and Gulf coast states closed certain waters to commercial and recreational fishing. 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 individual and business claims on behalf of BP.

Facts of the Claim

On 30 December 2010, you submitted a final claim to the GCCF for lost subsistence use of natural resources following the Deepwater Horizon spill, in the amount of \$20,000, which was denied. On 25 April 2011, you presented your claim to the NPFC, seeking \$20,000 for seafood that you claim you were/are unable to purchase for consumption due to your fear of contamination from the oil spill.

Applicable Law

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

General Claim Requirements

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

Subsistence Use Loss Claim Requirements

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

- 1) be for lost subsistence use and submitted by an eligible claimant;
- 2) identify and describe the actual subsistence use of each specific natural resource for which compensation is being claimed;
- 3) describe how and to what extent the claimant's subsistence use was affected by injury to or loss of each specific natural resource;
- 4) describe efforts to mitigate the subsistence use loss;
- 5) be based on the reasonable cost to replace the lost subsistence use of natural resources; and
- 6) be reduced by the amount of all compensation made available to the claimant to compensate for the loss, all income which was derived by utilizing the time which otherwise would have been used to obtain the subsistence resources, and any avoided costs associated with the subsistence activity, such as gas for vehicles or boats, bait, and other overhead costs not incurred due to the spill.

The NPFC has provided more detail about these claim requirements at:
http://www.uscg.mil/npfc/Claims/DWH_faqs.asp.

Claim Submission and Documentation

The claim that you submitted to the NPFC, which was received on 25 April 2011, included the following supporting documents: receipts for seafood purchased after the spill; copies of your Louisiana identification and social security cards; proof of your

social security income; an internet article about the Deepwater Horizon spill; and your claim to the GCCF with proof of filing.

NPFC Determination

The NPFC finds that you have not met your burden of proving a subsistence use loss as defined by the Oil Pollution Act (OPA, 33 U.S.C. 2701 et seq.) and OPA claims regulations (33 C.F.R. Part 136). Your claim is deficient because:

- (1) You have not adequately explained a loss suffered due to the spill. You assert that you bought seafood before the spill on a regular basis, but have stopped purchasing and eating it since the spill due to your fear of contamination. However, you also state that you continued to eat seafood from the Gulf, and in fact, you submitted receipts¹ to show that you continued to purchase it after the spill.
- (2) You have not provided any basis to support your claim that you suffered a \$20,000 loss of subsistence use. For example, the NPFC cannot determine the period of claimed loss or the actual increased costs incurred to replace the fish that you would have purchased if the spill had not occurred (i.e., insufficient receipts or statements were provided to support damages incurred in the amount claimed).

Request for Reconsideration

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

Should you choose to request NPFC reconsideration of this determination, please mail the request and additional claim information with the appropriate claim number (N10036-0707) to:

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

¹ The NPFC notes that certain receipts submitted with your claim were also submitted in support of another claimant, [REDACTED] N10036-0708.

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

[REDACTED]

U.S. Coast Guard

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 # N10036-0708
06 June 2011

Re: Claim Number: N10036-0708

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 N10036-0708 involving the Deepwater Horizon oil spill. Please see the attached Claim Summary/Determination Form for further explanation.

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

Reconsideration of the denial will be based upon the information provided. A claim may be reconsidered only once. Disposition of that reconsideration in writing will constitute final agency action. Failure of the NPFC to issue a written decision within 90 days after receipt of a timely request for reconsideration shall, at the option of the claimant, be deemed final agency action. All correspondence should include claim number N10036-0708.

Mail reconsideration requests to:

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

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

Enclosure: Claim Summary/Determination Form

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-0708
Claimant	██████████
Type of Claimant	Private (US)
Type of Claim	Loss of Profits & Earnings Capacity/Subsistence Use
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.

CLAIM AND CLAIMANT

On 25 April 2011, ██████████ (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$55,000.00 in loss of profits and impairment of earnings capacity and \$17,000.00 in loss of subsistence use of natural resources resulting from the Deepwater Horizon oil spill.

Claimant's Schedule C Profit or Loss from Business for 2009 shows she owns or owned a business named ██████████¹ Claimant submitted letters from alleged parents verifying that the Claimant provided care services for their children. Claimant alleged that as a result of the oil spill, she lost wages.

Claimant also alleged that she has lost the use of seafood for subsistence because she is "skeptical about eating any type of seafood for fear of what damage it can do to my unborn child and myself."²

APPLICABLE LAW

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

The 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.

Subsistence Use Loss Claims Requirements

Under 33 C.F.R. §§ 136.219-223, each claim for subsistence use must:

¹Schedule C Profit or Loss From Business 2009 for ██████████.

²OSLTF Claim Form signed by Claimant and dated 13 April 2011.

- (a) be for lost subsistence use by an eligible client;
- (b) identify and describe the actual subsistence use of each natural resource for which compensation is being claimed;
- (c) describe how and to what effect the claimant's subsistence use was affected by injury to or loss of each specific natural resource;
- (d) describe efforts to mitigate the subsistence loss;
- (e) be based on the reasonable cost to replace the lost subsistence use of natural resources; and
- (f) be reduced by the amount of all compensation made available to the claimant to compensate for the loss, all income which was derived utilizing the time which otherwise would have been used to obtain the subsistence resources, and any avoided costs associated with the subsistence activity, such as gas for vehicles or boats, bait, and other overhead costs not incurred due to the spill.³

Lost Profits and Earnings Capacity Claims Requirements

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—

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

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

³ Additional information about subsistence use claims is available at <http://www.uscg.mil/npfc/Claims/DWH.asp>.

To support this claim, Claimant submitted the following documentation:

- OSLTF Claim Form signed by Claimant and dated 13 April 2011
- Picture of Deepwater Horizon oil spill explosion
- Copy of dated 05 February 2011 from Times-Picayune
- Form 1040 US Individual Income Tax for 2009
- Schedule C Profit or Loss From Business 2009 for [REDACTED]
- W-2 Wage and Tax Statement for 2008 from [REDACTED]
[REDACTED], Inc.
- Food Stamp Application with [REDACTED] Office dated 15 June 2010
- Copy of Louisiana drivers license
- Two hand-written letters concerning day care dated 28 and 29 April 2010
- Form 1040A US Individual Income Tax for 2008
- Copies of 5 receipts for the purchase of seafood at commercial establishments in August and September 2010
- GCCF Deficiency Letter of 23 October 2010 for Emergency Advance Payment Claim

Prior to presentment to the NPFC, Claimant presented multiple claims to the RP/GCCF, including an Emergency Advance Payment (EAP) and two Final Payment claims.⁴ The EAP claim was denied by the GCCF.⁵

On 25 April 2011, Claimant presented the subject claim to the NPFC for \$55,000.00 in loss of profits and impairment of earnings capacity and \$17,000.00 in loss of subsistence use of natural resources resulting from the Deepwater Horizon oil spill.

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 Subsistence Use Loss of Natural Resources

The NPFC finds that the Claimant has not met her burden of proving a subsistence use loss as defined by the Oil Pollution Act (OPA, 33 U.S.C. 2701 et seq.) and OPA claims regulations (33 C.F.R. Part 136). Specifically, Claimant

- (1) Has not adequately explained a loss suffered due to the spill. She asserts that she bought seafood before the spill on a regular basis, but has stopped purchasing and eating it since the spill due to her fear of contamination. However, she also states that she continued to eat seafood from the Gulf, and in fact, she submitted receipts to show that she continued to purchase it after the spill.
- (2) Has not provided any basis to support her claim that she suffered a \$17,000 loss of subsistence use. For example, the NPFC cannot determine the period of claimed loss or the actual increased costs incurred to replace the fish that she would have purchased if the

⁴ Claimant indicates that she was assigned GCCF Claimant ID [REDACTED]

⁵ GCCF denial letter Re: Claimant's EAP claim, dated 1 December 2010.

spill had not occurred (i.e., insufficient receipts or statements were provided to support damages incurred in the amount claimed).

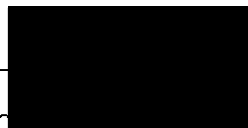
For the foregoing reasons, the subsistence component of this claim is denied.

Loss of Profits and Impairment of Earnings Capacity

The lost profits and earnings component of this claim is also denied because the Claimant's submission does not meet the evidentiary requirements of 33 C.F.R. § 136.233 to establish a loss of profits and impairment of earnings capacity claim. Specifically, the Claimant has not demonstrated (1) that her income was reduced as a consequence of injury to, destruction of, or loss of property or natural resources; (2) 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; and (3) whether alternative employment or business was available and undertaken and, if so, the amount of income received.

Additionally, the Claimant refuses to respond to the NPFC's request for additional information to support her claim.⁶

For the foregoing reasons, this claim is denied.



Claim Supervisor: *Claims Adjudication Division*

Date of Supervisor's Review: *06 June 2011*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

⁶ The NPFC's request for additional information was delivered to Claimant's address on record on 5 May 2011. To date, the NPFC has received no response to the request.

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# N10036-0709
28 April 2011

RE: Claim Number: N10036-0709

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 N10036-0709 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 N10036-0709.

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	27 April 2011
Claim Number	N10036-0709
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. The Coast Guard designated the source of the discharge and identified BP as a responsible party (RP). BP accepted the designation and advertised its OPA claims process. On 23 August 2010, the Gulf Coast Claims Facility (GCCF) began accepting and adjudicating claims for certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On 25 April 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 \$10,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

Claimant was not working at the time of the Deepwater Horizon oil spill. Claimant collected unemployment from the Louisiana Workforce Commission for the year of 2010.¹ In 2008 and part of 2009, the Claimant was a hotel reservations agent in New Orleans.² The Claimant alleged that she repeatedly searched for jobs and could find none.³

APPLICABLE LAW

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

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

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

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

¹ Unemployment payments from Louisiana Workforce Commission for 2010.

² Compensation Report for 2008 & 2009 from [REDACTED]

³ OSLTF claim form.

- (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 the following documentation to the NPFC:

- 1) Optional OSLTF claim form dated 12 April 2011
- 2) Unemployment payments from Louisiana Workforce Commission for 2010
- 3) U.S. Individual Income Tax Return form 1040A for 2008 and 2009
- 4) Tax Summary from H&R Block for 2010
- 5) Compensation Report for 2008 from [REDACTED]
- 6) Compensation Report for 2009 from [REDACTED]
- 7) Room list for [REDACTED] for 02-06 April 2011
- 8) Emails from Claimant under [REDACTED] dated 13 April 2011

Claimant presented an Emergency Advance Payment (EAP) claim to the RP/GCCF for \$8,500.00 and was assigned GCCF Claimant ID [REDACTED] and Claim [REDACTED]. On 06 December 2010, the GCCF denied her claim.⁴ Claimant then presented a Final Payment claim for \$10,000.00 to the GCCF (Claim # [REDACTED]). On 01 April 2011, this claim was denied by the GCCF.⁵

⁴ GCCF denial letter Re; Claimant's EAP claim, dated 06 December 2010.

⁵ GCCF denial letter Re; Claimant's Final Payment claim, dated 01 April 2011.

On 25 April 2011, Claimant presented this claim for \$10,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

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 not demonstrated a loss 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 was unemployed prior to the Deepwater Horizon oil spill. Claimant provided an unemployment compensation letter for 2010 from the Louisiana Workforce Commission.⁶ Since Claimant had no independent income besides unemployment benefits, her claim for lost income as a result of the Deepwater Horizon oil spill is unsubstantiated.

Additionally, Claimant provides no evidence that her fruitless job search resulted from the Deepwater Horizon oil spill and not other factors. This claim is accordingly DENIED.

Claim Supervisor:  §

Date of Supervisor's Review: 4/28/11

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

⁶ Unemployment payments from Louisiana Workforce Commission for 2010.

U.S. Department
of Homeland
Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim # N10036-0710
18 May 2011



Re: Claim Number: N10036-0710

Dear [REDACTED]

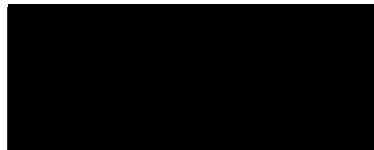
The National Pollution Funds Center (NPFC) is accordance with the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et. seq (OPA) and the associated regulations at 33 C.F.R. Part 136 denies your claim relating to the Deepwater Horizon incident. Please see the enclosed Claim Summary/Determination form for further explanation.

You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. If, however 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 N10036-0710

Mail reconsideration requests to:

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



Enclosures: Claim Summary/Determination Form

CLAIM SUMMARY/DETERMINATION FORM

Date	16 May 2011
Claim Number	N10036-0710
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
Amount Requested	\$36,000.00

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 25 April 2011, [REDACTED] as President and sole proprietor of [REDACTED] (Claimant), presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Funds Center (NPFC) for \$36,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

The Claimant is a sole practitioner of criminal, estates and family law in Bay St. Louis, Mississippi.¹ The vast majority of the Claimant's business (approximately seventy-five percent) involves criminal law.² Claimant asserted that due to the Deepwater Horizon oil spill, her existing clients have stopped paying monthly fees owed to her from previous cases and cannot afford to hire her in criminal defense matters.³ Instead, the Claimant states that potential clients for criminal representation have utilized the free services of the local public defender's office, siphoning away work that used to go to her.⁴ The Claimant stated her business as a solo practitioner only began in 2008, but that her 2009 receipts show an upward trend in revenue.⁵ Aside from noting this upward trend, the Claimant has not provided any additional information as to how she calculated her alleged damage amount of \$36,000.

APPLICABLE LAW

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

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

¹ Letter from Claimant to the GCCF, dated 25 January 2010.

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ PHONECON between the NPFC and Claimant, dated 9 May 2011.

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

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

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

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

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

DETERMINATION OF LOSS

Claimant's Submission

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

- OSLTF Claim Form;
- Letter from Claimant informing NPFC of her desire to file a claim;
- Chart listing gross receipts for 2008, 2009 and 2010 with breakdowns by month;
- Signed certificate for the formation of [REDACTED];
- Letter from IRS providing Claimant with business identification number for [REDACTED] PLLC;
- Federal income tax returns with accompanying Schedule C's for 2008, 2009 and 2010.

On 23 January 2011, Claimant presented an Interim Payment claim for \$21,000.00 in lost profits and earnings to the GCCF. She was assigned GCCF Claimant ID Number [REDACTED] and Claim Number [REDACTED].⁶ That claim was denied on 6 March 2011.⁷ On 16 April 2011, Claimant presented another Interim Payment claim for \$21,000 in lost profits and earnings to the GCCF (Claim [REDACTED]).

On 25 April 2011, Claimant presented this claim to the NPFC for \$36,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

⁶ GCCF Filing Report, dated 5 May 2010.

⁷ GCCF Denial Letter dated 6 March 2011.

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.

As previously noted, only \$21,000 of the Claimant's \$36,000 in asserted damages were properly presented to the RP as of the date of this determination. All damages in excess of those properly presented are DENIED in accordance with 33 U.S.C. §2713(b) and the associated regulation at 33 C.F.R. § 136.103(a), which state that all claims for removal costs or damages must be presented first to the responsible party.

The remaining damages are DENIED because the Claimant has failed to demonstrate that her alleged loss is due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil. In other words, the Claimant failed to demonstrate the correlation between her alleged loss and the Deepwater Horizon oil spill.

To support her loss, the Claimant provided Schedule C's for 2008 through 2010, which indicated that she grossed \$57,963.00 in 2008, \$68,823.00 in 2009, and \$40,480.00 in 2010. Claimant asserted that the spill precluded her from acquiring new business due to a regional decrease in disposable income, and that existing clients either withheld business or ceased paying for services previously rendered, thus causing her 2010 revenues to decrease. Claimant has not, however, provided evidence to establish the correlation between her loss and the Deepwater Horizon oil spill.

The claim is denied because (1) the Claimant has not demonstrated that her alleged loss is due to the injury or destruction of property or natural resources as a consequence of oil discharged by the Deepwater Horizon oil spill, (2) the Claimant has failed to demonstrate the alleged loss in the amount claimed and (3) the Claimant has failed properly present all costs to the RP as claimed to the NPFC pursuant to the governing claims regulations.

Claim Supervisor 

Date of Review: *5/18/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

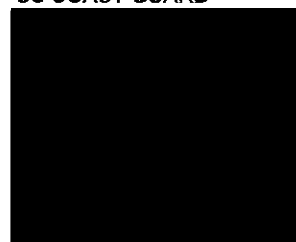
U.S. Department
of Homeland
Security

United States
Coast Guard



Director
National Pollution Funds Center
United States Coast Guard

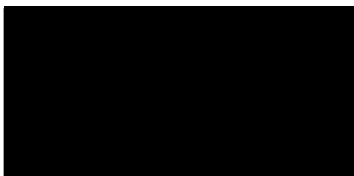
NPFC CA MS 7100
US COAST GUARD



CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Number: 

5890/DWHZ
Claim# N10036-0711
13 May 2011



Claim Number N10036-0711

Dear 

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 N10036-0711 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination Form for further explanation.

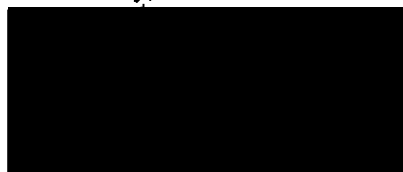
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-0711.

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

FOIA2011-3380-00002781

CLAIM SUMMARY / DETERMINATION FORM

Date	11 May 2011
Claim Number	N10036-0711
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Claim Manager	[REDACTED]
Amount Requested	\$24,098.00

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 21 April 2011, [REDACTED] (Claimant) presented an Optional Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Funds Center (NPFC) for \$24,098.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

Claimant owns and operates a firearms business in Panama City, Florida. Claimant indicated that he sold guns, ammunition and gun accessories out of the [REDACTED] in Panama City,¹ where he developed a loyal clientele base. Claimant alleged that as a result of the Deepwater Horizon oil spill, the general public lost income, which led a "decline in the sale of firearms and ammo" and reduced revenues for the Claimant.²

Claimant indicated that he has relocated his business to his home and has taken other measures to mitigate his damages.³

APPLICABLE LAW

Under the Oil Pollution Act of 1990 (OPA), at 33 U.S.C. § 2702(a), responsible parties are liable for removal costs and damages resulting from the discharge of oil into 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

¹ PHONECON between the NPFC and Claimant on 11 May 2011

² Claimant response to NPFC request for additional information, dated 4 May 2011.

³ *Id.*; PHONECON between the NPFC and Claimant on 11 May 2011.

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:

1. Claimant's letter dated 04 May 2011 in response to NPFC's request for additional information;
2. A worksheet dated 25 March 2011 setting forth gross income and expense for 2007 through 2010;
3. Copy of claimant's Federal Firearms License expiring 01 April 2013;
4. Copy of 2011 Florida Annual Resale Certificate for Sales Tax expires 31 December 2011;
5. OSLTF Claim Form signed 19 April 2011;
6. Claimant's letter to GCCF dated 25 March 2011 explaining his claim;
7. E-mail providing directions from Claimant's home to [REDACTED], Florida;
8. GCCF Denial Letter 06 March 2011 for Interim Payment/Final Payment Claim;
9. GCCF Letter 29 January 2011 acknowledging receipt Interim Payment/Final Payment Claim application;

10. GCCF Denial Letter 07 December 2011 for Emergency Advance Payment;
11. Form 1040 US Individual Income Return with supporting schedules for 2007, 2008, 2009 and 2010.

On 18 October 2010, Claimant presented a six-month Emergency Advance Payment claim for \$20,000.00 in lost profits and earnings to the GCCF. Claimant was assigned GCCF Claimant ID [REDACTED] and Claimant [REDACTED]. On 07 December 2010, this claim was denied by the GCCF.⁴ On 4 January 2011, Claimant presented a Full Review Final Payment claim (Claim [REDACTED]) for \$40,000.00 in lost profits and earnings to the GCCF. On 6 March 2011, this claim was denied by the GCCF.⁵

On 21 April 2011, Claimant presented this claim for \$24,098.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

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 earnings capacity. The NPFC considered all the documentation submitted by the Claimant.

The claim is DENIED because the Claimant's evidence does not demonstrate that the alleged loss in the amount of \$24,098.00 is due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil.

Although the Claimant alleged \$24,098.00 in loss of profits as a result of the Deepwater Horizon oil spill, the Claimant has failed to demonstrate the correlation between this alleged loss and the oil spill. The Claimant stated that the oil spill impacted the general public's buying power, including his clientele's, and therefore they have opted to forgo buying guns and ammunition from the Claimant. The Claimant has provided no evidence to substantiate this assertion.

Because the Claimant failed to demonstrate that the alleged loss of \$24,098.00 is due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil, this claim is DENIED.

Claim Supervisor [REDACTED]

Date of Supervisor's Review: *5/13/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

⁴GCCF Denial Letter 07 December 2011 for Claimant's Emergency Advance Payment claim.

⁵ GCCF Denial Letter 06 March 2011 for Claimant's Final Payment claim.

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 # N10036-0713
29 April 2011

Re: Claim Number: N10036-0713

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 N10036-0713 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 N10036-0713.

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

FOIA2011-3380-00002785

CLAIM SUMMARY / DETERMINATION FORM

Date	: 4/28/2011
Claim Number	: N10036-0713
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Impairment of Earnings Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$31,080.00

FACTS:

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

CLAIM AND CLAIMANT:

On 25 April 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 \$31,080.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill

Claimant was employed by [REDACTED] a drilling contractor that provides drilling support to the energy industry.¹ Claimant asserted that as a result of the Deepwater Horizon oil spill, he was "laid off" in September 2010 and lost \$31,080.00 in earnings.²

APPLICABLE LAW:

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

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

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

- (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

¹ Letter of Recommendation from [REDACTED] submitted by the Claimant, dtd 28 September 2010.

² Claimant's OSLTF Claim form submitted to the NPFC on 25 April 2011.

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 Optional Claim Form dated 25 April 2011.

On April 26, 2011, the NPFC contacted the Claimant and requested additional information. On April 27, 2011, the Claimant responded by providing the following additional information:

- Copy of Pay Statements ending 9 July 2010 and 1 October 2010;
- Copy of Reference Letter dated 28 September 2010;
- A letter certifying employment history with [REDACTED] from 1 December 2005 to 28 September 2010.
- GCCF denial letter Re: Claimant's Interim/Final Payment claim dated 1 April 2011.

Claimant indicated that he was paid \$3,000.00 in compensation from the responsible party, BP, after the Deepwater Horizon oil spill while he was still working on [REDACTED].³ Claimant then presented an Emergency Advance Payment claim to the GCCF. He was assigned GCCF Claimant ID [REDACTED] and Claim [REDACTED]. On 01 November 2010, that claim was denied by GCCF.⁴

³ PHONECON between the NPFC and Claimant on 27 April 2011.

⁴ GCCF denial letter Re: Claimant's Emergency Advance Payment claim, dated 01 November 2010. Claimant disputes filing this claim with the GCCF.

Claimant also presented a Final Payment claim for \$13,320.00 in lost earnings to the GCCF (Claim [REDACTED]).⁵ On 01 April 2011, that claim was also denied by the GCCF.⁶

On 25 April 2011, Claimant presented this claim for \$31,080.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

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 documentation presented by the Claimant.

Under 33 C.F.R. § 136.103(a), all claims for removal costs or damages must be presented first to the responsible party (RP). Claimant presented a Final Payment claim for \$13,320.00 in lost wages and earnings to the RP/GCCF. Claimant then presented a loss of profits and impairment of earnings capacity claim of \$31,080.00 to the NPFC. Any claimed amount of damages exceeding \$13,320.00 was not properly presented to the RP/GCCF pursuant to 33 C.F.R. § 136.103(a) and is therefore DENIED.

The remainder of this claim is DENIED because the Claimant's evidence does not demonstrate (1) his alleged loss, as claimed, and (2) the correlation, if any, between this alleged loss and the Deepwater Horizon oil spill.

Claimant indicated that to calculate his alleged loss of \$31,080.00, he multiplied his gross earnings of \$2,042.91⁷ by seven (7) months;⁸ however, this calculation does not yield Claimant's alleged loss amount.

Additionally, the NPFC contacted [REDACTED] to verify if the Claimant had been laid off as a result of the Deepwater Horizon oil spill. [REDACTED] HR representative indicated that the Claimant's layoff was due to a "reduction of force."⁹

The Claimant failed to demonstrate (1) his alleged loss, as claimed, and (2) the correlation, if any, between this alleged loss and the Deepwater Horizon oil spill, therefore this claim is DENIED.

Claim Supervisor: [REDACTED]

Date of Review: 4/29/11

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

⁵ PHONECON between the NPFC and Claimant, dated 28 April 2011.

⁶ GCCF denial letter Re: Claimant's Final Payment claim, dated 01 April 2011.

⁷ As reported on Claimant's paystub for period ending 01 October 2010.

⁸ PHONECON between the NPFC and Claimant on 27 April 2011.

⁹ PHONECON between the NPFC and [REDACTED] HR Dept on 27 April 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: 202-493-6872

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim# N10036-0714
29 April 2011



RE: Claim Number: N10036-0714

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 N10036-0714 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 N10036-0714.

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

FOIA2011-3380-00002789

CLAIM SUMMARY / DETERMINATION FORM

Date	28 April 2011
Claim Number	N10036-0714
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
Claim Manager	[REDACTED]
Amount Requested	\$7,920.00

FACTS

On or about 20 April 2010, the Mobile Offshore Drilling Unit Deepwater Horizon (Deepwater Horizon) exploded and sank in the Gulf of Mexico. As a result of the explosion and sinking, oil was discharged. 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 25 April 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 \$7,920.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

The Claimant is employed by the [REDACTED] which provides payday advance loans and money transfer services. The Claimant asserted that the oil spill caused business at her branch to drop off, as fewer customers had money to transfer, which in turn caused the branch to reduce the Claimant's hours.¹

APPLICABLE LAW

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

¹ Statement from Claimant's supervisor on behalf of Claimant explaining the nature of her financial loss, dated 25 April 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

In support of her claim, the Claimant submitted an OSLTF claim form, a narrative statement describing her financial loss, and W-2 wage and earning statements from [REDACTED] for 2008 through 2010.

Claimant indicated that she presented a Final Payment claim for \$7,920.00 in lost earnings to the RP/GCCF in December 2010.² Claimant was assigned GCCF Claimant ID [REDACTED] and Claim [REDACTED]. On 22 April 2011, this claim was denied by the GCCF.³

On 25 April 2011, the Claimant presented this claim for \$7,920.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill 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.

After initially reviewing the Claimant's submission, the NPFC contacted [REDACTED] human resources department and verified that the W-2 wage and earning statements that the

² PHONECON between the NPFC and Claimant on 29 April 2011.

³ GCCF denial letter Re: Claimant's Final Payment claim, dated 22 April 2011.

Claimant submitted in support of her claim had been fraudulently altered.⁴ Specifically, the tax year reported on each W-2 had apparently been “whited out” and overwritten with a black permanent marker so that the amount that the Claimant had presented as her 2009 earnings actually represented her 2010 earnings, and vice versa.⁵

This claim is denied because the Claimant has made false statements in connection with her claim submissions to the NPFC in order to obtain funds for an alleged loss of profits as a result of the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil.

Under 33 C.F.R. 136.9, persons submitting false claims or making false statements in connection with claims under this part may be subject to prosecution under Federal law, including but not limited to 18 U.S.C. 287 and 1001. In addition, persons submitting written documentation in support of claims under this part which they know, or should know, is false or omits a material fact may be subject to a civil penalty for each claim. The NPFC considered all of the documentation submitted by the Claimant.

This claim is DENIED.

Claim Supervisor: [REDACTED]
Date of Supervisor's Review: <i>foa</i> 4/29/11
Supervisor's Actions: <i>Denial approved</i>
Supervisor's Comments:

⁴ Letter from [REDACTED] HR, confirming alterations to Claimant's W-2's, dated 28 April 2011.

⁵ As altered and presented to the NPFC, Claimant earned \$21,585.20 in 2009 and \$18,632.74 in 2010. As clarified by [REDACTED] HR, Claimant actually earned \$18,632.74 in 2009 and \$21,585.20 in 2010. The clarification indicates that Claimant earned \$2,952.46 more in 2010 (the year of the oil spill) than 2009.

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: 202-493-6872

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim# N10036-0715
18 May 2011

[REDACTED]

RE: Claim Number: N10036-0715

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 N10036-0715 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 N10036-0715.

Mail reconsideration requests to:

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

Sincerely,

[REDACTED]

on Division

Enclosure: Claim Summary/Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Date	16 May 2011
Claim Number	N10036-0715
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
Amount Requested	\$29,550.00

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 26 April 2011, the Claimant presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Funds Center (NPFC) for \$29,950.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

Claimant provided a letter purportedly from [REDACTED] Director of [REDACTED] at [REDACTED]. The letter indicated that the Claimant worked as a shipfitter for [REDACTED] at the [REDACTED] in New Orleans, LA from February through May 2010.¹ The letter further indicated that the Claimant was released “due to the fact they were working on gas and oils supply vessels at the time.”²

APPLICABLE LAW

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

¹ Letter purportedly from [REDACTED] to whom it may concern, dated 13 March 2011.

² It is unclear what this quote means.

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 presented the following documentation:

- OSLTF claim form;
- Letter purportedly from ██████████ to whom it may concern, dated 13 March 2011;
- Letter purportedly from the payroll supervisor at ██████████ dated 22 March 2011;
- W-2 earnings statements from ██████████ for 2008 and 2009 (illegible) and 2010;
- W-2 from ██████████ for 2010 (illegible);
- W-2 from ██████████ for 2010.

On 17 October 2010, Claimant presented an Emergency Advance Payment (EAP) claim for \$14,000.00 in lost profits and earnings to the GCCF. He was assigned GCCF Claimant ID Number ██████████ and Claim Number ██████████. On 29 November 2010, the EAP claim was denied by the GCCF.³ On 30 December 2010, Claimant presented a Final Payment claim to the GCCF (Claim # ██████████). That claim was denied on 15 April 2011.⁴

On 26 April 2011, Claimant presented this claim for \$29,550.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

³ GCCF denial letter Re: Claimant's EAP claim, dated 29 November 2010.

⁴ GCCF denial letter Re: Claimant's Final Payment claim, dated 15 April 2011.

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 documentation presented by Claimant.

After initially reviewing the Claimant's submission, the NPFC contacted [REDACTED] to verify the letter that the Claimant presented, which indicated that he had worked for [REDACTED] from February through May 2010 when he was released. The letter was purportedly signed by [REDACTED] Director of [REDACTED] at [REDACTED]. [REDACTED] Director of Operations informed the NPFC that [REDACTED] had not signed the letter and that the Claimant's actual dates of employment with [REDACTED] were the weeks ending 11, 18 & 25 December 2010.

Pursuant to 33 C.F.R. § 136.9, persons submitting false OSLTF claims or making false statements in connection with OSLTF claims may be subject to prosecution under Federal law, including but not limited to 18 U.S.C. §§ 287 and 1001. In addition, persons submitting written documentation in support of OSLTF claims which they know, or should know, is false or omit a material fact may be subject to a civil penalty for each claim.

The claim is DENIED for fraud.

NPFC Claims Adjudication [REDACTED]

Date of Supervisor's Review: *5/18/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

U.S. Department
of Homeland
Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim # N10036-0716
16 May 2011

Re: Claim Number: N10036-0716

Dear [REDACTED]

The National Pollution Funds Center, in accordance with the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq. (OPA) and the associated regulations at 33 C.F.R. Part 136, denies your claim, N10036-0716, relating to the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination form for further explanation.

You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. If, however 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 N10036-0716.

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

FOIA2011-3380-0002797

CLAIM SUMMARY/DETERMINATION FORM

Date	12 May 2011
Claim Number	N10036-0716
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
Claim Manager	[REDACTED]
Amount Requested	\$14,981.00

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 25 April 2011, [REDACTED] (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Funds Center (NPFC) for \$14,981.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

Claimant works as a poker dealer at [REDACTED] in New Orleans, Louisiana.¹ Claimant is compensated based on an hourly wage and tips, which comprise the majority of his pay.² Claimant asserted that as a result of the Deepwater Horizon oil spill, his hours and tips were reduced, leading to loss of income.³

Claimant calculated his loss by dividing his total hours worked in 2010 (1,658) by his 2010 gross annual earnings (tips and hourly wages), which equals an average of \$35.50 per hour. Claimant then subtracts the total maximum number of hours he could have worked in 2010 (2,080)⁴ from actual hours worked (1,658), leaving a difference of 422 hours. Claimant multiplied this difference by \$35.50 to reach his total potential loss of \$14,981.00.⁵

APPLICABLE LAW

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

¹ OSLTF Claim Form.

² Claimant's "Summary of 2010 Paystubs".

³ Id.

⁴ Claimant gets 2,080 by multiplying 40 (hours a week) by 52 (number a weeks a year).

⁵ Claimant's "Summary of Actual and Potential Losses".

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 the OSLTF

In support of his claim, Claimant presented the following documentation:

- OSLTF Claim Form;
- Claimant's handwritten summary of 2010 pay stubs;
- Claimant's handwritten summary of calculations for actual and potential losses dated 25 April 2011;
- W-2s from ██████████ for 2009 and 2010;
- Paystubs from ██████████ for the period ending 24 December 2009;
- Paystubs from ██████████ for the periods ending 07 January 2010 through 23 December 2010.

On 14 October 2010, Claimant presented six-month Emergency Advance Payment (EAP) and Final Payment claims each for \$10,000.00 in lost profits and earnings to the GCCF. Claimant was assigned GCCF Claimant II [REDACTED] and Claim [REDACTED] and [REDACTED] respectively. On 29 October 2010, Claim [REDACTED] was denied by the GCCF.⁶

On 25 April 2011, Claimant presented this claim for \$14,981.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

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 documentation presented by Claimant.

Under 33 C.F.R. § 136.103(a), all claims for removal costs or damages must be presented first to the responsible party (RP). Claimant presented EAP and Final Payment claims each for \$10,000.00 in lost profits and earnings to the GCCF. Claimant then presented this loss of profits and impairment of earnings capacity claim for \$14,981.00 to the NPFC. Any claimed amount of damages exceeding \$10,000.00 was not properly presented to the RP/GCCF pursuant to 33 C.F.R. § 136.103(a) and is therefore DENIED.

The remainder of this claim is DENIED because the Claimant has not demonstrated through evidence that his alleged loss in the amount of \$10,000.00 is due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil.

Claimant's alleged loss entails reduced hours and reduced tips. With regard to reduced hours, Claimant asserted that he would have worked 2,080 hours in 2010, as opposed to the 1,658 (including training, PTO and meetings) that he actually recorded, had the Deepwater Horizon oil spill not occurred. Claimant has not, however, provided any evidence demonstrating his entitlement to this number of hours. In 2009, Claimant only recorded 1,799 hours, or 141 more than in 2010. There is no evidence in the record that this year-to-year reduction in hours resulted from the Deepwater Horizon oil spill.

On 11 May 2011, the NPFC contacted the Claimant's employer to verify whether the Claimant's hours had been reduced due to the oil spill. Claimant's employer, citing corporate policy, did not respond to the NPFC's questions.⁷

With regard to tips, the Claimant's final paystub for 2009 reveals that he earned \$51,897.61 in tips.⁸ Claimant's final paystub for 2010 reveals that he earned \$47,594.84 in tips.⁹ Claimant has not demonstrated that the difference in tips from 2009 and 2010 resulted from the Deepwater Horizon oil spill.

Because Claimant has not demonstrated that his alleged loss in the amount of \$10,000.00 is due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil, this claim is DENIED.

⁶ GCCF denial letter Re: Claimant's EAP claim, dated 29 October 2010.

⁷ PHONECON between the NPFC and [REDACTED] HR representative, dated 11 May 2011.

⁸ Paystub from [REDACTED] for the period ending 24 December 2009 (denoting tipped income as "TOKES").

⁹ Paystub from [REDACTED] for the period ending 23 December 2010 (denoting tipped income as "TOKES").

Claim Supervisor



Date of Review: *5/16/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

U.S. Department of
Homeland Security

United States
Coast Guard



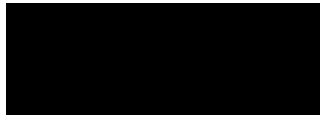
Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD

5890
5/26/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number [REDACTED]



RE: Claim Number: N10036-0717

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 N10036-0717 involving the Deepwater Horizon oil spill. Please see the attached Claim Summary/Determination Form for further explanation.

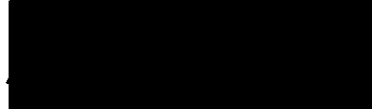
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you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

Reconsideration of the denial will be based upon the information provided. A claim may be reconsidered only once. Disposition of that reconsideration in writing will constitute final agency action. Failure of the NPFC to issue a written decision within 90 days after receipt of a timely request for reconsideration shall, at the option of the claimant, be deemed final agency action. All correspondence should include claim number N10036-0717.

Mail reconsideration requests to:

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

Sincerely,



National Pollution Funds Center
U.S. Coast Guard

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

FOIA2011-3380-0002802

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-0717
Claimant	: ██████████
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: \$25,000.00

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 April 27, 2011, ██████████ (Claimant) presented a claim to the National Pollution Fund Center (NPFC), on an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form seeking \$25,000.00 in lost profits and earning capacity resulting from the Deepwater Horizon incident.

Claimant asserted that she works for ██████████ Auto Sales which had a substantial decrease in business following the Deepwater Horizon oil spill therefore the Claimant is alleging a loss of income due to the oil spill.

The Claimant stated in her letter dated April 18, 2011, that she filed an Initial claim with the GCCF on or about September 30, 2010 for an Emergency Advance Payment (EAP) and was denied. Claimant further stated that she filed for a Final claim in December 2010 and has not received a response to that 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.
- (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 Form, dated April 18, 2011;
- Letter from Claimant dated April 18, 2011;
- Letter from Claimant GCCF dated December 8, 2010;
- Copy of oil forecast map;
- W-2s for 2008, 2009 & 2010.

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 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.

Based on the documentation provided by the Claimant, the Claimant indicated lost wages and days as a result of the Deepwater Horizon incident.

On April 28, 2011, the NPFC sent, via certified 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:

- a) Detailed explanation of the claim and how you arrived at your sum certain of \$9,460.00.
- b) Detailed explanation on how the oil spill impacted [REDACTED]
- c) Signed letter from [REDACTED] stating how they were impacted by the oil spill and why your hours were cut. Please provide a name and contact number we may contact.
- d) [REDACTED] file a claim with the GCCF? If so, please provide a copy of the claim.
- e) Proof of 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. This may consist of paystubs for the period the loss occurred and comparable periods in the past.

The Claimant has not provided the additional documentation to support the claim in order to demonstrate a loss of profits and earnings. Therefore, this claim is denied because (1) the Claimant has failed to meet the burden to demonstrate that there was a loss of profits and (2) that the alleged loss was due to the injury to, destruction of, or loss of property or natural resources as a result of a discharge or substantial threat of discharge of oil.

Claim Supervisor: [REDACTED]

Date of Supervisor's review: *5/26/11*

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

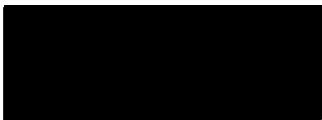
NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937

5890
6/27/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]



RE: Claim Number: N10036-0718

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 N10036-0718 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

ENCL: Claim Summary / Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-0718
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: \$80,000.00

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 27 April 2011, [REDACTED] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$80,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

Claimant asserted that he was employed as an Off Shore Vessel (OSV) Captain but that due to the Deepwater Horizon oil spill, he received "no calls" and "no billet."¹

Prior to presentment to the NPFC, the Claimant presented a Final Payment claim to the RP/GCCF for \$80,000.00 in lost profits and earnings on 7 January 2011. He was assigned GCCF Claimant ID # [REDACTED] and Claim # [REDACTED]. On 1 April 2011, the Final Payment claim was denied by the GCCF.²

REQUEST FOR RECONSIDERATION:

On June 23, 2011, the Claimant sent a request for reconsideration to the NPFC stating he would like the NPFC to reconsider his claim.

The NPFC denied the claim originally on May 23, 2011 because the Claimant indicated that he worked directly for the offshore drilling industry and that the moratorium on offshore drilling significantly impacted his ability to work.³ The Claimant also indicated that he was laid off as a result of the effects of the moratorium. By the Claimant's own admission, his alleged loss in the amount of \$80,000.00 was not 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.

¹ OSLTF claim form.

² GCCF denial letter Re: Claimant's Final Payment claim dated 1 April 2011.

³ PHONECON between Claimant and the NPFC on 12 May 2011.

On reconsideration, the Claimant only provided a one page letter. The Claimant provided no new documentation in support of his request for reconsideration.

RECONSIDERATION CLAIM ANALYSIS:

The claimant requested reconsideration which was received by the NPFC on June 23, 2011. To support the request for reconsideration the Claimant submitted a letter that asserted he disagrees with the NPFC's initial denial of his claim and he would like his claim reconsidered. No other information or arguments were presented to the NPFC.

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 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. The Claimant's request for reconsideration letter only stated that he disagreed with the NPFC's denial of his claim and that he believes his file contains enough information to support his claim.

The Claimant has provided no new information therefore the Claimant has failed to meet the burden of demonstrating a loss of profits 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.

Based on the foregoing information, the NPFC again denies the claim because (1) the Claimant has failed to demonstrate that he had an alleged loss of profits in the amount claimed and (2) the Claimant has failed to demonstrate a loss of profits 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.

This claim is denied upon reconsideration.

Claim Supervisor: 

Date of Supervisor's review: 6/27/11

Supervisor Action: *Denial on reconsideration approved*

Supervisor's Comments:

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim # N10036-0718
23 May 2011

Re: Claim Number: N10036-0718

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act of 1990, U.S.C. § 2701 et seq. (OPA) and the associated regulations at 33 C.F.R. Part 136, denies payment on the claim number N10036-0718 involving Deepwater Horizon oil spill. Please see the attached Claim Summary/Determination Form for further explanation.

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

Reconsideration of the denial will be based upon the information provided. A claim may be reconsidered only once. Disposition of that reconsideration in writing will constitute final agency action. Failure of the NPFC to issue a written decision within 90 days after receipt of a timely request for reconsideration shall, at the option of the claimant, be deemed final agency action. All correspondence should include claim number N10036-0718.

Mail reconsideration requests to:

Director (ca)
NPFC CA MS 7100
US COAST GUARD

Sincerely,

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

Enclosure(s): (1) Claim Summary/Determination Form
(2) Documentation Submitted by Claimant

09/14/11

FOIA2011-3380-00002809

CLAIM SUMMARY/DETERMINATION FORM

Date	19 May 2011
Claim Number	N10036-0718
Claimant	[REDACTED]
Type of Claimant	Private (US)
Amount Requested	\$80,000.00

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 27 April 2011, [REDACTED] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$80,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

Claimant asserted that he was employed as an Off Shore Vessel (OSV) Captain but that due to the Deepwater Horizon oil spill, he received “no calls” and “no billet.”¹

APPLICABLE LAW

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

¹ 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 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 this claim, the Claimant presented an optional OSLTF claim form on 27 April 2011. Claimant also presented his GCCF Payment/Final Payment denial letter dated 01 April 2011. On 29 April 2011, Claimant provided a release to the NPFC allowing the NPFC to obtain Claimant's complete claim file from the GCCF. A copy of the GCCF file was obtained, which file contained the documents listed in Enclosure (2).

Prior to presentment to the NPFC, the Claimant presented a Final Payment claim to the RP/GCCF for \$80,000.00 in lost profits and earnings on 7 January 2011. He was assigned GCCF Claimant ID # [REDACTED] and Claim # [REDACTED]. On 1 April 2011, the Final Payment claim was denied by the GCCF.²

On 27 April 2011, Claimant presented this claim for \$80,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

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 all information and documentation provided by Claimant.

Claimant indicated that he worked directly for the offshore drilling industry and that the moratorium on offshore drilling significantly impacted his ability to work.³ Claimant also

² GCCF denial letter Re: Claimant's Final Payment claim, dated 1 April 2011.

³ PHONECON between Claimant and the NPFC on 12 May 2011.

indicated that he was laid off as a result of the effects of this moratorium. By the Claimant's own admission, his alleged loss in the amount of \$80,000.00 is not 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. This claim is accordingly denied.

Claim Supervisor:  *Claims Adjudication Division*

Date of Supervisor's Review: *5/23/11*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

Documentation Submitted by Claimant:

- GCCF Claim Form
- Correspondence from Claimant to [REDACTED] dated 30 August 2010;
- PEC Premier Vessel of Opportunity Training Card;
- Merchant Mariner's License No. [REDACTED]
- Correspondence from Claimant to [REDACTED] dated 30 August 2010 re: Final Payment;
- Correspondence from Claimant to [REDACTED] dated 25 October 2010 re: Emergency Payment;
- Denial letter on Interim Payment/final Payment Claim dated 1 April 2011;
- Partially Completed GCCF Full Review Final payment Claim Form;
- Correspondence from Claimant to [REDACTED] dated 03 February October 2010 re: Final Payment;
- [REDACTED] Earnings Statement for pay period ending 10 July 2010;
- GCCF global notes;
- Letter from GCCF re: Claimant Identification Number [REDACTED] dated 23 September 2010;
- Completed GCCF Full Review Final Payment Claim Form;
- Copy of Claimants Florida Driver License;
- Correspondence from Claimant to [REDACTED] dated 06 January 2010;
- Marine Yellow Pages extract, gulf states, 2010;
- 2008 IRS Form 1040 Tax Return;
- 2007 IRS Form 1040 Tax Return;
- Unsigned 2007 IRS Form 1120S ([REDACTED]);
- 2006 IRS Form 1040 Tax Return;
- 2006 IRS Form 1120S ([REDACTED]);
- Miscellaneous Envelope Labels;
- Correspondence from Claimant to [REDACTED] dated 15 February ref: Final Processing Department;
- Unsigned 2008 IRS Form 1040 Tax Return;
- 2008 W-2 Wage and Tax Statement;
- 2008 IRS Form 1099-R Filings;
- Signed 2007 IRS Form 1120S ([REDACTED]);
- Signed 2007 IRS Form 4562 ([REDACTED]);
- Signed 2007 IRS Form 4797 ([REDACTED]);
- 2007 IRS Form 1120S Section 179 Disposal Worksheet ([REDACTED]);
- 2007 IRS Form 1120S Statement1- Page 1, Line 19 -Other Deductions ([REDACTED]);
- 2007 IRS Form 1120S Statement2- Page 3, Schedule K, Line 17d -Other Items and Amounts ([REDACTED] Inc.);
- 2007 IRS Form 1120S Federal Asset Report ([REDACTED]);
- 2007 IRS Form 1120S AMT Asset Report ([REDACTED]);
- 2007 IRS Form 1120S Depreciation Adjustment Report: All Business Activities ([REDACTED]);
- 2007 IRS Form 1120S Two Year Comparison Worksheet ([REDACTED]);
- Signed 2006 IRS Form 1040 Tax Return;
- 2007 W-2 Wage and Tax Statements;
- Fax cover letter from Claimant to [REDACTED] dated 31 December 2010 re: claimant's picture ID and social security card; and
- Faxed correspondence from Claimant to the NPFC authorizing the NPFC to obtain the Claimant's GCCF records dated 29 April 2011.

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

5890
6/27/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]



RE: Claim Number: N10036-0719

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 N10036-0719 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

ENCL: Claim Summary / Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-0719
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: \$170,000.00

FACTS:

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

CLAIM AND CLAIMANT:

On 18 April 2011, [REDACTED] (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Funds Center (NPFC) for \$850,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill. On 28 April 2011, the Claimant modified this sum certain to \$170,000.00.¹

Claimant indicated that after graduating from the [REDACTED] in Jacksonville, FL, he began working as a commercial diver in the Gulf of Mexico. Claimant stated that “[he] was repeatedly singled out on the rigs that [he] worked on as a top diver in the Gulf.”² Claimant indicated that the 2010 diving season was projected to be “near an all time high,” promising lucrative employment.³

Claimant indicated that at the time of the Deepwater Horizon oil spill, he was breaking out as a commercial diver and interviewing with large commercial diving companies. Claimant alleged that as a result of the Deepwater Horizon oil spill, he lost commercial diving jobs and earnings. Claimant further alleged that he has lost employment for years as a result of a federal mandate restricting commercial drilling in the Gulf of Mexico.⁴

REQUEST FOR RECONSIDERATION:

On June 13, 2011, the Claimant sent a request for reconsideration to the NPFC stating he would like the NPFC to reconsider his claim.

The NPFC denied the claim originally on May 9, 2011 because the Claimant has failed to (1) make proper presentment of some of the costs claimed to the NPFC to the GCCF pursuant to 33 C.F.R. § 136.103(a), (2) failed to demonstrate his alleged loss in the amount of \$170,000.00, as

¹ Letter to NPFC, modifying sum certain, dated 28 April 2011 (providing loss figure for the period of 20 April 2010 through 20 April 2011).

² Final Settlement Claim Request, dated 01 November 2010.

³ *Id.*

⁴ OSLTF claim form.

claimed and (3) that this alleged loss is due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil.

On reconsideration, the Claimant provided a three page type written letter in support of his request for reconsideration along with the following documents: (1) an incomplete and partially blanked out copy of a GCCF Notice of Emergency Advance Payment Determination, (2) letter from Claimant to BP Claim Center dated August 18, 2010, (3) Form 1040 US Individual Income Tax Return 2009 for an individual by the name of [REDACTED] (4) a copy of 2008 W-2s and Tax statements for an individual by the name of [REDACTED], (5) a copy of the Claimant's Final Settlement Claim Request letter to the GCCF dated November 1, 2010, (6) a copy of page 5 of 6 identified as Attachment B associated with a GCCF document, (7) a copy of the Claimant's own W-2 for 2010, (8) a copy of the Claimant's 1099 for 2010 from [REDACTED] and (9) a copy of a two page document identified by the Claimant as being the National Commission Conclusion on the BP Deepwater Horizon Oil Spill and Offshore Drilling.

On 19 May 2010, the Claimant filed a claim with the responsible party (RP), BP, and was compensated \$10,000.00 by BP. On 24 August 2010, Claimant presented a six-month Emergency Advance Payment (EAP) claim for \$30,000.00 in lost profits and earnings to the GCCF. He was assigned GCCF Claimant ID # [REDACTED] and Claim # [REDACTED]. Claimant was compensated \$30,000.00 towards his EAP claim as validated by the GCCF.

On 24 August 2010, the Claimant also presented a Final Payment claim for \$30,000.00 in lost profits and earnings (Claim # [REDACTED]) to the GCCF. Claimant received a Final Payment Offer of \$5,000.00, which Claimant reportedly has not accepted.

To date, the Claimant has received collectively \$40,000.00 in compensation from BP/GCCF as verified to the NPFC by the GCCF.

RECONSIDERATION CLAIM ANALYSIS:

The claimant requested reconsideration which was received by the NPFC on June 13, 2011. To support the request for reconsideration the Claimant submitted the above referenced letter and accompanying documentation.

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 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 both initially and on reconsideration. The Claimant's request for reconsideration letter addressed the following assertions:

1. The Claimant asserted the he was advised that the Coast Guard had access to all previous documentation submitted by a Claimant to BP and/or the GCCF and that he was instructed "not" to re-provide any of that data that was questioned in the NPFC's initial denial determination;
2. The Claimant stated that on page 2 of the May 9, 2011 determination package he received from the NPFC and under the CLAIM AND CLAIMANT section, that the NPFC implied that the Claimant modified the amount of his claim referencing 18 April 2011 (5 year claim period) and 28 April 2011 (1 year claim period) correspondence. Claimant goes on to assert that his per year claim amount has not changed since it was established with BP in April 2010;
3. The Claimant stated that on page 3 of the May 9, 2011 determination package he received from the NPFC stated that he filed a claim with the Responsible Party and was compensated \$10,000.00 on May 19, 2010. The Claimant goes on to state he actually filed his initial claim on or about 24 April 2010 at a BP claims office and that the compensation stated in his RP/GCCF letter was identified as a PARTIAL payment for lost wages from April 20, 2010 to May 19, 2010 and that he was advised he would receive monthly checks on or about the 19th of each month until final settlement of the disaster;
4. The Claimant asserted that the 24 August 2010 Emergency Advance Payment (EAP) for \$30,000.00 was for a ONE-MONTH payment in response to his August 18, 2010 correspondence and not in fact a FINAL SETTLEMENT as stated in the May 9, 2011 determination package from the NPFC. The Claimant further asserted that the \$30,000.00 payment the NPFC references that he received from the RP/GCCF was not paid on August 24, 2010 but rather in two separate payments of \$8,400.00 and \$21,600.00 on October 2, 2010;
5. Claimant asserted that his annual loss amount of \$170,000.00 was established and acknowledged by BP before his payment was ever made. Claimant goes on to give information about what the primary commercial diving months are and how 80-90% of a diver's income is generated during the referenced time period of May through October. The Claimant goes on to explain that since 2010 would have been his first year as a commercial diver, he submitted and used information associated with other commercial divers as proof of income for 2008 and 2009 for which he is asserting establishes his methodology on what his alleged loss amount(s) should be. The Claimant again asserted that BP accepted his alleged annual income loss to be \$170,000.00 which he contends is what he is due for each year for a five year period bringing his total alleged loss to \$850,000.00 which was in fact identified as his claimed amount on his OSLTF claim form;
6. Claimant stated that on page 4 of the May 9, 2011 determination package he received from the NPFC, the last two paragraphs of that page question whether the Deepwater Horizon oil spill is attributable to his lack of employment as a deepwater commercial diver. He continues on to say the letter attempts to imply that the "implementation of new safety conditions" and the stopping of the permitting process that resulted following the United States government imposed Moratorium is not the exclusive and direct result of the BP Deepwater Horizon disaster which he adamantly disagrees with;
7. Finally, the Claimant asserted that had the Deepwater Horizon incident not occurred, the oil industry would not have stopped operating in the Gulf of Mexico and there would not be new federally mandated safety regulations which the Claimant contends paralyzed the commercial diving industry. The Claimant is upset that the NPFC Claims Supervisor, [REDACTED], questioned whether the Deepwater Horizon oil spill incident was the cause of his unemployment. The Claimant asserted that the Deepwater Horizon oil spill

incident is the ONLY reason why he was unable to have a financially successful first year as a commercial diver in 2010.

The NPFC will address the Claimant's assertions on reconsideration below.

1. The Claimant asserted that he was advised that the Coast Guard had access to everything a Claimant presented to the RP/GCCF therefore he takes issue with the fact that the NPFC's initial denial references missing documentation. It is important to note that the NPFC's claim process is a separate and distinct process from the claims process set up by the RP/GCCF. The only way the NPFC can obtain information provided to the RP/GCCF is if a Claimant provides an authorization with their claim submission authorizing the NPFC permission to obtain documentation from the RP/GCCF which was not the case for this Claimant. The Claimant has not provided information on who possibly gave incorrect advice; therefore, the NPFC has no further comment on the assertion.
2. The Claimant stated that on page 2 of the May 9, 2011 denial determination package he received from the NPFC and under the CLAIM AND CLAIMANT section, that the NPFC implied that the Claimant modified the amount of his claim referencing 18 April 2011 (5 year claim period) and 28 April 2011 (1 year claim period) correspondence. Claimant goes on to assert that his per year claim amount has not changed since it was established with BP in April 2010.

For clarification purposes, the NPFC will articulate the facts as presented with respect to this issue. The Claimant presented an optional OSLTF claim form in the amount of \$850,000.00 which the claim form indicated \$170,000.00 per year alleged loss and requested compensation for a five year period (see page 2 of the OSLTF claim form question #10) which equated to the \$850,000.00 identified under question #3 of the OSLTF claim form.⁵ Upon receipt of the claim, the NPFC contacted the Claimant on April 26, 2011 via telephone and advised the Claimant that 'future' losses are not OPA compensable because they are speculative in nature and have not been realized as a loss by the Claimant. In response the Claimant sent the NPFC a letter dated April 28, 2011, thanking the NPFC for follow up and assistance with respect to the proper filing of a claim. In that same letter, the Claimant stated in paragraph 2 as follows..."[M]y claim loss for lost earnings, as a commercial under water diver, for the period of April 20, 2010 thru April 20, 2011 that I'm submitting to the US Coast Guard for assistance caused by the BP Deepwater Horizon failure in the Gulf of Mexico on April 20, 2010 is \$170,000.00."⁶ Therefore the NPFC's CLAIM AND CLAIMANT section of the May 9, 2011 denial determination package is in fact correct.

3. The Claimant stated that on page 3 of the May 9, 2011 determination package he received from the NPFC stated that he filed a claim with the Responsible Party and was compensated \$10,000.00 on May 19, 2010. The Claimant goes on to state he actually filed his initial claim on or about 24 April 2010 at a BP claims office and that the compensation stated in his RP/GCCF letter was identified as a PARTIAL payment for lost wages from April 20, 2010 to May 19, 2010 and that he was advised he would receive monthly checks on or about the 19th of each month until final settlement of the disaster. The Claimant has not provided a full copy of that letter which he references in

⁵ See, OSLTF claim form dated April 17, 2011 which was received at the NPFC on April 18, 2011.

⁶ See, Letter from Claimant to the NPFC dated April 28, 2011.

his assertion; therefore, the NPFC has no comment on whether the \$10,000.00 payment was identified by the RP/GCCF as partial payment or not.

4. The Claimant asserted that the 24 August 2010 Emergency Advance Payment (EAP) for \$30,000.00 was for a ONE-MONTH payment in response to his August 18, 2010 correspondence and not in fact a FINAL SETTLEMENT as stated in the May 9, 2011 determination package from the NPFC. The Claimant further asserted that the \$30,000.00 payment the NPFC references that he received from the RP/GCCF was not paid on August 24, 2010 but rather in two separate payments of \$8,400.00 and \$21,600.00 on October 2, 2010.

With respect to the Claimant's assertion that his EAP claim in the amount of \$30,000.00 was for a one month payment and not in fact a final settlement which the Claimant alleges the NPFC stated in its May 9, 2011 denial determination package, the NPFC offers that the only reference made in its May 9, 2011 denial determination package to the Claimant's EAP claim can be found at the bottom of page three and nowhere in the determination does the NPFC state that the EAP payment was a final settlement.

The Claimant further asserted that the \$30,000.00 payment he received for his EAP claim was not paid on August 24, 2010 but rather in two payments. Again, the NPFC's May 9, 2010 denial determination makes no mention that the Claimant was paid \$30,000.00 on August 24, 2010. On page 3 of the NPFC May 9, 2011 denial determination, the NPFC stated..."On August 24, 2010, Claimant presented a six-month Emergency Advance Payment (EAP) claim for \$30,000.00 in lost profits and earnings to the GCCF. He was assigned GCCF Claimant II [REDACTED] and Claim [REDACTED] Claimant was compensated \$30,000.00 towards his EAP claim."

5. Claimant asserted that his annual loss amount of \$170,000.00 was established and acknowledged by BP before his first payment was ever made. Claimant goes on to give information about what the primary commercial diving months are and how 80-90% of a diver's income is generated during the referenced time period of May through October. The Claimant goes on to explain that since 2010 would have been his first year as a commercial diver, he submitted and used information associated with other commercial divers as proof of income from their 2008 and 2009 records which he is asserting establishes his methodology on what his alleged loss amount(s) should be. The Claimant again asserted that BP accepted his alleged annual income loss to be \$170,000.00 which he contends is what he is due for each year for a five year period bringing his total alleged loss to \$850,000.00 which was in fact identified as his claimed amount on his OSLTF claim form.

The NPFC understands what the Claimant has asserted as his alleged annual loss and the NPFC further understands that the Claimant arbitrarily used financial information for other commercial divers in order to try to establish what he feels he is due.

OPA provides that if a claim presented to the responsible party is not settled by payment by any person within 90 days after the date on which the claim was presented the Claimant may present its claim to the NPFC. 33 U.S.C. § 2713(c)(2). The NPFC's claims process and the RP/GCCF claims process are different and distinct. The NPFC is not bound by any determinations or decisions the RP/GCCF has made with respect to claims presented to them.

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.

Based on the above referenced law and regulations, the Claimant did not provide his own comparable financial information to evidence that he suffered a loss of income as required by OPA and the claims regulations but rather presented financial information from another commercial diver. Additionally, the Claimant provided another diver's income tax returns and W-2s without providing his own tax records and W-2s; therefore, the NPFC has determined that the Claimant has not provided evidence of his actual loss of profits.

In summary, the Claimant has not produced any documentation from his employer that addresses his loss of employment or the reason(s) the employer released him from employment. Additionally, the Claimant asserted that he has lost wages for a period of five years although the Claimant has provided no documentation indicating that he was hired by his employer for a guaranteed period of time at a guaranteed rate of pay. Because the Claimant has provided no documentation from his employer to support his allegations, the Claimant has failed to meet his burden to demonstrate the reason for his loss of employment, its correlation to the Deepwater Horizon incident nor has the Claimant met his burden to demonstrate that he has a loss in the amount alleged.

The NPFC has determined that the Claimant has not provided evidence to demonstrate why he lost his employment and that the loss of employment is not the direct result of other reasons such as new federally mandated safety regulations or the delays associated with the offshore permitting process.

Furthermore, as stated in the NPFC's May 9, 2011 denial determination package, the Claimant has presented a claim to BP in May 2010 for an amount assumed to be \$10,000.00, an EAP claim in the amount of \$30,000.00 and a Final Payment claim in the amount of \$30,000.00. The cumulative total of all claimed amounts presented to the RP/GCCF does not exceed \$70,000.00.

Under 33 C.F.R. § 136.103(a), all claims for removal costs or damages must be presented first to the responsible party (RP). The Claimant has presented a claim to the NPFC for much more than what was presented to the RP/GCCF. Any amount in excess of \$70,000.00 has again not been properly presented to the RP/GCCF and is denied by the NPFC on reconsideration.

Based on the foregoing information, the NPFC again denies the claim because (1) the Claimant has failed to demonstrate that he had an alleged loss of profits in the amount claimed, (2) the Claimant has failed to demonstrate a loss of profits due to the destruction or injury to real or personal property or natural resources as a result of a discharge or substantial threat of a discharge of oil, (3) the Claimant has failed to provide his financial documentation demonstrating that he has a loss of profits, and (4) the Claimant has failed to properly present all costs in excess of \$70,000.00 to the RP/GCCF prior to presenting the costs to the NPFC.

This claim is denied upon reconsideration.

Claim Supervisor 

Date of Supervisor's review: *6/27/11*

Supervisor Action: *Denial on reconsideration approved*

Supervisor's Comments:

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim # N10036-0720
11 May 2011

Re: Claim Number: N10036-0720

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act of 1990, U.S.C. § 2701 et seq. (OPA) and the associated regulations at 33 C.F.R. Part 136, denies payment on your claim, # N10036-0720 involving the Deepwater Horizon oil spill. Please see the attached Claim Summary/Determination Form for further explanation.

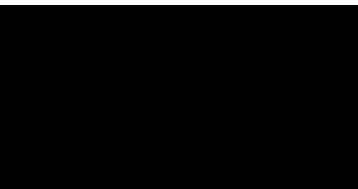
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you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

Reconsideration of the denial will be based upon the information provided. A claim may be reconsidered only once. Disposition of that reconsideration in writing will constitute final agency action. Failure of the NPFC to issue a written decision within 90 days after receipt of a timely request for reconsideration shall, at the option of the claimant, be deemed final agency action. All correspondence should include claim number N10036-0720.

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

FOIA2011-3380-00002822

CLAIM SUMMARY/DETERMINATION FORM

Date	10 May 2011
Claim Number	N10036-0720
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
Claim Manager	[REDACTED]
Amount Requested	\$11,076.00

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 27 April 2011, [REDACTED] Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Funds Center (NPFC) for \$11,076.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

Claimant reportedly is self-employed and sells merchandise and collectibles.¹ He alleged that the Deepwater Horizon oil spill depressed the market in his area and forced him out of business.² Although the Claimant alleged \$11,076.00 in lost profits and impairment of earnings capacity, the Claimant is really seeking lost disaster relief assistance. He indicated that in the wake of Hurricanes Katrina and [REDACTED], his area in Louisiana was declared a Federal Disaster Area, triggering Disaster Unemployment Insurance (DUI), which the Claimant collected. He stated that in the wake of the Deepwater Horizon oil spill, no federal disaster area was declared, depriving him of DUI. Claimant calculated his loss of \$11,076.00 from 39 weeks of DUI at \$284.00 a week.³

APPLICABLE LAW

Under the Oil Pollution Act of 1990 (OPA), at 33 U.S.C. § 2702(a), responsible parties are liable for removal costs and damages resulting from the discharge of oil into 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.

¹ Claimant letter to BP, dated 29 June 2010.

² OSLTF claim form.

³ It is unclear how Claimant determined the weekly DUI benefit of \$284.00.

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 his OSLTF claim form; two handwritten letters explaining his situation; three letters from the GCCF; location map; unemployment insurance claims request for information, dated 19 October 2005 & 03 October 2008; letter from workforce commission, dated 15 November 2008; Form 1099 G from 2008 & 2009; Claimant 1040 2007-2009; Regions personal financial statement; and Claimant calculations for 2010.

On 03 December 2010, Claimant presented a Full Review Final Payment Claim with the RP/GCCF in the amount of \$11,076.00 in lost profits and earnings. He was assigned GCCF Claimant ID [REDACTED] and Claim [REDACTED]. This claim is still under review.

On 27 April 2011, Claimant presented this claim for \$11,076.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

NPFC Determination

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

The claim is DENIED because the alleged loss in the amount of \$11,076.00 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 the extent that the Claimant asserted a loss from the non-declaration of a federal disaster area and his ensuing failure to collect DUI, this loss does not result the Deepwater Horizon oil spill.

To the extent that the Claimant asserted a loss from his merchandise and collectibles business due to the Deepwater Horizon oil spill, the Claimant failed to demonstrate the amount of his profits in comparable periods and during the period when the claimed loss or impairment was suffered through financial documentation, or how this alleged loss correlates to the Deepwater Horizon oil spill.

Because the Claimant has failed to meet his burden of proof under OPA and the associated regulations at 136 Part 136, this claim is DENIED.

Claim Supervisor 

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

Supervisor's Action: *Denial approved*

Supervisor's Comments:

U.S. Department of
Homeland Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim # N10036-0721
16 August 2011

Re: Claim Number: N10036-0721

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 your claim number N10036-0721 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. If, however 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 N10036-0721.

Mail reconsideration requests to:

Director (ca)
NPFC CA MS 7100
US COAST GUARD

Sincerely,

[REDACTED]
National Pollution Funds Center
U.S. Coast Guard

Enclosures: (1) Claim Summary/Determination Form

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-0721
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$130,679.96

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 26 April 2011, [REDACTED] (Claimant) presented an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) seeking \$130,679.96 in loss of profits and impairment of earnings capacity that allegedly resulted from the Deepwater Horizon oil spill.

Claimant is the sole owner and operator of an [REDACTED] in Daphne, Alabama.¹ The Claimant indicated that the bulk of his business comes from home, automobile, and boat insurance.² Claimant asserted that due to the Deepwater Horizon oil spill, he lost income because clients in the region ceased purchasing and renewing insurance plans from the Claimant.³ Claimant also asserted that he lost policies from clients for businesses, homes, autos and other property.⁴

Claimant calculated his sum certain by calculating the difference in his commissions between April through December of 2009 and April through December of 2010 (\$37,337.13).⁵ Claimant then multiplied his lost commission sales by 3.5 for a total loss of \$130,679.96, representing his assertion that insurance policies are retained by an agent for an average of seven years but offset by half to represent the general downturn in the economy.⁶

APPLICABLE LAW

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

¹ PHONECON between NPFC and Claimant on 11 May 2011.

² PHONECON between NPFC and Claimant on 11 May 2011.

³ PHONECON between NPFC and Claimant on 11 May 2011.

⁴ Optional OSLTF Claim Form.

⁵ Letter from Claimant dated 25 April 2011.

⁶ Letter from Claimant dated 09 August 2011.

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 the OSLTF

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

- Optional OSLTF Claim Form received 26 April 2011;
- Letter from Claimant dated 25 April 2011;
- [REDACTED] for May 2009-December 2009;
- [REDACTED] for May 2010-December 2010;
- [REDACTED] for January 2010 and January 2010;
- Letter from Claimant dated 09 August 2011;
- [REDACTED] for February 2010-May 2010;
- [REDACTED] for January 2008- December 2008
- [REDACTED] for February 2007-December 2007;

- Executive Agent Commission Statements for January 2009;
- [REDACTED] Exclusive Agent Production Statement for May 2009-December 2009;
- [REDACTED] Exclusive Agent Production Statement for May 2010-December 2010;
- [REDACTED] Schedule of Commissions;
- News article from [REDACTED] Report titled 'BP Is Planning Its Legal Defense';
- News article from [REDACTED] Report titled 'Folks outside the coast region aren't getting the true picture';
- News article from [REDACTED] Report titled '[REDACTED] hires our firm on oil spill claims';
- News article from [REDACTED] Report titled 'Oil Spill Cleanup Workers Reporting Illnesses';
- News article from [REDACTED] Report titled 'BP Oil Spill cost Alabama economy almost \$2 Billion'.

Prior to presenting his claim to the NPFC, Claimant filed a Full Review Final (FRF) Payment Claim with the GCCF on 02 December 2010 in the amount of \$31,641.00.⁷ Claimant was assigned Claimant ID # [REDACTED] and Claim # [REDACTED]. This claim was denied on 22 April 2011.⁸

Based upon the evidence provided by Claimant, it appears that the subject matter for the GCCF claim is the same as the subject matter of his claim before the NPFC, i.e., that due to the Deepwater Horizon oil spill, Claimant experienced a reduction in commissions from insurance policies. The NPFC deems Claimant's denied FRF claim to be properly presented to the RP and properly presented to the NPFC up to the amount \$31,641.00. Accordingly, this Claim Summary Determination for NPFC Claim N10036-0721 considers and addresses the earnings claimed in Claimant's claim presented to the responsible party, specifically; GCCF Claim # [REDACTED] (FRF).

NPFC Determination

Under 33 C.F.R. § 136.103(a), all claims for removal costs or damages must be presented first to the responsible party (RP). Claimant presented a Full Review Final (FRF) Payment Claim for loss of profits and impairment of earnings capacity to the GCCF in the amount of \$31,641.00. Claimant then presented a claim for loss of profits and impairment of earnings capacity in the amount of \$130,679.96 to the NPFC. Any claimed amount of damages exceeding \$31,641.00 was not properly presented to the RP/GCCF pursuant to 33 C.F.R. § 136.103(a) and is therefore denied.

The remainder of this claim is denied because the Claimant has not proven that he suffered a financial loss due to the Deepwater Horizon oil spill. The Claimant asserted that he experienced a reduction of income because his clients cancelled or failed to renew insurance policies due to the Deepwater Horizon oil spill.

However, the Claimant failed to provide any documentation to indicate that clients broke or modified insurance policies with the Claimant due to the Deepwater Horizon oil spill. The NPFC specifically asked for such documentation on 21 April 2011. In a response to the NPFC on 9 August 2011, the Claimant stated that "The request for individual cancelled policies is forbidden in my contract as is any material with personal information regarding my clients."⁹ Regardless, the Claimant's contractual obligations do not alleviate the evidentiary burden imposed by 33 C.F.R. § 136.105(a) and 33 C.F.R. § 136.105(e)(6), which require the Claimant to provide sufficient evidence to support his claim. The documentation provided by the Claimant is not sufficient to establish that the Deepwater Horizon oil spill was the cause of any particular cancelled or modified insurance policy.

⁷ Report from the GCCF dated 29 July 2011.

⁸ GCCF Denial Letter dated 22 April 2011.

⁹ Letter from Claimant to NPFC, dated 9 August 2011.

Furthermore, the Claimant's submitted financial information indicated that his business had been in a steady decline prior to the Deepwater Horizon oil spill. The Claimant's commission-based income went from \$299,389.99¹⁰ in May 2007-December 2007 to \$174,703.63¹¹ in May 2008-December 2008. This pattern continued in 2009 when Claimant's commissions dropped to \$128,021.68¹² in May 2009-December 2009. Though the Claimant's earnings dropped another \$16,145.00 to \$111,876.58¹³ in May 2010-December 2010, this decrease was significantly less than the earnings reductions of \$124,686.36 and \$46,681.95 experienced in the two prior years, respectively. Thus, the Claimant failed to isolate any reduction in commissions as a product of the Deepwater Horizon oil spill as opposed to other factors such as cost-cutting decisions by clients or potential clients to reduce expenses or otherwise generally declining market conditions.

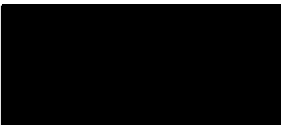
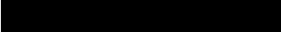
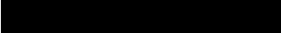
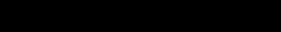
This claim is denied because the Claimant has failed to (1) make presentment of some of the costs claimed to the NPFC pursuant to 33 C.F.R. § 136.103(a), (2) demonstrate that there was an alleged loss in the amount claimed, and (3) demonstrate that its alleged loss is due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil, this claim is denied.


Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *8/16/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

¹⁰  Production Statement for February 2007-December 2007.
¹¹  Production Statement for January 2008-December 2008.
¹²  Production Statement for May 2009-December 2009.
¹³  Production Statement for May 2010-December 2010.

U.S. Department of
Homeland Security

United States
Coast Guard

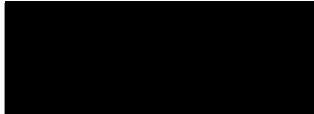


Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD

5890
6/1/2011

CERTIFIED MAIL -- RETURN RECEIPT REQUESTED
Number [REDACTED]



RE: Claim Number: N10036-0722

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act of 1990, U.S.C. § 2701 et seq. (OPA) and the associated regulations at 33 C.F.R. Part 136, denies payment on the claim number N10036-0722 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 N10036-0722.

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: (1) Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00002831

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-0722
Claimant	██████████
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
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. 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 April 27, 2011, ██████████ (Claimant) presented a lost profits & earnings capacity claim in the amount of \$10,000.00 to the National Pollution Funds Center (NPFC) for reimbursement. The Claimant is asserting that her “notary business that consists of loan closings and beach weddings declined from \$5,370.00 in 2009 to \$3,865.00 in 2010.”¹

The Claimant did not provide any correspondence or copies of the denial letters from the GCCF but stated that her claim was denied. The NPFC verified presentment with the RP and it was determined that the Claimant filed a \$5,000.00 Emergency Advance Payment (EAP) claim and an \$8,000.00 interim claim with the GCCF. Both claims were denied by the GCCF.

APPLICABLE LAW:

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

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

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

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

¹ Optional OSLTF Claim Form dated April 19, 2011
09/14/11

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

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

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

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

DETERMINATION OF LOSS

Claimant's Submission

To support the claim, the Claimant submitted the following documentation:

- NPFC OSLTF Form, received April 19, 2011;
- 2008, 2009, & 2010 Income Tax Returns;
- Itemized listing of all notary work done and amount charged in 2008, 2009, & 2010;
- Letter consisting of responses to questions presented by the NPFC.

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 documentation presented by Claimant.


Under 33 C.F.R. § 136.103(a), all claims for removal costs or damages must be presented first to the responsible party (RP). The Claimant presented an EAP claim for \$5,000.00 and an interim claim for \$8,000.00 in lost wages/earnings to the GCCF. Claimant then presented a loss of profits and impairment of earnings capacity claim of \$10,000.00 to the NPFC. Any claimed amount of damages exceeding \$8,000.00 was not properly presented to the RP/GCCF pursuant to 33 C.F.R. § 136.103(a) and is therefore DENIED.

The remainder of this claim is DENIED because the Claimant's evidence does not demonstrate (1) the alleged loss in the amount of \$8,000.00 or (2) that this alleged loss is due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil. When answering the NPFC's question regarding how the Claimant arrived at the sum certain presented, the Claimant stated, "I have lost approximately \$2,500.00 per year. I arrived at \$10,000.00 broken out below:

- a) 2010 \$2,500 lost income
- b) 2011 \$2,500 estimated lost income
- c) 2010/2013 \$5,000 approximate time frame it will take for our area to recover."²

As per 33 C.F.R. § 136.235, "The amount of compensation allowable is limited to the actual net reduction or loss of earnings or profits suffered." Therefore, \$7,500.00 is denied because the loss is prospective and not an actual realized loss therefore not an OPA compensable damage.

The claim is denied because the Claimant has failed to (1) make proper presentment of some of the costs claimed to the NPFC pursuant to 33 C.F.R. § 136.103(a), (2) demonstrate an alleged loss in the amount of \$2,500.00, as claimed, or (3) demonstrate that this alleged loss is 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.

Claim Supervisor:  *Cl*

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

Supervisor Action: *Denial approved*

Supervisor's Comments:

² Claimant's response to NPFC questions, dated May 16, 2011
09/14/11

U.S. Department of
Homeland Security

United States
Coast Guard



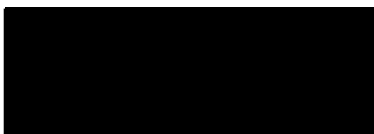
Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD

5890
6/27/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number [REDACTED]



RE: Claim Number: N10036-0723

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 N10036-0723 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination Form for further explanation.

Disposition of this reconsideration constitutes final agency action.

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

Sincerely,



U.S. Coast Guard

ENCL: Claim Summary / Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-0723
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: \$6,069.00

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 28 April 2011, [REDACTED] (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Funds Center (NPFC) for \$6,069.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

Claimant worked as a telemarketer for [REDACTED] at a call center in Pensacola, Florida, which serviced the Southeastern area.¹ Claimant alleged that as a result of the Deepwater Horizon oil spill's impact on the [REDACTED] area, call volume decreased substantially, preventing the call center from meeting monthly quotas and projected goals. Claimant indicated that she was consequently laid off on 27 July 2010.

Claimant applied for and received unemployment compensation in Florida.² Claimant remained unemployed and takes nursing classes at [REDACTED] College.³ Claimant calculated her alleged loss by subtracting her monthly gross at [REDACTED] (\$3,123.00) from her monthly unemployment compensation benefit (\$1,100.00) and multiplying the difference by 3, representing the months of July, August, and September 2010.

On 22 November 2010, Claimant presented a six-month Emergency Advance Payment (EAP) Claim for \$10,000.00 in lost profits and earnings to the GCCF. She was assigned GCCF Claimant ID # [REDACTED] and Claim # [REDACTED]. On 13 December 2010, claim # [REDACTED] was denied by the GCCF.⁴ On 25 January 2011, Claimant a Full Review Final Payment claim (# [REDACTED]) for \$6,069.00 in lost profits and earnings to the GCCF. On 15 April 2011, claim # [REDACTED] was denied by the GCCF.⁵

¹Letter from Claimant to NPFC explaining her claim, dated 27 April 2011.

²Wage Transcript and Determination for Florida for unemployment compensation. Determination dated 29 July 2010.

³Letter from Claimant to NPFC responding to requested for additional information, dated 12 May 2011.

⁴GCCF denial letter Re: Claimant's EAP claim dated 13 December 2010.

⁵GCCF denial letter Re: Claimant's Final Payment claim dated 15 April 2011.

REQUEST FOR RECONSIDERATION:

On June 21, 2011, the Claimant sent a request for reconsideration to the NPFC stating she would like the NPFC to reconsider his claim.

The NPFC denied the claim originally on May 16, 2011 because the Claimant has not demonstrated that her alleged loss in the amount of \$6,069.00 is due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil. In other words, the Claimant has not shown through evidence that her loss of earnings resulted from the Deepwater Horizon oil spill as opposed to other economic or business factors.

The Claimant explained that the Deepwater Horizon oil spill's impact on the economy, particularly in the Southeast, resulted in reduced call volume at her place of employment which led to her layoff. Despite the explanation provided by the Claimant, she has provided no documentation from her employer that demonstrate a correlation in the loss of her job and 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 only provided a one page letter. The Claimant provided no new documentation in support of her request for reconsideration.

Prior to presentment to the NPFC, Claimant presented an Emergency Advance Payment and an Interim Payment Claim to the RP/GCCF. Claimant was assigned GCCF Claimant ID # [REDACTED]. These claims were denied by the GCCF.⁶

RECONSIDERATION CLAIM ANALYSIS:

The claimant requested reconsideration which was received by the NPFC on June 21, 2011. To support the request for reconsideration the Claimant submitted a letter that asserted she is in receipt of unemployment benefits which demonstrates she was let go from employment for a reason she had nothing to do with. The Claimant asserted that she has tried to contact her previous employer but has been unsuccessful. No other information has been presented to the NPFC.

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 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.

⁶ GCCF denial letter Re: Claimant's EAP Claim, dated 17 November 2010; GCCF denial letter Re: Claimant's Interim Payment Claim, dated 6 May 2011.

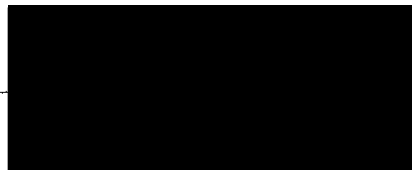
The NPFC performed a complete review of the documentation presented by the Claimant. The Claimant's request for reconsideration letter stated that she was let go from her job due a decline in business that resulted from the oil spill although there is no evidence to support that allegation. The allegation of a decline in business during the Deepwater Horizon incident is not enough to demonstrate the oil spill directly affected her employer as opposed to other economic factors.

The Claimant has provided no new information therefore the Claimant has failed to meet the burden of demonstrating a loss of profits 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.

Based on the foregoing information, the NPFC again denies the claim because (1) the Claimant has failed to demonstrate that she had an alleged loss of profits in the amount claimed and (2) the Claimant has failed to demonstrate a loss of profits 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.

This claim is denied upon reconsideration.

Claim Supervisor:



Date of Supervisor's review: *6/27/11*

Supervisor Action: *Denial on reconsideration approved*

Supervisor's Comments:

U.S. Department of
Homeland Security

United States
Coast Guard



Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim # N10036-0724
09 May 2011

Re: Claim Number: N10036-0724

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 your claim, # N10036-0724, involving the Deepwater Horizon oil spill. Please see the attached Claim Summary/Determination Form for further explanation.

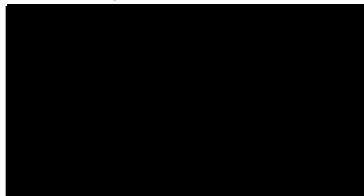
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you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

Reconsideration of the denial will be based upon the information provided. A claim may be reconsidered only once. Disposition of that reconsideration in writing will constitute final agency action. Failure of the NPFC to issue a written decision within 90 days after receipt of a timely request for reconsideration shall, at the option of the claimant, be deemed final agency action. All correspondence should include claim number N10036-0724.

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: (1) Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00002839

CLAIM SUMMARY/DETERMINATION FORM

Date	06 May 2011
Claim Number	N10036-0755
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
Claim Manager	[REDACTED]
Amount Requested	\$66,778.00

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 28 April 2011, [REDACTED] (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Funds Center (NPFC) for \$66,778.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

Claimant asserted that he worked as a deep sea diver offshore in the Gulf of Mexico for Global [REDACTED]. Claimant alleged that as a result of the Deepwater Horizon oil spill, “the industry i [sic] work in, the oilfield, suffered tremendously [and] I was essentially put out of work for several months. . . .”¹

APPLICABLE LAW

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

¹ Letter addressed “to whom it may concern,” undated.

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 this claim, the Claimant presented his OSLTF claim form; letter addressed “to whom it may concern,” undated; GCCF denial letter Re: Claimant's Final Payment claim, dated 15 April 2011; various earnings statements from [REDACTED] 2009 & 2010 W-2's from [REDACTED] and IRS Wage and Income Transcript 2008.

Procedurally, the Claimant presented a Full Review Final Payment claim for \$79,000.00 in lost profits and earnings to the RP/GCCF. He was assigned GCCF [REDACTED] and Claim [REDACTED]. On 15 April 2011, this claim was denied by the GCCF.²

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 his claim. The NPFC considered all documentation presented by Claimant.

The claim is DENIED because the alleged loss in the amount of \$66,778.00 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.

In reviewing this claim, the NPFC contacted the Claimant's employer, [REDACTED] Inc. (Global) to verify the Claimant's employment and the circumstances of his alleged loss of earnings. The Manager of [REDACTED] Gulf of Mexico Division indicated that divers like the Claimant are contract labor and utilized by [REDACTED] on an ‘as needed’ basis. The Manager

² GCCF Denial letter Re: Claimant's Final Payment claim, dated 15 April 2011.

explained that contract labor earns wages, not guaranteed salary like statutory employees. Given this, the Manager could not say that a diving contractor like the Claimant lost wages from [REDACTED] as a result of the Deepwater Horizon oil spill. The Manager stated that he could say that significant delays in the permitting process impacted the industry as a whole, including [REDACTED] and its associated workers.³

Because the evidence fails to demonstrate that the Claimant's alleged loss in the amount of \$66,778.00 is 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, this claim is DENIED.

Claim Supervisor [REDACTED]

Date of Supervisor's Review: *5/9/11*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

³ PHONECON, [REDACTED] Inc. Gulf of Mexico Region Manager and NPFC staff, 04 May 2011.
09/14/11

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 # N10036-0716
16 May 2011

Re: Claim Number: N10036-0716

Dear [REDACTED]

The National Pollution Funds Center, in accordance with the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq. (OPA) and the associated regulations at 33 C.F.R. Part 136, denies your claim, N10036-0716, relating to the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination form for further explanation.

You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. If, however 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 N10036-0716.

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

FOIA2011-3380-0002843

CLAIM SUMMARY/DETERMINATION FORM

Date	12 May 2011
Claim Number	N10036-0716
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
Claim Manager	[REDACTED]
Amount Requested	\$14,981.00

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 25 April 2011, [REDACTED] (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Funds Center (NPFC) for \$14,981.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

Claimant works as a poker dealer at [REDACTED] in New Orleans, Louisiana.¹ Claimant is compensated based on an hourly wage and tips, which comprise the majority of his pay.² Claimant asserted that as a result of the Deepwater Horizon oil spill, his hours and tips were reduced, leading to loss of income.³

Claimant calculated his loss by dividing his total hours worked in 2010 (1,658) by his 2010 gross annual earnings (tips and hourly wages), which equals an average of \$35.50 per hour. Claimant then subtracts the total maximum number of hours he could have worked in 2010 (2,080)⁴ from actual hours worked (1,658), leaving a difference of 422 hours. Claimant multiplied this difference by \$35.50 to reach his total potential loss of \$14,981.00.⁵

APPLICABLE LAW

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

¹ OSLTF Claim Form.

² Claimant's "Summary of 2010 Paystubs".

³ *Id.*

⁴ Claimant gets 2,080 by multiplying 40 (hours a week) by 52 (number a weeks a year).

⁵ Claimant's "Summary of Actual and Potential Losses".

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 the OSLTF

In support of his claim, Claimant presented the following documentation:

- OSLTF Claim Form;
- Claimant's handwritten summary of 2010 pay stubs;
- Claimant's handwritten summary of calculations for actual and potential losses dated 25 April 2011;
- W-2s from [REDACTED] for 2009 and 2010;
- Paystubs from [REDACTED] for the period ending 24 December 2009;
- Paystubs from [REDACTED] for the periods ending 07 January 2010 through 23 December 2010.

On 14 October 2010, Claimant presented six-month Emergency Advance Payment (EAP) and Final Payment claims each for \$10,000.00 in lost profits and earnings to the GCCF. Claimant was assigned GCCF Claimant ID [REDACTED] and Claim [REDACTED] and [REDACTED] respectively. On 29 October 2010, Claim [REDACTED] was denied by the GCCF.⁶

On 25 April 2011, Claimant presented this claim for \$14,981.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

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 documentation presented by Claimant.

Under 33 C.F.R. § 136.103(a), all claims for removal costs or damages must be presented first to the responsible party (RP). Claimant presented EAP and Final Payment claims each for \$10,000.00 in lost profits and earnings to the GCCF. Claimant then presented this loss of profits and impairment of earnings capacity claim for \$14,981.00 to the NPFC. Any claimed amount of damages exceeding \$10,000.00 was not properly presented to the RP/GCCF pursuant to 33 C.F.R. § 136.103(a) and is therefore DENIED.

The remainder of this claim is DENIED because the Claimant has not demonstrated through evidence that his alleged loss in the amount of \$10,000.00 is due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil.

Claimant's alleged loss entails reduced hours and reduced tips. With regard to reduced hours, Claimant asserted that he would have worked 2,080 hours in 2010, as opposed to the 1,658 (including training, PTO and meetings) that he actually recorded, had the Deepwater Horizon oil spill not occurred. Claimant has not, however, provided any evidence demonstrating his entitlement to this number of hours. In 2009, Claimant only recorded 1,799 hours, or 141 more than in 2010. There is no evidence in the record that this year-to-year reduction in hours resulted from the Deepwater Horizon oil spill.

On 11 May 2011, the NPFC contacted the Claimant's employer to verify whether the Claimant's hours had been reduced due to the oil spill. Claimant's employer, citing corporate policy, did not respond to the NPFC's questions.⁷

With regard to tips, the Claimant's final paystub for 2009 reveals that he earned \$51,897.61 in tips.⁸ Claimant's final paystub for 2010 reveals that he earned \$47,594.84 in tips.⁹ Claimant has not demonstrated that the difference in tips from 2009 and 2010 resulted from the Deepwater Horizon oil spill.

Because Claimant has not demonstrated that his alleged loss in the amount of \$10,000.00 is due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil, this claim is DENIED.

⁶ GCCF denial letter Re: Claimant's EAP claim, dated 29 October 2010.

⁷ PHONECON between the NPFC and [REDACTED] HR representative, dated 11 May 2011.

⁸ Paystub from [REDACTED] for the period ending 24 December 2009 (denoting tipped income as "TOKES").

⁹ Paystub from [REDACTED] for the period ending 23 December 2010 (denoting tipped income as "TOKES").

Claim Sup



Date of Review: *5/16/11*

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

5890
6/3/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]



RE: Claim Number: N10036-0726

Dear [REDACTED]

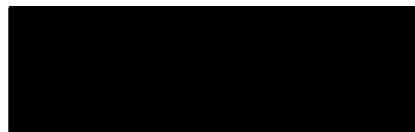
The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq. (OPA) and the associated regulations at 33 C.F.R. Part 136, denies payment on the claim number N10036-0726 involving the Deepwater Horizon oil spill. Please see the attached Claim Summary/Determination Form for further explanation.

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

Reconsideration of the denial will be based upon the information provided. A claim may be reconsidered only once. Disposition of that reconsideration in writing will constitute final agency action. Failure of the NPFC to issue a written decision within 90 days after receipt of a timely request for reconsideration shall, at the option of the claimant, be deemed final agency action. All correspondence should include claim number N10036-0726.

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

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

FOIA2011-3380-00002848

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-0726
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: \$11,765.00

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 April 29, 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 \$11,765.00 in lost profits and earning capacity resulting from the Deepwater Horizon incident.

Claimant asserted that she provided daycare for her grandchildren until her daughter lost her job and no longer needed her services. The Claimant stated that her daughter lost her job as a result of the oil spill therefore the Claimant is alleging a loss of income due to the oil spill.

The Claimant provided copies of denial letters from the GCCF for her emergency advance payment claim and final 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.

- (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:

- Optional OSLTF Claim Form
- Copy of Social Security card and Driver's License
- GCCF Full review Final Claim Payment Form
- Handwritten ledger detailing back rent and late fees owed
- Two (2) indebt notices from [REDACTED] Rentals
- GCCF denial letters for Emergency Advance Payment (EAP) and Final claims
- Letter of explanation
- Sixteen (16) handwritten receipts for childcare
- Handwritten ledger detailing amounts owed to Claimant from GCCF for damages
- 2009 & 2010 Schedule C
- Unsigned letter from [REDACTED] of Claimant's home of record
- Letter from Claimant's daughter explaining the daycare situation for her children

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 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,

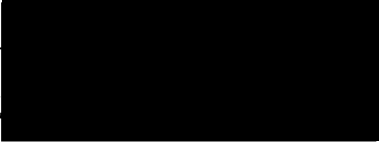
information, and documentation deemed necessary by the Director, NPFC, to support the claim. The NPFC considered all documentation presented by the Claimant.

Based on the documentation provided by the Claimant, the Claimant indicated lost wages and days as a result of the Deepwater Horizon incident.

On May 2, 2011, the NPFC sent, via certified 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:

- a) Detailed explanation of the claim and how you arrived at your sum certain of \$11,765.00. You must be able to demonstrate that you have lost \$11,765.00.
- b) In your letter to the GCCF you state you have lost \$7,540.00 in income since May 2010, yet you request an additional \$3,000.00 for rent and \$1,225.00 for late fees. Please explain.
- c) If your only client is your daughter, please provide a detailed explanation on how and why the oil spill caused your daughter to lose her job. If she was compensated by the GCCF, please explain.
- d) When was the last time you provided daycare?
- e) What have you done to mitigate your loss? Have you looked for other employment?
- f) If you have received unemployment benefits from 2009 through the present, provide copies of payments received and statements of benefits.
- g) You must be able to show 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.
- h) Please provide financial documentation showing that you received \$7,540.00 in income in the months May through January in previous years.
- i) Income Tax Return Filings for 2008, 2009 and 2010 including all attachments, Schedule C's, W-2's and form 1099's.
- j) Provide copies of pay stubs, pay checks and earnings statements for all work during 2008, 2009, and 2010.
- k) Monthly profit and loss statements for 2008, 2009, and 2010.

The Claimant has not provided the additional documentation to support the claim in order to demonstrate a loss of profits and earnings. Therefore, this claim is denied because (1) the Claimant has failed to meet the burden to demonstrate that there was a loss of profits and (2) that the alleged loss was due to the injury to, destruction of, or loss of property or natural resources as a result of a discharge or substantial threat of discharge of oil.

Claim Supervisor:  Division

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

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 # N10036-0728
25 May 2011

Re: Claim Number: N10036-0728

[REDACTED]

[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 N10036-0728 involving the Deepwater Horizon oil spill. Please see the attached Claim Summary/Determination Form for further explanation.

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

Reconsideration of the denial will be based upon the information provided. A claim may be reconsidered only once. Disposition of that reconsideration in writing will constitute final agency action. Failure of the NPFC to issue a written decision within 90 days after receipt of a timely request for reconsideration shall, at the option of the claimant, be deemed final agency action. All correspondence should include claim number N10036-0728.

Mail reconsideration requests to:

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

Sincerely,

[REDACTED]

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

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

FOIA2011-3380-00002852

CLAIM SUMMARY/DETERMINATION FORM

Date	24 May 2011
Claim Number	N10036-0728
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
Amount Requested	\$5,706.00

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 28 April 2011, [REDACTED] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$5,706.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

Claimant, who was employed at a [REDACTED] store in New Orleans, LA, asserted that his weekly hours were reduced as a result of the oil spill. The Claimant has provided correspondence from [REDACTED] which asserted that “due to hard times from the BP oil spill” the Claimant’s hours were cut “from 30 hours per week to 22 ½ hours per week.”¹ The Claimant also provided subsequent correspondence from [REDACTED] which revised the stated hours worked by the Claimant before the spill to 40 hours per week.²

APPLICABLE LAW

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

¹ Letter from [REDACTED] of [REDACTED] dated 13 October 2010.

² Letter from [REDACTED] of [REDACTED] dated 29 December 2010, as found within the Claimant’s GCCF file.

- (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 this claim, Claimant submitted the following documentation:

- Oil spill claim form dated 28 April 2010;
- GCCF Claim Form;
- Letter from [REDACTED] manager of [REDACTED] dated 13 October 2010;
- Letter from Claimant to the NPFC dated 06 May 2011;
- Letter from Claimant to the NPFC re: permission to obtain GCCF file dated 28 April 2011;
- Cover letter from Claimant dated 28 April 2011; and
- GCCF Claim File.

Prior to presentment to the NPFC, on 4 November 2010, the Claimant presented an Emergency Advance Payment claim for \$1,000.00 in lost profits and earnings to the RP/GCCF. He was assigned Claimant II [REDACTED] and Claim [REDACTED]. On 6 December 2010, Claimant's EAP claim was denied by the GCCF.³

On 5 January 2011, Claimant presented a Full Review Final Payment claim for \$5,706.00 in lost profits and earnings to the GCCF. On 15 April 2011, Claimant's Final Payment claim was denied by the GCCF.⁴

³ GCCF denial letter Re: Claimant's EAP claim, dated 6 December 2010.

⁴ GCCF denial letter Re: Claimant's Interim Payment/Final Payment Claim, dated 16 April 2011.

On 28 April 2011, the Claimant presented the subject claim to the NPFC for \$5,706.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

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.

Claimant asserted that his weekly hours at [REDACTED] were reduced as a result of the oil spill, which led to his loss of earnings. To verify this assertion, the NPFC contacted the [REDACTED] in New Orleans, where the Claimant worked and allegedly suffered a reduction in hours. The Store indicated that it experienced a decline in sales due to the generally deteriorating economic environment.⁵ The Store further stated that although the oil spill certainly affected its business, information which might apportion the store's relative losses as between the oil spill versus other factors which might have negatively impacted the business could not be provided.⁶ Further, although the store does sell merchandise related to boating and fishing, the store is a full service hardware store, and, while employees are expected to work the entire store, the Claimant was generally assigned to the plumbing department.

This claim is denied because the Claimant has failed to demonstrate that the alleged loss in the amount of \$5,706.00 is due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil.

Claim Supervisor: *Claims Adjudication Division*

Date of Supervisor's Review: *5/26/11*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

⁵ PHONECON with [REDACTED] of New Orleans manager on 24 May 2011.

⁶ Id.
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
5890
5/9/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number [REDACTED]

[REDACTED]

RE: Claim Number: N10036-0729

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number N10036-0729 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 N10036-0729.

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

FOIA2011-3380-00002856

CLAIM SUMMARY / DETERMINATION FORM

Date	: May 5, 2011
Claim Number	: N10036-0729
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 April 29, 2011, [REDACTED] (Claimant) presented a lost profits & earnings claim in the amount of \$5,000.00 to the National Pollution Funds Center (NPFC) for reimbursement. The Claimant asserted that during the summer and whenever he has free time, he works on charter boats and for a small retail store located in Ocean Springs, MS. The Claimant further stated that he lost both of his jobs as a result of the oil spill.

The Claimant's sum certain is for \$5,000.00, although in his own statement, he admitted to only suffering an alleged loss of \$1,540.00 over the course of the year.

The Claimant provided a GCCF denial letter for his final claim dated April 16, 2011. It was also determined that the Claimant filed an emergency advance payment claim with the GCCF that was also 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 the claim, the Claimant submitted the following documentation:

- NPFC OSLTF Form, dated April 28, 2011;
- Letter dated April 28, 2011 from the Claimant to the NPFC describing the claim;
- Impact Letter dated 12 April 2011 written by Claimant;
- Print out from GCCF website indicating lost profits final claim has been denied;
- 2008, 2009, and 2010 W-2s;
- 2008 and 2009 Income Tax Returns;
- 2009 Profit or Loss From Business Schedule C;

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.

With respect to the alleged loss of profits, the Claimant has failed to provide sufficient comparable financial information pursuant to the claims regulations found at 33 C.F.R. § 136.233, a claimant must establish the following to prove loss of profits or impairment of earning capacity:

- (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.

Additionally, the Claimant has failed to provide documentation to demonstrate that any alleged loss, if one had occurred, was 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. The Claimant has failed to provide any information pertaining to any charter vessels he may have worked on, had scheduled to work on but was advised otherwise, or provide any information regarding the retail store that shut down.

Based on the documents and information presented, this claim is denied because (1) the Claimant has not demonstrated that a loss of profits or earnings capacity occurred 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, and (2) the Claimant has failed to provide information on the loss of income associated with the charter work therefore the Claimant has failed to demonstrate a loss associated with this line of work.

Claim Supervisor 

Date of Supervisor's review: *5/9/11*

Supervisor Action: *Denial approved*

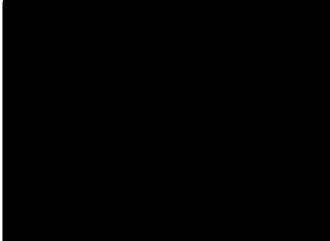
U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
National Pollution Funds Center
United States Coast Guard

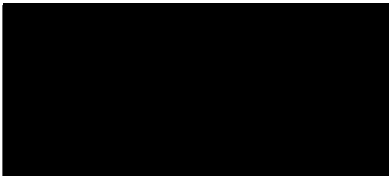
NPFC CA MS 7100
US COAST GUARD



CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Number: [REDACTED]

3830/D WIL
Claim # N10036-0730
27 June 2011



Re: Claim Number: N10036-0730

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 N10036-0730 involving the Deepwater Horizon oil spill. Please see the attached Claim Summary/Determination Form for further explanation.

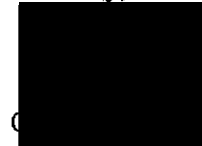
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you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

Reconsideration of the denial will be based upon the information provided. A claim may be reconsidered only once. Disposition of that reconsideration in writing will constitute final agency action. Failure of the NPFC to issue a written decision within 90 days after receipt of a timely request for reconsideration shall, at the option of the claimant, be deemed final agency action. All correspondence should include claim number N10036-0730.

Mail reconsideration requests to:

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

Sincerely,



Operations Division
National Pollution Funds Center
U.S. Coast Guard

Enclosure: Claim Summary/Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	N110036.0730
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$140,000.00

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 April 29, 2011, [REDACTED] (Owner), on behalf of [REDACTED] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for an alleged \$140,000.00 loss in profits and earnings resulting from the Deepwater Horizon oil spill.¹

Claimant is a computer gaming facility and electronics repair /computer training business located in D'Iberville, MS. Information provided by the Owner shows that the Claimant is a new business that opened on 1 June 2010.²

APPLICABLE LAW

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

¹ Optional OSLTF Claim Form received 29 April 2011, signed on 13 April 2011.

² Claimant's Projected and Actual statements of income, earnings statements and balance sheet/stockholder equity statement for June 2010.

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, the Owner submitted the following documentation:

- Optional OSLTF Claim Form dated 4/13/2011, received 4/29/2011.
- GCCF denial letter for EAP dated 7 December 2010.
- GCCF denial letter for Interim Payment/Full Review Final Payment dated 6 March 2011.
- Circle chart on affects of BP' oil spill on [REDACTED] and its employees.
- Two unsigned, undated hardship letters.
- [REDACTED] flier, indicating products/services offered.
- Three photographs of store.
- Cost projections for computer equipment, TV and console equipment, appliances and furniture.
- Revenue sources - rates for gaming, PC equipment services, training services & misc.
- Projected and Actual statements of income, earnings statements and balance sheet/stockholder equity statement for June 2010.
- Claim cover sheet for GCCF claim.
- Copy of Mississippi driver's license.
- 8/30/2010 [REDACTED] for September 2010 rent and additional items.
- To [REDACTED] electrical bill for service 8/11/10 to 9/15/10.
- Sales Receipt dated 9/28/10 from [REDACTED] Software for 15 seats.
- Cable One bill for 11/01/10 and 1/01/11.
- Mississippi Sales Tax Returns for 08/10, 08/10, 10/10,11/10, 12/10,01/11,02/11 and 03/11.
- [REDACTED] yard [REDACTED] for working on cleanup.

Prior to presentment to the NPFC, Claimant presented an Emergency Advance Payment (EAP) Claim to the RP/GCCF on 14 October 2010 for \$300,000.00 in lost profits and earnings. Claimant was assigned GCCF Claimant ID Number [REDACTED]. The \$300,000.00 EAP claim was denied on 7 December 2010.³

On 29 April 2011, Claimant presented this claim in the amount of \$140,000.00 for loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

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.

After an initial review, the NPFC sent the Claimant a letter requesting additional information to further evaluate the claim. The letter requested, among other things, financial documentation to support lost profits and an explanation of how the Deepwater Horizon oil spill caused the business losses. The Claimant was given 14 days to respond to the letter, dated 23 May 2011. To date, the Claimant has not responded.

This claim is denied for the following reasons: (1) Claimant has failed to meet the evidentiary burden to provide all evidence, information, and documentation deemed necessary by the Director, NPFC, to support its claim, pursuant to 33 C.F.R. § 136.105(e)(6); (2) Claimant has also failed to demonstrate its alleged loss in the amount of \$140,000.00 through financial documentation; and (3) Claimant has failed to demonstrate that its alleged loss is due to injury or destruction or loss of real or personal property or a natural resource as a result of a discharge or a substantial threat of a discharge of oil.

[REDACTED]
Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *6/27/11*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

³ GCCF denial letter, dated 7 December 2010.
09/14/11

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
8/02/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]

[REDACTED]

RE: Claim Number: N10036-0732

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 N10036-0732 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination Form for further explanation.

Disposition of this reconsideration constitutes final agency action.

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

Sincerely,

[REDACTED]

Chief, Claims Adjudication Division
U.S. Coast Guard

ENCL: Claim Summary / Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-0732
Claimant	[REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: \$48,547.00

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 30 April 2011, [REDACTED] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$30,000.00 in loss of profits and impairment of earnings capacity and \$40,000.00 in real or personal property damages resulting from the Deepwater Horizon oil spill.

Claimant asserted that as a result of the Deepwater Horizon oil spill, he lost rental revenue from one property and lost a sale on another property.¹

Although the Claimant presents \$40,000.00 in real or personal property damage, because he seeks the loss of value on real property, as opposed to physical damages to real or personal property, his election of \$40,000.00 in real or property damage is interpreted as a claim for \$40,000.00 in loss of profits and impairment of earnings capacity. Claimant therefore seeks \$70,000.00 in lost profits and earnings from the OSLTF.

Prior to presentment to the NPFC, the Claimant presented a claim to BP and an Emergency Advance Payment (EAP), Interim Payment, and Final Payment claims to the GCCF. Claimant was assigned Claimant Identification [REDACTED]. Claimant indicated that he was paid \$2,714.89 by BP on 10 August 2010 and the NPFC has confirmed with the GCCF that the Claimant also received an additional payment from BP in the amount of \$2,067.19 on August 2, 2010, \$2,200.00 by the GCCF on 4 September 2010, \$300.00 by the GCCF on 13 September 2010, and \$15,200.00 from the GCCF on 13 October 2010.² To date, the Claimant has received \$22,482.08 from the RP/GCCF.

REQUEST FOR RECONSIDERATION:

On July 25, 2011, the Claimant sent a request for reconsideration to the NPFC stating he would like the NPFC to reconsider his claim as he disagreed with the NPFC's denial on the diminution

¹ OSLTF Claim Form dated 28 April 2011

² E-mail from Claimant to NPFC staff dated 11 May 2011.

of value on the property that did not sell. The Claimant has amended his sum certain on reconsideration to \$48,547.00, more fully described below.

The NPFC denied the claim originally on May 26, 2011 because the Claimant (1) has been compensated by BP/GCCF and thus has been compensated in excess of his alleged loss; (2) that the Claimant has failed to demonstrate his alleged loss of profits in the amount of \$70,000.00; and (3) that the Claimant has failed to establish that his alleged loss is due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil.

On reconsideration, the Claimant provided a one page typed letter explaining his request for reconsideration along with the following documentation:

- a copy of a letter from the Florida Realtors to [REDACTED] (realtor who represented the potential buyer [REDACTED] who cancelled his contract to buy the Claimant property in May 2010) indicating that on behalf of the Florida Real Estate Licensee Emergency Fund, they have awarded the realtor's claim for lost commission associated with the lost sale on the Claimant's property;
- copy of a letter from the realtor for the purchaser who cancelled his sales contract for the Claimant's property which affirms that she received compensation for her claim;
- a copy of the Residential Sale/Purchase Contract by and between the Claimant and Mr. [REDACTED] for sale of the Claimant's subject property at a contract price of \$400,000.00;
- a copy of the intended purchaser's deposit check and Deposit Verification and Transmittal Form dated May 11, 2010;
- copy of the HUD-1 form created in support of the intended sale/purchase;
- a copy of a hand written letter from the intended purchaser, [REDACTED] dated June 29, 2010 that states why [REDACTED] has opted to cancel his contract to purchase the Claimant's subject property;
- copy of the Warrant Deed for the Claimant's property;
- copy of Uniform Residential Appraisal Report for the Claimant's property dated September 23, 2010 showing a property value of \$395,000.00;
- copy of an invoice associated with the September 2010 appraisal report;
- copy of a property listing for a home that sold across the street from the Claimant's property on March 29, 2011 for a sale price of \$350,000.00;
- a breakdown of the Claimant's sum certain on reconsideration which is as follows:

May 2010 thru December 2010:

\$2,742.31 in monthly mortgage payments to [REDACTED]

\$373.75 in monthly interest payment to [REDACTED]

\$24,928.48 is the total of the above amounts for an eight month period

January 2011 thru March 2011:

\$2,742.31 in monthly mortgage payments to [REDACTED]

\$360.77 in monthly interest payment to [REDACTED]

\$9,309.24 is the total of the above amounts for a three month period

April 2011 thru June 2011:

\$2,742.31 in monthly payments to [REDACTED]

\$360.77 in monthly interest payment to [REDACTED]

\$9,309.24 is the total of the above amounts for a three month period

Loss in property value of \$5,000.00 as evidenced by cancelled sales contract dated May 8, 2010 for the Claimant's property in the amount of \$400,000.00 vice the property value determined on September 23, 2010 via certified appraisal in the amount of \$395,000.00

Total sum certain: \$48,546.96

RECONSIDERATION CLAIM ANALYSIS:

The claimant requested reconsideration which was received by the NPFC on July 25, 2011 via facsimile. The Claimant provided the above referenced documentation in support of his request for reconsideration.

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 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. The NPFC contacted the GCCF to confirm whether any of the payments made by either BP or the GCCF were for alleged losses claimed associated with the lost sales contract. The GCCF confirmed that all payments made were associated with lost rental income presented by the Claimant.

Claimant obtained and submitted to the NPFC a certified appraisal³ on the property in September 2010 (post spill) that suggested a value of \$395,000.00. Claimant seeks \$5,000 in an alleged loss in the real property's value, based on the \$400,000 sales contract price in May 2010 and the September 2010 appraised value of \$395,000, arguing that the property lost \$5,000 in value. The Claimant's property was not injured, destroyed or lost due to damage to the natural resource.

³ An appraised value of a property is only an indication of its value and can be used for various purposes.

When considering property value diminution, the concept could constitute an economic loss under OPA and the claims regulations only if the Claimant had realized an actual financial loss by selling the subject property at a lower sales price and the lower sales price was due to the injury, destruction or loss of the real property or the natural resource.

In this case the Claimant still owns the property; any alleged loss of value is speculative. Further, if he sells the property, the Claimant still has the burden to demonstrate that any loss he was to realize is due to the damage to the natural resource and not to other factors.

With respect to the Claimant's arguments associated with property taxes, mortgage interest and/or maintenance fees requested over a fourteen month period as discussed above, the NPFC finds that the Claimant would have been responsible for servicing the mortgage and paying property-related expenses regardless of the oil-spill until the properties were sold; therefore, these costs are not OPA compensable and are therefore also denied.

Based on the foregoing information, the NPFC denies the claim on reconsideration because (1) the Claimant has not demonstrated a loss of profits and earnings exceeding what he has been compensated by BP and GCCF, (2) the Claimant has not realized any financial losses because of a diminution in value by way of the sale of the subject property, and (3) the Claimant has not established that his alleged losses are due to the injury, destruction or loss of property or natural resources resulting from the Deepwater Horizon incident.

This claim is denied upon reconsideration.

Claim Supervisor 

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

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

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim # N10036-0732
26 May 2011

Re: Claim Number: N10036-0732

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 N10036-0732 involving the Deepwater Horizon oil spill. Please see the attached Claim Summary/Determination Form for further explanation.

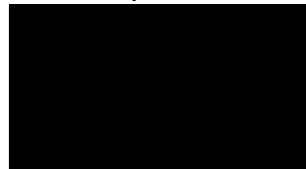
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you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

Reconsideration of the denial will be based upon the information provided. A claim may be reconsidered only once. Disposition of that reconsideration in writing will constitute final agency action. Failure of the NPFC to issue a written decision within 90 days after receipt of a timely request for reconsideration shall, at the option of the claimant, be deemed final agency action. All correspondence should include claim number N10036-0732.

Mail reconsideration requests to:

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

Sincerely,



Division
National Pollution Funds Center
U.S. Coast Guard

Enclosure: Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00002869

CLAIM SUMMARY/DETERMINATION FORM

Date	23 May 2011
Claim Number	N10036-0732
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity/ Real or Personal Property
Amount Requested	\$70,000.00

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 30 April 2011, [REDACTED] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$30,000.00 in loss of profits and impairment of earnings capacity and \$40,000.00 in real or personal property damages resulting from the Deepwater Horizon oil spill.

Claimant asserted that as a result of the Deepwater Horizon oil spill, he lost rental revenue from one property and lost a sale on another property.¹

Although the Claimant elects \$40,000.00 in real or personal property damage, because he seeks the loss of a gain on real property, as opposed to physical damages to real or personal property, his election of \$40,000.00 in real or property damage is interpreted as a claim for \$40,000.00 in loss of profits and impairment of earnings capacity. Claimant therefore seeks \$70,000.00 in lost profits and earnings from the OSLTF.

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.

¹ OSLTF Claim Form dated 28 April 2011
09/14/11

- (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 this claim, Claimant submitted the following documentation:

- OSLTF claim form dated 28 April 2011;
- Fax Cover Sheet;
- Handwritten calculations of loss of rental income 2010 and the first quarter of 2011;
- Statement of [REDACTED] 2011 rates;
- Statement of [REDACTED] 2010 rates;
- Statement of actual rental cancellations for the months of May through September 2010;
- 2011 booking report as of 07 April 2011;
- 2009 through 2010 annual booking reports;
- Statement of 2010 carrying costs for rental unit;
- Statement of first quarter 2011 carrying costs for rental unit;
- Wells Fargo monthly mortgage statements;
- Home equity line of credit statement dated 20 January 2011;
- Florida Real Estate Licensee Emergency Fund letter to [REDACTED] Realty dated 30 November, 2010;
- Residential sale and purchase contract;
- Deposit Verification dated 10 May 2011;
- Draft HUD-1 settlement statement;
- Letter from [REDACTED] dated 29 June 2010;
- 2008 W-2 Wage and Tax Statements;

- Warranty Deed;
- 2008, 2009, and 2010 Individual Tax Returns; and
- E-mail correspondence from Claimant to NPFC re: Request for Additional information dated 11 May 2011.

Prior to presentment to the NPFC, the Claimant presented a claim to BP and an Emergency Advance Payment (EAP), Interim Payment, and Final Payment claims to the GCCF. Claimant was assigned Claimant Identification [REDACTED]. Claimant indicated that he was paid \$2,714.89 by BP on 10 August 2010, \$2,200.00 by the GCCF on 4 September 2010, \$300.00 by the GCCF on 13 September 2010, and \$15,200.00 from the GCCF on 13 October 2010.² To date, the Claimant has received \$20,414.89 from the RP/GCCF.

On 30 April 2011, Claimant presented the subject claim for \$70,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

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 all information and documentation provided by Claimant.

Claimant asserted that as a result of the Deepwater Horizon incident, he was forced to reduce rates in order to increase bookings.³ The Claimant has also asserted that potential rentals declined and existing rentals were cancelled due to the oil spill.

As to the Claimant's request for the difference in value between the reduced rate in 2010 and 2011 bookings versus full rate 2009 bookings, the information provided by the Claimant is insufficient to support the losses alleged. For example, in July 2009 the Claimant indicated that his rental unit was booked 13 times. In July 2010, the Claimant's bookings actually *increased* to 25. The Claimant attributed the rise in July 2010 bookings to decreased rental rates, and has accordingly requested compensation for the lost revenue differential based upon all 25 July 2010 bookings in the amount of \$3,088.04. Because the Claimant has merely assumed that, but for the spill, he would have been able to rent the unit 25 times in July 2010 at the standard full rates, he has failed to provide sufficient evidentiary support for a claim of lost profits for that period.

The Claimant's other alleged monthly losses due to the reduced rates suffer similar deficiencies in proof. The Claimant has not shown, for each reduced rate booking, that the booking was made as a result of the reduced rate or that the reduction in rate was imperative to the booking.

The Claimant has provided the NPFC with information which may indicate, for certain months, that modest declines occurred in rentals year over year.⁴ However, some monthly rental figures remained the same or actually *increased* after the spill. The Claimant has shown, at most, a general decrease in market conditions from 2008 through 2011, but has not provided any

² E-mail from Claimant to NPFC staff dated 11 May 2011.

³ Yearly booking changes from July 2009 to July 2010 as shown on Claimant's handwritten calculations of loss of rental income in 2010 and the first quarter of 2011.

⁴ For example, yearly booking changes from 2009 to 2010 and 2011 for the months of May, August, and March as shown on Claimant's handwritten calculations of loss of rental income in 2010 and the first quarter of 2011.

evidence to support the proposition that any decline is due to the oil spill as opposed to other causes, such as generally declining market conditions. Specifically, evidence of a causal link between specific cancellations for which losses are claimed and the oil spill has not been provided.

As to the lost sale of the property located at [REDACTED], the Claimant alleged that he has suffered lost profits in the amount of \$40,000.00. Based on the information provided, the Claimant has not sold the property as of the date of his claim submission to the NPFC. Because the Claimant owns the property and has not suffered a loss on the sale of the property, this part of the claim is therefore prospective and not compensable under OPA pursuant to the governing regulations at 33 C.F.R. Part 136.⁵

Finally, to date, the Claimant has received \$20,414.89 from the RP/GCCF for his lost profits and earnings claims. Because the Claimant is unable to establish his alleged loss from the reduced/cancelled rentals or cancelled sale, the NPFC had determined that the Claimant has been fully compensated by the RP.

In consideration of the foregoing, this claim is denied because Claimant (1) has been compensated in excess of his alleged loss; (2) that the Claimant has failed to demonstrate his alleged loss of profits in the amount of \$70,000.00; and (3) that the alleged loss is due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil.

[REDACTED]

Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *5/26/11*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

⁵ 33 CFR 136.235 limits compensation to the actual net reduction or loss *suffered* (emphasis added). Similarly, although Claimant alleges that he has not been able to sell his property as a result of the oil spill, it is unclear as to how he has suffered a loss as he still owns the subject property and has not sold the property at a lower price subsequent to his initial contract.

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

[Redacted] 000

Fax: 202-493-6937

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Number: [Redacted]

5890/DWHZ
Claim # N10036-0733
3 June 2011

[Redacted]

Re: Claim Number: N10036-0733

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 your claim number N10036-0733 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. If, however 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 N10036-0733.

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]

Enclosures: Claim Summary/Determination Form

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-0733
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$16,502.75

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 29 April 2011, [REDACTED] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$16,502.75 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

Claimant cleans condominiums on Okaloosa Island and Pensacola Beach in Florida for [REDACTED].¹ Prior to the Claimant's current employment, the Claimant was employed under the same employer from 7 June 2010-27 June 2010 and was contracted to provide cleaning services to [REDACTED].² The Claimant asserted that as a result of the Deepwater Horizon oil spill, the tourism industry collapsed, creating vacancies at the condominiums owned by [REDACTED].³ As a result of these vacancies, the Claimant asserted [REDACTED] laid her off, leaving her without work until 30 April 2011.⁴

Claimant's sum certain was calculated by determining both her monthly wages and tips and prorating these amounts for eleven months after she was laid-off.⁵ The final number totaled \$16,502.75.⁶

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

¹ Attachment to Claimant's submission describing claim.

² PHONECON between NPFC and [REDACTED] dated 24 May 2011.

³ Attachment to Claimant's submission describing claim.

⁴ Id.

⁵ Id.

⁶ Id.

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 the OSLTF

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

- Optional OSLTF Claim Form received 29 April 2011;
- Employee Separation Notice completed by [REDACTED] dated 6 June 2010;
- Attachment to Claimant's submission describing claim;
- Pay Stubs dated 11 June 2010-2 July 2010;
- GCCF Denial Letter dated 1 April 2011;
- Wikipedia article on the Deepwater Horizon oil spill;
- Authorization and Release dated 9 May 2011 authorizing NPFC to obtain documents on behalf of Claimant;
- Fax from [REDACTED] describing nature of Claimant's employment.

Prior to presenting this Claim, Claimant presented multiple claims to the RP/GCCF, including an Interim Payment claim for \$24,512.00 in lost profits and earnings. Claimant was assigned GCCF Claimant II [REDACTED] and Claim [REDACTED]. The Interim Payment claim was denied by the GCCF.

On 29 April 2011, Claimant presented this claim for \$16,502.75 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

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.

The claim is denied because the alleged loss in the amount of \$16,502.75⁷ 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 her contracting employer reducing contract staff in an effort to decrease business expenditures. The NPFC attempted to obtain information from [REDACTED] regarding the Claimant's contract work with [REDACTED] and [REDACTED], but the Claimant's employer refused to comply.⁸ Correspondence between the NPFC and [REDACTED] established that the reduction in housecleaning personnel resulted from a

⁷ Regarding the lost profit/earning capacity, Claimant's calculation included multiplying her monthly wages of \$1,100.25 and monthly tips of \$400.00 by eleven to account for eleven months of lost income from 28 June 2010-28 June 2011. Under OPA, this amount is not compensable because only actual net reductions or loss of earnings or profits are compensable and prospective future losses are not. Claimant's use of a multiplier for future earnings is entirely prospective in nature. There is no indication that Claimant would continue to generate a base of wages and tips to substantiate the multiplied amount irrespective of the Deepwater Horizon incident.

⁸ Fax between NPFC and [REDACTED], received 11 May 2011.

business decision to reduce the number of contract workers in light of reduced tourism in the Gulf of Mexico.⁹

Because the Claimant has not demonstrated that her alleged loss in the amount of \$16,502.75 due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil, this claim is denied.

Claim Supervisor: *NPFC* [REDACTED]

Date of Review: *6/3/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

⁹ PHONECON between NPFC and [REDACTED] dated 24 May 2011 and 26 May 2011.

U.S. Department
of Homeland Security

United States
Coast Guard



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

U.S. Coast Guard Stop 7100

16480

24 May 2011

CERTIFIED MAIL Number: [REDACTED] 1

[REDACTED]

RE: Claim Number: N10036- 0735

D [REDACTED]

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

Background

On or about 20 April 2010, the Mobile Offshore Drilling Unit Deepwater Horizon exploded and sank in the Gulf of Mexico. As a result, oil was discharged and the federal government and Gulf coast states closed certain waters to commercial and recreational fishing. 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 individual and business claims on behalf of BP.

Facts

On 10 October 2010, you submitted a claim to the GCCF for lost subsistence use of natural resources, which was denied. On 27 April 2011, you presented a claim to the NPFC for \$5,000 for lost use of natural resources and \$5,000 for natural resource damages following the Deepwater Horizon spill.

Applicable Law

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

General Claim Requirements

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

Subsistence Use Loss Claim Requirements

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

- 1) be for lost subsistence use and submitted by an eligible claimant;
- 2) identify and describe the actual subsistence use of each specific natural resource for which compensation is being claimed;
- 3) describe how and to what extent the claimant's subsistence use was affected by injury to or loss of each specific natural resource;
- 4) describe efforts to mitigate the subsistence use loss;
- 5) be based on the reasonable cost to replace the lost subsistence use of natural resources; and
- 6) be reduced by the amount of all compensation made available to the claimant to compensate for the loss, all income which was derived by utilizing the time which otherwise would have been used to obtain the subsistence resources, and any avoided costs associated with the subsistence activity, such as gas for vehicles or boats, bait, and other overhead costs not incurred due to the spill.

Also, see http://www.uscg.mil/npfc/Claims/DWH_faqs.asp.

Claim Submission and Documentation

The claim that you submitted to the NPFC on 27 April 2011, included the NPFC Optional OSLTF Claim Form, a letter from you further describing your losses, and no other supporting documents.

NPFC Determination

The NPFC finds that you have not met your burden of proving a subsistence use loss as defined by the Oil Pollution Act (OPA, 33 U.S.C. 2701 et seq.) and OPA claims regulations (33 C.F.R. Part 136). Your claim is denied because you have not documented:

- 1) the type and amount of natural resource for which compensation is being claimed (i.e., what you typically catch and use for subsistence food). You provide the recreational fish limits established by the state, but provide no evidence of your past catches and frequency of use for subsistence food;
- 2) how and to what extent your subsistence use was affected by injury to or loss of specific natural resources. You state that you fish from the Okaloosa Island Fishing Pier, yet the website (<http://www.okaloosaislandpier.com/>) includes a fishing report for each day since the spill occurred indicating that the pier never closed due to the spill; or
- 3) the dollar amount of lost subsistence use claimed. The NPFC cannot determine how you determined a \$1,700 loss or the actual costs incurred to replace the fish that you would have caught and eaten if the spill had not occurred (i.e., insufficient receipts or statements were provided to support damages incurred in the amount claimed).
- 4) Also, natural resource damages (NRD) under OPA are public use losses as described in the implementing regulations at 33 C.F.R. Part 136.207-136.211, and may only be submitted by the appropriate federal, state, or tribal natural resource trustees. You are not an eligible claimant under OPA to submit a claim for NRD.

Request for Reconsideration

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

Should you choose to request NPFC reconsideration of this determination, please mail the request and additional claim information with the appropriate claim number (N10036-0735) to:

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

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

Sincerely,

[REDACTED]
Natural Resource Damage Claims Division
National Pollution Funds Center
U.S. Coast Guard

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 # N10036-0736
3 June 2011

Re: Claim Number: N10036-0736

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 your claim number N10036-0736 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. If, however, 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 N10036-0736.

Mail reconsideration requests to:

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

Sincerely,
[REDACTED]

Enclosures: Claim Summary/Determination Form

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-0736
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits Impairment of Earnings Capacity
Amount Requested	\$4,500.00

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 certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On 2 May 2011, [REDACTED] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$4,500.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

Claimant is employed as a certified United States Coast Guard civilian instructor for fire school training and contracts with [REDACTED] for training classes.¹ Claimant trains, teaches, instructs and certifies oil platform and drilling rig workers involving fire fighting, prevention and first aid.² Claimant asserted that as a result of the Deepwater Horizon oil spill, the number of potential trainee oil platform and rig workers plummeted, resulting in a reduction of the Claimant's income.³

Claimant's sum certain was calculated by comparing his 2009 income to his 2010 income and determining the difference between the two.⁴ This totaled \$4,544.00 and the Claimant submitted a sum certain of \$4,500.00.⁵

APPLICABLE LAW

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

¹ Attachment to Claimant's submission, Memorandum describing claim.

² Id.

³ Id.

⁴ Attachment to Claimant's submission, '2009 and 2010 Wages'.

⁵ Id. see also OSLTF.

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 the OSLTF

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

- Optional OSLTF claim form, received 2 May 2011;
- GCCF Denial letter dated 9 March 2011;
- GCCF Claimant Identification Information;
- Undated letter from Claimant to 'Whom It May Concern';
- Photocopies of Claimant's business card, [REDACTED] business card and [REDACTED] business card;
- Claimant's GCCF Application;
- Letter from Claimant to 'Sirs' describing his claim;
- Attachment to submission, '2009 and 2010 Wages' including photocopy of Claimant's Mississippi Driver's License and Social Security card;
- 2010 version of W-2 tax form with wages from [REDACTED]; and

- Paystubs from [REDACTED]: 1 August 2008- 9 April 2009; 5 June 2009-2 July 2010; 1 September 2010-19 November 2010.

Prior to presenting this Claim, on 4 January 2011, Claimant presented an Interim Payment Claim to the GCCF for \$4,544.00 and was assigned Claimant ID [REDACTED] and Claim [REDACTED]. The Interim Payment Claim was denied on 9 March 2011.⁷

On 2 May 2011, Claimant presented this claim for \$4,500.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

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 documentation presented by Claimant.

The claim is denied because the alleged loss in the amount of \$4,500.00 is not due to the injury, destruction, loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil. Claimant provided tax information and paystubs to substantiate a potential loss of earnings in 2010. However, by the Claimant's own admission, he implicated other factors as the cause of his loss. He claimed a reduction in earnings due to "the resulting moratorium imposed on drilling in the Gulf of Mexico."⁸ Claimant later confirmed this connection between his loss and the oil moratorium.⁹ Furthermore, the Claimant provided no other documentation to support a connection between his alleged loss and the Deepwater Horizon oil spill.

In sum, the Claimant has not proven that he suffered a loss in income 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. Accordingly, the Claimant has not met the evidentiary burden prescribed in 33 C.F.R. Part 136, and the claim is denied.

<p>Claim Supervisor: <i>NPFC Claim [REDACTED] Division</i></p> <p>Date of Review: <i>6/3/11</i></p> <p>Supervisor's Actions: <i>Denial approved</i></p> <p>Supervisor's Comments:</p>

⁶ Report to the GCCF dated 20 May 2011.

⁷ GCCF Denial Letter dated 9 March 2011.

⁸ Attachment to submission, to 'Sirs' describing claim.

⁹ PHONECON between Claimant and NPFC Representative, 13 May 2011.

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 # N10036-0737
29 June 2011

Re: Claim Number: N10036-0737

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 N10036-0737 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 N10036-0737.

Mail reconsideration requests to:

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

Sincerely,

[REDACTED]
National Pollution Funds Center
U.S. Coast Guard

Enclosure: Claim Summary/Determination Form

09/14/11

FOIA2011-3380-0002887

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-0737
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$1,050.00

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 02 May 2011, [REDACTED] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$1,050.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

The Claimant owns a condo unit in the [REDACTED] in Navarre Beach, Florida. His unit is rented by [REDACTED] in Navarre Beach.¹ On 14 June 2010, a renter e-mailed Century 21 to cancel her reservation for the week of 17 July through 24 July for \$1,050.00.² The renter stated the reason for her cancellation was "due to the recent oil spill." The Claimant stated [REDACTED] made their best effort to rent the unit but had no success.³

Claimant presented a Final Payment Claim to the GCCF on 20 December 2011 and was issued GCCF Claimant ID [REDACTED] and Claim [REDACTED].⁴ On 27 June 2011 GCCF made an Interim Payment to the Claimant of \$1,050.00. GCCF also made a Final Payment Offer of \$25,000.00.

APPLICABLE LAW

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

¹Letter to NPFC in response to request for additional information dated 05 May 2011

²E-mail from rent [REDACTED] cancelling reservation 17 July to 24 July 2010 dated 14 June 2010

³Letter to NPFC in response to request for additional information dated 05 May 2011

⁴GCCF Claim Status site

- (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, the Claimant submitted the following documentation:

- OSLTF Claim Form signed by Claimant on 20 April 2011
- E-mail from rent [REDACTED] to [REDACTED] cancelling reservation 17 July to 24 July 2010 dated 14 June 2010
- Letter to GCCF submitting claim dated 06 September 2010
- Letter to GCCF to follow-up on claim dated 07 October 2010
- Letter to [REDACTED], Congressman from Kentucky, about GCCF claim dated 07 October 2010
- Privacy Form from [REDACTED] Congressman from Kentucky dated 01 November 2010
- Letter to [REDACTED] Congressman from Kentucky, about GCCF claim dated 11 October 2010
- Letter to GCCF submitting second claim packet claim dated 20 December
- GCCF Claim Form 2000-C for a Final Payment dated 20 December 2010 for \$1,050.00
- Copy of Occupancy State for [REDACTED] at [REDACTED] from 01 February to 10 October 2010

- Letter to NPFC in response to request for additional information dated 05 May 2011
- Copy of US and Kentucky Partnership Tax Returns for 2009
- Letter to Claimant from GCCF dated 30 September 2010 requesting additional information
- Letter to Claimant from GCCF dated 05 April 2011 acknowledging receipt of Final Claim

On 02 May 2011 NPFC sent the Claimant a letter requesting additional information in order to further evaluate the claim. On 24 May 2011 the Claimant responded to the request.

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 their claim. The NPFC considered all the documentation submitted by the Claimant.

Based on information presented by the Claimant and information available to the NPFC, the GCCF paid a total of \$1,050.00 to the Claimant as compensation for his claim. According to information from the GCCF, the Claimant has also been offered a \$25,000.00 Quick Payment.

This claim is denied because it appears from the record that the Claimant has fully settled his \$1,050.00 claim with BP/GCCF, and that BP and GCCF have compensated the Claimant, including a \$25,000.00 Quick Payment offer.

Claim Supervisor 

Date of Supervisor's Review: *29 June 2011*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

U.S. Department of
Homeland Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

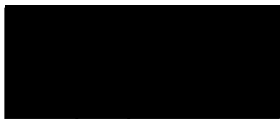
NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937

5890
6/28/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]



RE: Claim Number: N10036-0738

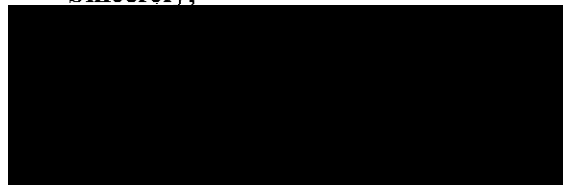
Dear [REDACTED]

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 N10036-0738 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination Form for further explanation.

Disposition of this reconsideration constitutes final agency action.

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

Sincerely,



U.S. Coast Guard

ENCL: Claim Summary / Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-0738
Claimant	: ██████████
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
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 2 May 2011, ██████████ (Claimant) presented a lost profits & earnings capacity claim in the amount of \$6,000.00 to the National Pollution Funds Center (NPFC) for reimbursement.

The Claimant stated on the Optional OSLTF claim form that “the oil spill caused my offshore company to shut down production. I lost 6 weeks of employment, home went into foreclosure and all bills are overdue.”¹ Claimant worked as a platform worker painting and sandblasting offshore platforms. To support his claim, the Claimant presented the NPFC several handwritten letters, 3 paystubs and a 2008 Tax Return. The handwritten letters stated the Claimant missed four weeks of work due to the spill. The other letter stated that the Claimant was unable to work and lost income from 21 April 2010 through 3 June 2010.

Prior to presentment to the NPFC, the Claimant presented an Emergency Advance Payment (EAP) and Final Payment claim to the RP/GCCF in the amount of \$6,000.00. He was assigned Claimant Identification Number ██████████ and Claim ██████████ (EAP) and ██████████ (Final). By letter dated 25 October 2010², the GCCF denied Claimant’s EAP claim. By letter dated 8 March 2011³, the GCCF denied Claimant’s Final Payment claim.

REQUEST FOR RECONSIDERATION:

On May 26, 2011, the Claimant sent a request for reconsideration to the NPFC stating he would like the NPFC to reconsider his claim.

The NPFC denied the claim originally on May 21, 2011 because the Claimant failed to demonstrate (1) the alleged loss of profits in the amount of \$6,000.00, as claimed, or (2) that his

¹ Optional OSLTF Claim Form dated May 2, 2011

² GCCF denial letter Re: Claimant’s EAP claim dated 25 October 2010.

³ GCCF denial letter Re: Claimant’s EAP claim dated 8 March 2011.

alleged loss 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.

On reconsideration, the Claimant provided a handwritten letter requesting an increased amount from his original request of \$6,000.00 to \$7,950.00. On reconsideration, the Claimant is requesting \$7,950.00 for the loss of five weeks of work at \$1,590.00 a week from April 21, 2010 through June 3, 2010. The Claimant provided W-2s for 2008 through 2010 along with a copy of his 2008 through 2010 Form 1040 Income Tax Forms.

Prior to presentment to the NPFC, the Claimant presented an Emergency Advance Payment (EAP) and Final Payment claim to the RP/GCCF. He was assigned Claimant Identification Number [REDACTED] and Claim # [REDACTED] (EAP) and [REDACTED] (Final). By letter dated 25 October 2010⁴, the GCCF denied Claimant's EAP claim. By letter dated 8 March 2011⁵, the GCCF denied Claimant's Final Payment claim. Both claims presented to the RP/GCCF were only in the amount of \$6,000.00 each.

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 provided a handwritten letter requesting an increased amount from his original request of \$6,000.00 to \$7,950.00. The Claimant provided W-2s for 2008 through 2010 along with a copy of his 2008 through 2010 Form 1040 Income Tax returns.

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 and that the loss was due to the destruction or injury to real or personal property or natural resources as a result of a discharge or substantial threat of a discharge of oil. 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. The Claimant's request for reconsideration letter provided nothing more than a statement that he lost five weeks of work at a weekly salary of \$1,590.00 and was requesting compensation in the amount of \$7,950.00 which is an increase of \$1,950.00 from his original claim submission. No other assertions or arguments were made in the Claimant's reconsideration letter.

In reviewing the Claimant's income tax records for the years 2008 – 2010, it is evident that the Claimant made less money in 2010 than in 2009 although the Claimant did not prove that his reduced annual income in 2010 was due to the injury or destruction or loss of real or personal

⁴ GCCF denial letter Re: Claimant's EAP claim dated 25 October 2010.

⁵ GCCF denial letter Re: Claimant's EAP claim dated 8 March 2011.

property or a natural resource as a result of a discharge or substantial threat of a discharge of oil. The Claimant did not provide any information from his employer, such as a letter or explanation of the employer's rationale for the Claimant's five week layoff. The Claimant's original submission stated that he worked offshore as a painter and sandblaster of offshore platforms. Without documentation from the employer explaining the temporary reduction of work, the Claimant has not demonstrated his alleged loss of profits resulted from the Deepwater Horizon incident.

Additionally, the Claimant increased his monetary request for compensation on reconsideration. It is important to note that the Claimant has not properly presented the costs in excess of \$6,000.00 pursuant to 33 C.F.R. § 136.103(a), all claims for removal costs or damages must be presented first to the responsible party (RP) therefore the increased amount of \$1,950.00 is denied on reconsideration for not being properly presented to the RP/GCCF.

The NPFC denies the request for reconsideration of the claim for \$6,000.00 on the basis that the Claimant provided no new documentation to support his assertion that would demonstrate his alleged loss is due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil and because \$1,950.00 of the requested amount has not been previously presented to the RP/GCCF..

This claim is denied upon reconsideration.

Claim Supervisor:



Date of Supervisor's review: *6/28/11*

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
26 May 2011

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Number [REDACTED]

RE: Claim Number: N10036-0738

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act of 1990, U.S.C. § 2701 et seq. (OPA) and the associated regulations at 33 C.F.R. Part 136, denies payment on the claim number N10036-0738 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 N10036-0738.

Mail reconsideration requests to:

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

[REDACTED]
U.S. Coast Guard

Encl: Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00002895

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-0738
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
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 2 May 2011, [REDACTED] (Claimant) presented a lost profits & earnings capacity claim in the amount of \$6,000.00 to the National Pollution Funds Center (NPFC) for reimbursement.

The Claimant stated on the Optional OSLTF claim form that "the oil spill caused my offshore company to shut down production. I lost 6 weeks of employment, home went into foreclosure and all bills are overdue."¹ Claimant worked as a platform worker painting and sandblasting offshore platforms. To support his claim, the Claimant presented the NPFC several handwritten letters, 3 paystubs and a 2008 Tax Return. The handwritten letters stated the Claimant missed four weeks of work due to the spill. The other letter stated that the Claimant was unable to work and lost income from 21 April 2010 through 3 June 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:

¹ Optional OSLTF Claim Form dated May 2, 2011

- (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 Form, dated 2 May 2011

On 2 May 2011 the Claimant was contacted and additional information was requested to support the claim. On 19 May 2011, the Claimant submitted the following to support the claim:

- Handwritten explanation dtd 19 May 2011;
- 2008 Tax Return (incomplete)
- Random Paystubs
 - o 6/25/2010
 - o 6/11/2010
 - o 12/11/2009

Prior to presentment to the NPFC, the Claimant presented an Emergency Advance Payment (EAP) and Final Payment claim to the RP/GCCF. He was assigned Claimant Identification Number [REDACTED] and Claim [REDACTED] (EAP) and [REDACTED] (Final). By letter dated 25 October 2010², the GCCF denied Claimant's EAP claim. By letter dated 8 March 2011³, the GCCF denied Claimant's Final Payment claim.

On 2 May 2011, Claimant presented this claim to the NPFC for \$6,000.00 in loss of profits and impairment of earning capacity resulting from the Deepwater Horizon oil spill.

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 documentation presented by Claimant.

It is also important to note that the Claimant failed to provide the comparable financial documentation we requested pursuant to the governing claims regulations at 33 CFR 136.233 (c) which states: "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."

Because Claimant has failed to demonstrate (1) the alleged loss of profits in the amount of \$6,000.00, as claimed, or (2) that this alleged loss is 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, this claim is denied.

[REDACTED]
Claim Supervisor: *Claims Adjudication Division*

Date of Supervisor's review: *5/26/11*

Supervisor Action: *Denial approved*

Supervisor's Comments:

² GCCF denial letter Re: Claimant's EAP claim dated 25 October 2010.

³ GCCF denial letter Re: Claimant's EAP claim dated 8 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# N10036-0739
27 May 2011

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 N10036-0739 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 N10036-0739.

Mail reconsideration requests to:

Director (ca)
NPFC CA MS 7100
US COAST GUARD

Sincerely,

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

Enclosure: Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00002899

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	N10036-0739
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
Amount Requested	\$58,969.00

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 02 May 2011, [REDACTED] (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form seeking \$58,969.00 in lost profits and earning capacity to the National Pollution Funds Center (NPFC) alleging damages resulting from the Deepwater Horizon oil spill.

The Claimant is a Louisiana licensed commercial fisherman¹ and owns his own boat.² He fishes for shrimp in the Chef Pass which connects Lake Pontchartrain and Lake Borgne.³ He stated the oil and dispersant from the Deepwater Horizon oil spill came into the Pass at high-tide and contaminated the shrimp. He claimed he was unable to shrimp and in May 2010 "tied up his boat." He has not been able to shrimp since. The Claimant has a Fresh Produce License and sold directly to the public.⁴

APPLICABLE LAW

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

¹Copy of Louisiana Commercial Fisherman License expires 12-21-2011

²Copy of Boat Register from Louisiana Department of Wildlife and Fisheries

³Handwritten letter from Claim to NPFC explaining his claim dated 11 May 2011

⁴Copy Fresh Produce Products expires 12-21-2011

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

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

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

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

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

On 02 May 2011, Claimant presented an optional OSLTF claim form and some accompanying documentation to the NPFC seeking \$58,969.00 in alleged damages. On 03 May 2011, the NPFC sent the Claimant a letter requesting additional information in order to further evaluate the claim. On 19 May 2011, the Claimant responded to the request. In sum, to support his claim, the Claimant has submitted the following documentation:

- OSLTF Form signed 19 April 2011
- Form 1040 US Individual Income Tax Returns for 2008, 2009 and 2010 with Schedule C's Profit or Loss from Business
- Forms 1099 for 2010 from BP for \$13,746.00 and GCCF for \$35,000.00
- Copies of Louisiana Commercial Fisherman License and Fresh Produce Products both expire 12-21-2011
- Copy of Boat Register from Louisiana Department of Wildlife and Fisheries
- Handwritten letter from Claim to NPFC explaining his claim dated 11 May 2011

Claimant presented an Emergency Advance Payment claim to the GCCF requesting \$35,000.00 and was issued GCCF Claimant ID [REDACTED] and Claim [REDACTED]. GCCF paid the Claimant \$35,000.00 for the EAP Claim.⁵ In addition the Claimant was paid \$13,746.00 by BP.

On 06 December 2010, the Claimant filed a Final Payment Claim with GCCF for 2010 Lost Profits in the amount of \$2,200,000.00. This Claim was denied because the GCCF determined that Claimant had already been fully compensated for his 2010 Lost Profits.⁶

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.

GCCF paid the Claimant \$35,000.00 for the Emergency Advance Payment in addition to the \$13,746.00 he received from BP. These sums total \$48,746.00. Based upon the financial documentation provided by the Claimant, including his prior year's tax returns from 2008 through 2010, the NPFC had determined that the Claimant has been fully compensated by the RP for the time period between the date of the Deepwater Horizon oil spill and the date of the Claimant's presentation of his denied final GCCF claim to the NPFC. Accordingly, his claim is denied.

[REDACTED]
Claim Supervisor: *NPFC Claims Adjudication Division*

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

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

⁵Forms 1099 for 2010 from BP for \$13,746.00 and GCCF for \$35,000.00

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 # N10036-0740
1 June 2011

Re: Claim Number: N10036-0740

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 N10036-0740 involving Deepwater Horizon. Please see the attached Claim Summary/Determination Form for further explanation.

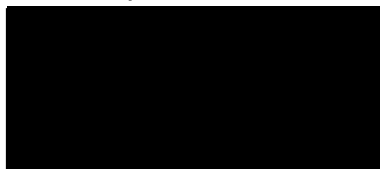
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-0740.

Mail reconsideration requests to:

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

Sincerely,



National Pollution Funds Center
U.S. Coast Guard

Enclosure: Claim Summary/Determination Form

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-0740
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$21,473.00

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 02 May 2011, [REDACTED] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$21,473.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

Claimant works as a deckhand for her husband who is a Louisiana licensed commercial fisherman. Claimant and her husband own a 38-foot inboard fishing boat,¹ which they use for shrimping. She alleged that as a result of the Deepwater Horizon oil spill, she and her husband could no longer shrimp and consequently they lost income.

Claimant's husband also presented a claim to the NPFC for shrimping losses as a result of the Deepwater Horizon oil spill. His joint tax documentation detailing profits from the shrimping business is identical to the Claimant's. The Claimant appears to lay claim to losses from the shrimping business on the basis of an alleged 1/2 ownership interest in the 38-foot inboard fishing vessel.²

APPLICABLE LAW

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

¹Copy of Louisiana Boat Registration Certificate for 38-foot inboard boat owned by husband and Claimant.

² Claimant handwritten response to NPFC request for additional information.

- (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 this claim, Claimant submitted the following documentation:

- Form 1040 US Individual Income Tax Returns for 2008, 2009 and 2010 with supporting schedules;
- Hand-written letter to NPFC explaining the claim received 02 May 2011;
- Copies of [REDACTED] Commercial Fisherman and Fresh Produce licenses from State of Louisiana;
- Louisiana Boat Registration Certificate for 38-foot inboard boat owned by [REDACTED] and [REDACTED];
- Copies of 2010 IRS Instructions for Schedule F and Schedule J;
- GCCF Claim Status pages for Claim 1123752.

On 3 May 2011, the NPFC sent the Claimant a letter requesting additional information in order to further evaluate the claim. On 19 May 2011, the Claimant responded to the NPFC's request.

On 14 June 2010, the Claimant presented a claim to BP and received \$6,350.00. Claimant thereafter presented a Six-Month Emergency Advance Payment Claim for \$12,500.00 in lost profits and earnings and a Final Payment Claim for \$217,500.00 in lost profits and earnings to

the GCCF. She was issued GCCF Claimant II [REDACTED] On 7 December 2010, her EAP claim was denied by the GCCF.³

On 02 May 2011, Claimant presented the subject claim for \$21,473.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

NPFC Determination

Under 33 U.S.C. § 2702(b)(2)(E) and 33 C.F.R. Part 136, a claimant must prove that their loss of income was due to 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 her claim.

This claim is denied because the alleged loss in the amount of \$21,473.00 has been fully compensated by the Responsible Party (RP). As noted, the Claimant's husband presented a claim to the NPFC for the same shrimping loss. The Claimant's husband was paid a Six-Month Emergency Advance Payment by GCCF of \$35,000.00 as well as a payment of \$13,746.00 from BP. The Claimant's husband reported the payments on his Schedule C for 2010.⁴ Based on these payments and an independent calculation of his alleged loss, the NPFC determined that the Claimant's husband had been fully compensated by the RP.

Claimant submits the same joint tax returns in support of her loss. The alleged loss in the amount of \$21,473.00 has been fully compensated by the RP and is therefore denied.

[REDACTED]
Claim Supervisor: *Claims Adjudication Division*

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

Supervisor's Action: *Denial approved*

Supervisor's Comments:

³ GCCF denial letter Re: Claimant's EAP claim, dated 7 December 2010.

⁴Form 1040 US Individual Income Tax Returns for 2008, 2009 and 2010 with supporting schedules.

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# N10036-0741
16 May 2011

Claim Number N10036-0741

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 N10036-0741 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 N10036-0741.

Mail reconsideration requests to:

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

Sincerely,

[REDACTED]
Marine Science Technician 1
U. S. Coast Guard
Claims Manager

Enclosure: Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00002908

CLAIM SUMMARY / DETERMINATION FORM

Date	10 May 2011
Claim Number	N10036-0741
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
Claim Manager	[REDACTED]
Amount Requested	\$27,000.00

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 02 May 2011 [REDACTED] (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Funds Center (NPFC) for \$27,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

Claimant works in industrial scaffolding.¹ From 2009 through March 2010, he worked for [REDACTED] at the [REDACTED] plant in Norco, Louisiana. In March 2010, Claimant left [REDACTED] for [REDACTED], but he continued to work at the same plant. Claimant was laid off at [REDACTED] on 23 April 2010, three days after the Deepwater Horizon oil spill.

Claimant alleged that he was laid off as a result of the Deepwater Horizon oil spill. Claimant returned to work at [REDACTED] on 22 August 2010. Claimant attributed his inability to find work for four months until returning to [REDACTED] to the oil spill's effect on the economy.²

APPLICABLE LAW

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

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

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

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

¹ PHONECON between Claimant and the NPFC on 06 and 09 May 2011.

² Id.

- (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:

1. OSLTF claim form
2. A note signed by the Claimant authorizing the NPFC to obtain GCCF documentation
3. Earnings statements (pay stubs) from [REDACTED] for periods ended 22 March and 21 November 2010
4. GCCF 2000-C Gulf Coast Claims Facility Claim Form for Emergency Advance Payment signed 10 December 2010
5. [REDACTED] Payroll Hours/Dollar History for weeks ended 24 January through 05 December 2010
6. GCCF 2000-F Gulf Coast Claims Facility Full Review Final Payment Claim Form 02 January 2011
7. Form W-2 Wage and Tax Statement for 2010 from [REDACTED]
8. Comments from a GCCF Claims Adjuster on a discussion with Claimant 20 April 2011
9. GCCF 2000-C GCCF Claim Form Generated Online for Six-Month Emergency Advance Payment 16 November 2010
10. Denial Letter of Emergency Advance Payment letter from GCCF dated 03 December 2010
11. Denial Letter of Interim Payment/Final Claim from GCCF dated 16 April 2011

12. Form 1040 Form W-2 Worksheet Additional Information for [REDACTED] for 2009 and 2008
13. Termination Notice from [REDACTED] dated 05 May 2010 and signed by a company representative
14. Form 1040 US Individual Income Tax Return for 2009 and 2008
15. Form 1040 Form W-2 Worksheet for [REDACTED] and [REDACTED] for 2008 and 2009
16. GCCF Letter acknowledging receipt of Interim Payment or Final Payment Claim dated 31 January 2011

On 15 November 2010, Claimant presented a six-month Emergency Advance Payment claim for \$20,000.00 in lost profits and earnings to the GCCF. He was assigned GCCF Claimant ID # [REDACTED] and Claim # [REDACTED]. On 03 December 2010, this claim was denied by the GCCF.³ On 01 November 2010, Claimant presented a Full Review Final Payment claim for \$28,000.00 to the GCCF. On 16 April 2011, this claim was denied by the GCCF.⁴

On 02 May 2011, Claimant presented this claim for \$27,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

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 \$27,000.00 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 alleged that he lost \$27,000.00 in earnings as a result of the Deepwater Horizon oil spill. Claimant was laid off from employment at [REDACTED] on 23 April 2010. Claimant provided a Termination Notice from [REDACTED] which confirmed that his last day worked was 23 April 2010. The notice further indicated that the Claimant was laid off as a result of a reduction in force.⁵ The NPFC contacted [REDACTED] to verify the circumstances of the Claimant's layoff. [REDACTED] [REDACTED] company representative, confirmed that the Claimant worked for [REDACTED] at the [REDACTED]. [REDACTED] explained that the Claimant was laid off because the project he was working on was completed and there was no other work available for him.⁶

Claimant provided no evidence that his inability to find work after his layoff at [REDACTED] to his return to [REDACTED] resulted from the Deepwater Horizon oil spill.

Because Claimant failed to demonstrate the correlation between his alleged loss and the Deepwater Horizon oil spill, this claim is DENIED.

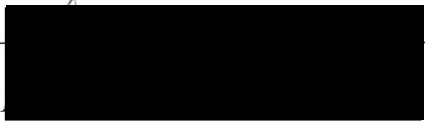
³Denial Letter of Emergency Advance Payment letter from GCCF dated 03 December 2010.

⁴Denial Letter of Interim Payment/Final Claim from GCCF dated 16 April 2011.

⁵[REDACTED] Termination Notice signed by [REDACTED] on 05 May 2010.

⁶PHONECON between the NPFC and [REDACTED] on 10 May 2011.

Claim Supervisor:



Date of Supervisor's Review: *5/16/11*

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 # N10036-0742
23 May 2011

Re: Claim Number: N10036-0742

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act of 1990, U.S.C. 33 § 2701 et seq. (OPA) and the associated regulations at 33 C.F.R. Part 136, denies payment on the claim number N10036-0742 involving Deepwater Horizon oil spill. Please see the attached Claim Summary/Determination Form for further explanation.

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

Reconsideration of the denial will be based upon the information provided. A claim may be reconsidered only once. Disposition of that reconsideration in writing will constitute final agency action. Failure of the NPFC to issue a written decision within 90 days after receipt of a timely request for reconsideration shall, at the option of the claimant, be deemed final agency action. All correspondence should include claim number N10036-0742.

Mail reconsideration requests to:

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

Sincerely,

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

Enclosure: Claim Summary/Determination Form

CLAIM SUMMARY/DETERMINATION FORM

Date	18 May 2011
Claim Number	N10036-0742
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$40,000.00

FACTS

On or about 20 April 2010, the Mobile Offshore Drilling Unit Deepwater Horizon (Deepwater Horizon) exploded and sank in the Gulf of Mexico. As a result of the explosion and sinking, oil was discharged. 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 May 2011, [REDACTED] Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$40,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

Claimant asserted that he works as a quality control (QC) employee for oil refineries. He explained that he works for whichever company calls on him. Claimant indicated that after the Deepwater Horizon oil spill, he has experienced a lack of work because, as he explains, “[t]he drilling moratorium has caused many companies to pull out of Louisiana and the lack of oil has caused a lack of work.”¹

Claimant indicated that the companies he has worked for have refused “to write a letter saying that the Oil Spill has caused this [lack of work] due to legal liability. . . .”²

APPLICABLE LAW

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

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

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

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

¹ Unaddressed Statement by Claimant labeled “B-3.”

² *Id.*

- (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:

- Fax Cover Letter;
- OSLTF claim form;
- Unaddressed Statement by Claimant labeled “B-3”;
- GCCF Claim Status Screenshot labeled “B-4”;
- GCCF Denial Letter re: Interim Payment/Final Payment Claim dated 16 April 2011, labeled “B-6”;
- Wikipedia “Deepwater Horizon Oil Spill” screen shot dated 27 April 2011 labeled “B-7”;
- BLR Compensation News article “Oil Spill Affecting Employment” dated 10 June 2010, last retrieved from www.blr.compensation.com on 27 April 2011, labeled “B-8”;
- www.theworkbuzz.com article “The Gulf Oil Spill and Job Loss: By The Numbers” dated 2 June 2010, last retrieved 27 April 2011, labeled “B-10”;
- www.micmn.com article “BP Oil Spill Causes More Damage: Nearly 100,000 Jobs Lost” dated 22 August 2010, last retrieved 27 April 2010, labeled “B-12”;
- www.jobs.aol.com article “Gulf Oil Spill Likely to Kill Oil Rig Jobs, Too” dated 22 May 2010, last retrieved 27 April 2011, labeled “B-13”;

- www.unemploymentcenter.com article "The Gulf Oil Spill and Job Loss: By The Numbers" dated 2 June 2010, last retrieved 27 April 2011, labeled "B-16";
- 2009 IRS Form 1040 Joint Tax Return labeled "B-18";
- 2009 W-2 Wage and Tax Statement labeled "B-19";
- 2009 IRS Form 1040 Joint Tax Return labeled "B-20";
- 2008 W-2 Wage and Tax Statements labeled "B-21";
- Louisiana Workforce Commission Form 1099-G for year 2010; and
- Letter from Claimant dated 9 May 2011 granting permission to spouse, [REDACTED] to speak to the NPFC regarding the subject claim.

On 6 December 2010, Claimant presented a Final Payment claim for \$40,000.00 in lost profits and earnings to the GCCF. He was assigned GCCF Claimant ID [REDACTED] and Claim # [REDACTED]. On 16 April 2011, the Final Payment claim was denied by the GCCF.³

On 3 May 2011, Claimant presented this claim for \$40,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

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 all information and documentation provided by Claimant.

Claimant repeatedly indicated that the moratorium on offshore drilling dried up the work available to him as a [REDACTED]. Claimant additionally indicated that the companies he has worked for, as a [REDACTED], have refused to provide letters declaring that the Claimant's lack of work resulted from the Deepwater Horizon oil spill.⁵

Claimant therefore has failed to demonstrate that his alleged loss in the amount of \$40,000.00 is due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil, and this claim is accordingly DENIED.

Claim Supervisor: *Claim [REDACTED] Division*

Date of Supervisor's Review: *5/23/11*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

³ GCCF Denial letter dated 16 April 2011.

⁴ OSLTF claim form; Unaddressed Statement by Claimant labeled "B-3."

⁵ *Id.*

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# N10036-0743
06 June 2011



RE: Claim Number: N10036-0743

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 N10036-0743 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 N10036-0743.

Mail reconsideration requests to:

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

Sincerely,



National Pollution Funds Center
Claims Manager

Enclosure: Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00002917

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	N10036-0743
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
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 03 May 2011, [REDACTED] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$6,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

Claimant worked for [REDACTED] a call center located in Pensacola Florida. She voluntarily left [REDACTED] on 08 May 2010.¹ On 03 May 2010, the Claimant accepted a position for a buffet waitressing job with [REDACTED].² Claimant alleged that her hours were cut at [REDACTED] due to a downturn in people travelling to the beach and passing by the buffet.³

APPLICABLE LAW

Under the Oil Pollution Act of 1990 (OPA), at 33 U.S.C. § 2702(a), responsible parties are liable for removal costs and damages resulting from the discharge of oil into 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

¹ Letter by Claimant addressing deficiency problem for GCCF submitted to the NPFC 03 May 2011.

² Id.

³ Letter by Claimant addressing the NPFC's request for additional information received 17 May 2011.

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:

- 1) Optional OSLTF claim form dated 04 March 2011;
- 2) Paystubs from [REDACTED] 8 June 2010, 15 June 2010, 22 June 2010, 29 June 2010, 06 July 2010, 13 July 2010, 20 July 2010, 27 July 2010, 03 August 2010, 10 August 2010, 24 August 2010, 31 August 2010;
- 3) Letter from [REDACTED] at [REDACTED] verifying employment began 03 May 2010;
- 4) Second letter from [REDACTED] at [REDACTED] explaining loss of hours due to the oil spill;
- 5) Letter from Claimant explaining her Claim to GCCF;
- 6) 2010 Summary of Tax Return;
- 7) 2009 Summary of Tax Return;
- 8) 2010 W-2 from [REDACTED];
- 9) 2010 W-2 from [REDACTED];
- 10) 2009 W-2 from [REDACTED];
- 11) 2008 W-2 from [REDACTED];
- 12) 2008 W-2 from [REDACTED];
- 13) 2010 1099-G from State of Florida agency for workforce innovation special payments unit;
- 14) 2009 1099-G from State of Florida agency for workforce innovation special payments unit;
- 15) 2008 1099-G from State of Florida agency for workforce innovation special payments unit; and

16) Employee Timecard from [REDACTED] for 07 May 2010 through 06 November 2010.

Prior to presentment to the NPFC, Claimant presented multiple claims to the RP/GCCF, including an Emergency Advance Payment (EAP) and Interim Payment claim.⁴ These claims were denied by the GCCF.⁵

On 03 May 2011, Claimant presented the subject claim to the NPFC for \$6,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill

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 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 the documentation submitted by the Claimant.

To support her claim, the Claimant submitted a letter from [REDACTED] Office Manager, at [REDACTED] (restaurant). The letter indicated that business at the restaurant slowed after the Deepwater Horizon oil spill and the Claimant's hours were reduced as a result. The NPFC contacted the restaurant to verify the letter. Management for the restaurant informed the NPFC that the restaurant's business had been on a steady decline since it opened. When questioned, management could not verify the reason for this decline, but indicated that servers' hours had to be cut due to decreased demand.⁶

Because the Claimant has not demonstrated that her alleged loss in the amount of \$6,000.00, as claimed, 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, this claim is denied.

Claim Supervisor: [REDACTED]

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

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

⁴ Claimant indicates that she was assigned GCCF Claimant [REDACTED]

⁵ GCCF denial letter Re: Claimant's EAP claim, dated 29 October 2010; GCCF denial letter Re: Claimant's Interim Payment claim, dated 30 April 2011.

⁶ PHONECON with restaurant management on 26 May 2011.

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# N10036-0744
15 June 2011

RE: Claim Number: N10036-0744

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 N10036-0744 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 N10036-0744.

Mail reconsideration requests to:

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

[REDACTED]
National Pollution Funds Center
Claims Manager

Enclosure: Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00002921

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	N10036-0744
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
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 03 May 2011, [REDACTED] (Claimant) presented an Optional Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Funds Center (NPFC) seeking \$15,000.00 in lost profits and earning capacity alleging damages resulting from the Deepwater Horizon oil spill.

Claimant worked for [REDACTED] as an assistant working on scaffolding.¹ The Claimant started with [REDACTED] in 2008 and worked until being laid off in January 2011, allegedly due to the Deepwater Horizon oil spill.² The Claimant has collected unemployment since being laid off and has calculated his loss based on lost hours until laid off and lost wages since being laid off in the amount of \$15,000.00.

Claimant presented an Emergency Advance Payment (EAP) claim to the GCCF and was issued GCCF Claimant ID [REDACTED] and Claim [REDACTED]. On 08 December 2010 the GCCF denied her claim.³

APPLICABLE LAW

Under the Oil Pollution Act of 1990 (OPA), at 33 U.S.C. § 2702(a), responsible parties are liable for removal costs and damages resulting from the discharge of oil into 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.

¹ See written response to NPFC's request for additional information from Claimant dated 26 May 2011

² Ibid.

³ See GCCF Claimant's Status Page/Report

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, the Claimant submitted the following documentation:

- 1) Optional OSLTF claim form dated 02 May 2011;
- 2) 2008 U.S. Individual Income Tax Return Form 1040;
- 3) 2009 U.S. Individual Income Tax Return Form 1040;
- 4) 2010 U.S. Individual Income Tax Return Form 1040;
- 5) 2008 W-2 from [REDACTED];
- 6) 2010 W-2 from [REDACTED];
- 7) Benefits document titled "Monetary Determination" from [REDACTED];
- 8) Employment verification letter from [REDACTED] and [REDACTED] dated 19 November 2010;
- 9) Handwritten response to request for additional information from the NPFC dated 26 May 2011;

10) Paystubs from [REDACTED] from 2008 to January 2011.

Claimant is seeking lost earnings and wages in the amount of \$15,000.00 from 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 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. 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 her claim. 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.

In reviewing this claim, the NPFC sent the Claimant a letter requesting additional information in order to further evaluate the claim. The letter requested, among other things, a contact person or letter from [REDACTED] acknowledging that the cause of the Claimant's termination was a result of the Deepwater Horizon oil spill. The letter was sent on 24 May 2011. On 26 May 2011, the Claimant responded that she could not produce any contact person or letter from her former employer.⁴ The NPFC also requested if [REDACTED] had filed a claim with the responsible party. The Claimant could not answer the question due to the fact that she no longer was employed at [REDACTED]. The Claimant stated that the information was confidential.⁵ Based on the foregoing, the Claimant has failed to meet her burden of establishing her lost hours and final termination in January 2011 as being the result of the Deepwater Horizon oil spill.

This claim is denied because the Claimant failed to meet her burden to demonstrate (1) that she has an alleged loss in the amount claimed, and (2) that her alleged loss is due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil.

[REDACTED]
Claim Supervisor: [REDACTED] *Communication Division*

Date of Supervisor's review: *6/15/11*

Supervisor Action: *Denial approved*

Supervisor's Comments:

⁴ See written response to NPFC's request for additional information from Claimant dated 26 May 2011

⁵ Id.

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD



CERTIFIED MAIL - RETURN RECEIPT REQUESTED
Number [REDACTED]

5890/DWHZ
Claim# N10036-0745
08 June 2011



RE: Claim Number: N10036-0745

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 N10036-0745 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination Form for further explanation.

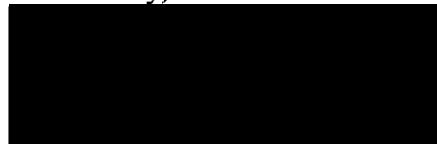
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-0745.

Mail reconsideration requests to:

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

Sincerely,



National Pollution Funds Center
Claims Manager

Enclosure: Claim Summary/Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	N10036-0745
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$6,300.00

FACTS

On or about 20 April 2010, the Mobile Offshore Drilling Unit Deepwater Horizon (Deepwater Horizon) exploded and sank in the Gulf of Mexico. As a result of the explosion and sinking, oil was discharged. 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 02 May 2011, [REDACTED] (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form seeking \$6,300.00 in loss of profits and impairment of earnings capacity to resulting from the Deepwater Horizon oil spill.

The Claimant worked as a retail salesperson for [REDACTED] located near Destin Florida.¹ [REDACTED] allegedly laid off the Claimant on 31 August 2010 because "business took a sharp decline . . . due to the oil spill."² The Claimant stated she was out of work for two months and then became employed by [REDACTED] clothing store.³ She asserted that she lost wages due to the Deepwater Horizon oil spill and its negative effects upon the Destin Florida tourism service industry.

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.

¹ Claimant's letter, dated 06 January 2011.

² *Id.*

³ *Id.*

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:

- 1) Optional OSLTF claim form dated 02 May 2011
- 2) Handwritten letter by Claimant explaining her claim dated 06 January 2011
- 3) Handwritten letter by Claimant stating employers will not assist her with her claim
- 4) Paystubs from [REDACTED] dated 27 November 2010, 11 December 2010, and 25 December 2010
- 5) Paystubs from [REDACTED] and [REDACTED] of [REDACTED] Inc. dated 14 May 2010, 28 May 2010, 11 June 2010, 25 June 2010, 09 July 2010, 23 July 2010, 06 August 2010, and 20 August 2010,

Prior to presentment to the NPFC, Claimant presented multiple claims to the RP/GCCF, including an Emergency Advance Payment (EAP), Interim Payment, and Final Payment claim.⁴ All claims were denied by the GCCF.⁵

On 2 May 2011, Claimant presented the subject claim for \$6,300.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

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 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 their claim. The NPFC considered all the documentation submitted by the Claimant.

In connection with a review of this claim, the NPFC sent the Claimant a letter requesting additional information in order to further evaluate her claim. The letter requested, among other things, contact information for her job at [REDACTED] to verify the cause of termination. It was sent on 03 May 2011. On 17 May 2011, the Claimant acknowledged receipt of the letter via telephone conversation with NPFC staff and indicated that she would decide what to do and be in touch with the NPFC.⁶ To date no response has been received by the NPFC.

⁴ The Claimant indicates that her GCCF Claimant ID # is [REDACTED]

⁵ GCCF denial letters, dated 12 November 2010 and 1 April 2011.

⁶ PHONECON with Claimant on 17 May 2011.

The NPFC accordingly proceeded to evaluate the claim with the minimal evidence the Claimant presented. This evidence does not demonstrate that the Claimant lost \$6,300.00 in earnings as a result of the Deepwater Horizon oil spill.

Because the Claimant fails to demonstrate that her alleged loss in the amount of \$6,300.00 is due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil, this claim is denied.


Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *6/8/11*

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
5890
5/5/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]

[REDACTED]

RE: Claim Number: N10036-0746

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 N10036-0746 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 N10036-0746.

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

FOIA2011-3380-0002929

CLAIM SUMMARY / DETERMINATION FORM

Date	: May 5, 2011
Claim Number	: N10036-0746
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$7,500.00

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 May 3, 2011, [REDACTED] (Claimant) presented a lost profits & earnings capacity claim in the amount of \$7,500.00 to the National Pollution Funds Center (NPFC) for reimbursement. The Claimant stated on the Optional OSLTF form that she worked as an Office Manager at a beachwear corporation. Due to the lack of tourism, the company could no longer afford to keep her position resulting in the loss of employment.

The Claimant did not provide correspondence or documentation pertaining to her claim with the GCCF.

APPLICABLE LAW:

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

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

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

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

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

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

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

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

DETERMINATION OF LOSS

Claimant's Submission

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

- NPFC OSLTF Form, dated May 3, 2011;
- Paystubs from August 19, 2010 through September 12, 2010.

NPFC Determination

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

This claim is denied because the Claimant's evidence does not demonstrate (1) the alleged loss of profits in the amount of \$7,500.00, as claimed, or (2) the correlation, if any, between this alleged loss and the Deepwater Horizon oil spill.

It is also important to note that the Claimant has provided NO comparable financial documentation pursuant to the governing claims regulations at 33 CFR 136.233 (c) which states..."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”.

Because Claimant has failed to demonstrate (1) the alleged loss of profits in the amount of \$7,500.00, as claimed, or (2) that this alleged loss is 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, this claim is DENIED.

Claim Supervisor: 

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

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
6/8/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]



RE: Claim Number: N10036-0747

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act of 1990, U.S.C. § 2701 et seq. (OPA) and the associated regulations at 33 C.F.R. Part 136, denies payment on the claim number N10036-0747 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.

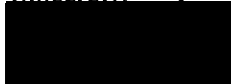
Reconsideration of the denial will be based upon the information provided. A claim may be reconsidered only once. Disposition of that reconsideration in writing will constitute final agency action. Failure of the NPFC to issue a written decision within 90 days after receipt of a timely request for reconsideration shall, at the option of the claimant, be deemed final agency action. All correspondence should include claim number N10036-0747.

Mail reconsideration requests to:

Director (ca)
NPFC CA MS 7100
US COAST GUARD



Sincerely,



National Pollution Funds Center
U.S. Coast Guard

Encl: (1) Claim Summary/Determination Form
09/14/11

FOIA2011-3380-00002933

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-0747
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: \$2,825,308.48

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 May 3, 2011, [REDACTED] on behalf of [REDACTED] Inc. (Claimant) presented an Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC). The OSLTF claim form alleged \$2,825,308.48 in lost profits and earnings resulting from the Deepwater Horizon oil spill.

Claimant is the President and CEO of [REDACTED] located in Houston, TX, which specializes in “the necessary safety supplies to protect those people cleaning hazards spills and helping to provide them with the proper equipment for the safe removal of hazardous materials.”¹ [REDACTED] sells their product; in this case sorbent boom to BP, through authorized distributors.

Claimant asserted that as a result of the Deepwater Horizon incident, they met with BP contractors “who evaluated our production capacities and processes and told us that BP wanted to know what all the manufacturers of absorbent boom could do ‘if pigs could fly’.”² The Claimant later met with [REDACTED] of BP at BP headquarters on June 16, 2010 and asserted that they “presented him with the natural fiber boom we were proposing to use instead of polypropylene. He indicated he had a tank where he could test the product. In addition, he reiterated the ‘if pigs could fly’ scenario representing 10 truckloads per day for 3 months. It was at this point that we started ramping up our supply, equipment and logistics purchases and shipping truckloads for our distributor to BP. The last truckload shipped to BP was on July 29th.”³

The NPFC verified that the Claimant met presentment requirements and determined that the claim was filed with the GCCF on March 24, 2011. The claim was subsequently denied, although a date was not provided.

¹ About Us section of [REDACTED] website, [http://\[REDACTED\]](http://[REDACTED])

² Email from Claimant to NPFC, dated May 5, 2011

³ Email from Claimant to NPFC, dated May 5, 2011

Bases for Claim Submission

1. The Claimant “produced approximately 40% of the absorbent boom used in the cleanup of the BP oil spill...according to BP’s own records. The other six (6) manufacturers of boom in the U.S produced only 60%.”⁴ The Claimant “didn’t sell directly to BP, but instead sold through its authorized distributors unlike the other boom manufacturers who sold directly to BP.”⁵
2. “All indications from our distributors were that BP wanted to know what [REDACTED] could do ‘if pigs could fly’. What BP really wanted to know was could [REDACTED] produce 10 truckloads of absorbent boom (624 bales each truck) per day everyday for approximately 3 months through the end of November 2010. [REDACTED] through its prime distributor and contact with BP, agreed to accomplish this task. BP put tremendous pressure on both the distributor and [REDACTED] to perform. BP pushed [REDACTED] and the distributor to ensure the supply chain was in place and that there would be adequate supplies of components to make the needed boom. That would have equated to about 900 truckloads of boom.”⁶
3. The Claimant asserted that “to accomplish this goal, a substitute for polypropylene had to be obtained and approved. We solved the problem of the polypropylene shortage with the use of a hydrophobic natural fiber which was readily available. Contracts were issued to acquire hardware, rope, and netting. Again, BP pressured the Claimant to ensure that the supply chain was full. Polyester netting is the choice for our [REDACTED] brand boom around the world. We had to find an alternative to polyester since the several manufacturers in the US were at maximum production. The solution was a heavy high density polyethylene net and a low melt index polypropylene net of sufficient strength not to be torn apart by gaffer's hooks used by the shrimpers to pull the boom out of the water.”⁷
4. “The amount of space needed to store the materials, install production lines, and work 300 additional people was over 30,000 feet. A manufacturing facility was found 3 blocks from the [REDACTED] offices which gave the needed space, electricity, and trucking access. The shortest time for obtaining a lease was 18 months. [REDACTED] had to sign the lease. The completion of the boom by the end of November wouldn't have been a problem since the costs associated with the lease and renovation would have been expended over the 3 month production. The same holds true for the extra clippers, shredders, blowers, forklifts, pallet jacks and stretch wrap machines which were purchased.”⁸
5. “BP had their own independent consultants visit [REDACTED] to review procedures and to offer improvements in processes to ensure that the production goals could be met. In addition, BP sent their own employees to [REDACTED] to ensure that safety standards were met. Other BP employees also visited [REDACTED] manufacturing facility to ensure the goals set by BP could be met without sacrificing the quality product for which [REDACTED] is known. Finally, representatives of [REDACTED] met with BP representatives in the corporate office of BP to discuss [REDACTED] commitment. [REDACTED] made and kept its commitment to achieve these production levels by purchasing capital equipment, and

⁴ Letter of explanation from Claimant, unsigned and undated

⁵ *Id*

⁶ *Id*

⁷ *Id*

⁸ *Id*

feedstock to manufacture the needed quantity of boom. Again, BP pushed ██████████ to ensure the supply chain was full and that ██████████ would be able to meet BP's need for absorbent boom. Contracts were placed for this material. Additionally, another warehouse had to be leased, upgraded, and managed in which to perform this task. ██████████ ramped production to 10 trucks per day of boom when all orders were cancelled on July 30, 2010.”⁹

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.

⁹ Letter of explanation from Claimant, unsigned and undated
09/14/11

Claimant's Submission to the OSLTF

To support the claim, Claimant submitted the following documentation:

- OSLTF optional claim form
- Letter entitled "Attachment A" - Undated and unsigned letter : claimant / Basis of claim
- Spreadsheet entitled "Attachment B" - List of Expenses incurred
- Spreadsheet entitled "Attachment C" - List of goods/services purchased
- Invoice: [REDACTED] / dated : 21MAY10
- Invoice: [REDACTED] / dated : 28JUN10
- Invoice: [REDACTED] / dated : 29JUN10
- Invoice: [REDACTED] / dated : 30JUN10
- Invoice: [REDACTED] / dated : 16JUL10
- Invoice: [REDACTED] / dated : 29JUN10
- Invoice: [REDACTED] / dated: 30JUN10
- Invoice: [REDACTED] / dated : 26JUN10
- Invoice: [REDACTED] / dated : 21MAY10
- Invoice: [REDACTED] / dated : 02AUG10
- Invoice: [REDACTED] / dated: 04JUN10
- Invoice: [REDACTED] / dated : 23JUN10
- Invoice: [REDACTED] / dated: 02JUL10
- Invoice: [REDACTED] / dated: 31AUG10
- Invoice: [REDACTED] / dated : 08JUL10
- Invoice: [REDACTED] / dated: 03AUG10
- Invoice: [REDACTED] / dated: 06OCT10
- Invoice: [REDACTED] / dated: 08NOV10
- Invoice: [REDACTED] / dated: 08NOV10
- Invoice: [REDACTED] / dated: 08NOV10
- Invoice: [REDACTED] / dated 20DEC10
- Invoice: [REDACTED] / dated: 22JUL10
- Invoice: [REDACTED] / dated: 03AUG10
- Invoice: [REDACTED] / dated: 15JUL10
- Invoice: [REDACTED] / dated: 08JUL10
- Invoice: [REDACTED] / dated: 07JUL10
- Invoice: [REDACTED] / dated: 28JUN10
- Invoice: [REDACTED] / dated: 30JUL10
- Invoice: [REDACTED] / dated: 29JUL10
- Invoice: [REDACTED] / dated: 23SEP10
- Invoice: [REDACTED] / dated: 07AUG10
- Invoice: [REDACTED] / dated: 30JUN10
- Invoice: [REDACTED] / dated: 24JUN10
- Invoice: [REDACTED] / dated: 22JUN10
- Invoice: [REDACTED] / dated: 02JUL10
- Invoice: [REDACTED] / dated: 20JUL10
- Invoice: [REDACTED] / dated: 28JUL10
- Invoice: [REDACTED] / dated: 16JUL10
- Invoice: [REDACTED] / dated: 26JUL10

- Invoice: [REDACTED] / dated: 08JUL10
- Invoice: [REDACTED] / dated: 02AUG10
- Invoice: [REDACTED] / dated: 22JUL10
- Invoice: [REDACTED] / dated: 20JUL10
- Invoice: [REDACTED] / dated: 23JUN10
- Invoice: [REDACTED] / dated: 28JUN10
- Invoice: [REDACTED] / dated: 22JUL10
- Invoice: [REDACTED] / dated: 09JUL10
- Invoice: [REDACTED] 07JUL10
- Invoice: [REDACTED] 15JUL10
- Invoice: [REDACTED] 15JUL10
- Invoice: [REDACTED] 15JUL10
- Invoice: [REDACTED] 29JUN10
- Invoice: [REDACTED] 29JUN10
- Invoice: [REDACTED] 29JUN10
- Email: [REDACTED] / dated: 01DEC10
- Compensation Statement / dated: 25SEP10
- Invoice: [REDACTED] / dated: 23SEP10
- Invoice: [REDACTED] / dated: 24OCT10
- Commercial Lease between [REDACTED] (lessee) and [REDACTED] and [REDACTED] (lessor)
- Invoice: [REDACTED] / dated: 18AUG10
- Invoice: [REDACTED] / dated: 21NOV10
- Email from [REDACTED] to [REDACTED] regarding payment on invoice / dated: 10AUG10
- Invoice: [REDACTED] / dated: 23JUN10
- Invoice: [REDACTED] / dated: 25JUN10
- Invoice: [REDACTED] / dated: 28JUN10
- Invoice: [REDACTED] / dated: 19JUL10
- Invoice: [REDACTED] / dated: 16JUL10
- Invoice: [REDACTED] / dated: 26JUL10
- Invoice: [REDACTED]
- Invoice: [REDACTED] / dated: 17AUG10
- Invoice: [REDACTED] dated: 28JUN10

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 spoke via telephone and email with BP Counsel, [REDACTED] and [REDACTED] to determine if a contract was in place between BP and the Claimant. [REDACTED] stated "BP did not do business directly with [REDACTED] aka [REDACTED], but rather with their distributor, [REDACTED]. Equipment was ordered from [REDACTED] pursuant to purchase orders, which have all been addressed in the normal course of business. [REDACTED] presumably would have received payments it claimed it is owed from [REDACTED]. As with most BP

vendors, none of this would have been handled through claims, but rather through the procurement and supply chain management group.”¹⁰

This claim is denied. While Claimant argues that his alleged loss of profits is due to the injury or destruction of a natural resource, any loss is due to contractual issues with its distributor, [REDACTED] and its business decision to increase the production of boom through November 2010. Furthermore, the Claimant made a business decision to lease a manufacturing facility and purchase new materials, such as extra clippers, shredders, blowers, forklifts, pallet jacks and stretch wrap machines in order to obtain work providing materials to [REDACTED] for use on the Deepwater Horizon incident.

Further, the Claimant’s evidence does not demonstrate (1) the alleged loss of profits in the amount of \$2,825,308.48, as claimed, since the Claimant did not provide three years of comparable financial documentation pursuant to the governing claims regulations at 33 CFR 136.233 (c) which states... “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. Additionally, comparative figures for profits or earnings for the same or similar activities outside of the area affected by the incident also must be established.”

It is also important to note that even if the Claimant were to provide the required comparable financial documentation, the Claimant has an intervening factor associated with his alleged loss which is his contractual relationship with his distributor therefore not making his alleged loss a direct result of the oil spill.

Because the Claimant has failed to demonstrate (1) the alleged loss of profits in the amount of \$2,825,308.48, as claimed, (2) failed to demonstrate that his alleged loss is 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, and (3) the Claimant has failed to demonstrate that his alleged loss is not the direct result of a contractual issue between the [REDACTED] and [REDACTED]

Based on the foregoing this claim is DENIED.

[REDACTED]
Claim Supervisor: *Claims Adjudication Division*

Date of Supervisor’s review: *6/8/11*

Supervisor Action: *Denial approved*

Supervisor’s Comments:

¹⁰ Email from BP Counsel to NPFC, dated June 2, 2011
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 # N10036-0749
23 May 2011

Re: Claim Number: N10036-0749

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 N10036-0749 involving Deepwater Horizon oil spill. Please see the attached Claim Summary/Determination Form for further explanation.

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

Reconsideration of the denial will be based upon the information provided. A claim may be reconsidered only once. Disposition of that reconsideration in writing will constitute final agency action. Failure of the NPFC to issue a written decision within 90 days after receipt of a timely request for reconsideration shall, at the option of the claimant, be deemed final agency action. All correspondence should include claim number N10036-0749.

Mail reconsideration requests to:

Director (ca)
NPFC CA MS 7100
US COAST GUARD

Sincerely,

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

Enclosure: Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00002940

CLAIM SUMMARY/DETERMINATION FORM

Date	19 May 2011
Claim Number	N10036-0749
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$29,500.00

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 4 May 2011, [REDACTED] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$25,000.00 in loss of profits and impairment of earnings capacity and \$4,500.00 in real or personal property damage resulting from the Deepwater Horizon oil spill.

Claimant alleged that he “got laid off at [REDACTED] on May 30, 2010 do [sic] to the oil spill.”¹ Claimant provided no explanation for his alleged loss of \$4,500.00 in real or personal property damages.

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.

¹ Handwritten letter from Claimant, undated.
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 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 this claim, Claimant presented his OSLTF claim form and various other documents.

Prior to presentation to the NPFC, Claimant presented a claim to the RP/BP on 2 June 2010 and received \$2,471.00. Claimant subsequently presented an Emergency Advance Payment claim for \$860.00 in lost profits and earnings and an Interim Payment claim for \$25,000.00 in lost profits and earnings to the GCCF. He was assigned GCCF Claimant ID # [REDACTED] and Claim # [REDACTED] and [REDACTED] respectively. These claims were denied by the GCCF.

On 4 May 2011, Claimant presented this claim for \$25,000.00 in loss of profits and impairment of earnings capacity and \$4,500.00 in real or personal property damages resulting from the Deepwater Horizon oil spill.

NPFC Determination

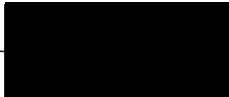
Under 33 U.S.C. § 2702(b)(2)(E) and 33 C.F.R. Part 136, a claimant must prove that his loss of income was due to injury or destruction or loss of real or personal property or a natural resource as a result of a discharge or substantial threat of a discharge of oil. Under 33 C.F.R. § 136.105(a) and § 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 all information and documentation provided by the Claimant. The NPFC also conducted an investigation to verify the Claimant's allegation that he was laid off at [REDACTED] as a result of the Deepwater Horizon oil spill. In response to the NPFC's investigation, [REDACTED] confirmed the Claimant's prior employment and indicated, in no uncertain terms, that the Claimant's termination was unrelated to the Deepwater Horizon oil spill.²

² PHONECON between [REDACTED] of Foley, AL and the NPFC on 19 May 2011.
09/14/11

This claim is denied because the alleged loss in the amount of \$25,000.00 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.

Additionally, the Claimant's alleged loss of \$4,500.00 in real or personal property damage is denied pursuant to 33 C.F.R. § 136.103(a), which states that all claims for removal cost or damages must be presented first to the responsible party. Claimant has provided no evidence demonstrating that he presented a claim for his alleged real or personal property loss to BP/GCCF.



Claim Supervisor: *Claims Adjudication Division*

Date of Supervisor's Review: *5/23/11*

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

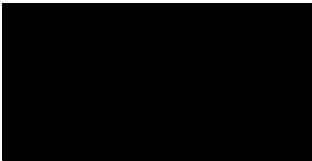
NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim # N10036-0750
8 July 2011



Re: Claim Number: N10036-0750

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 N10036-0750 involving Deepwater Horizon. Please see the attached Claim Summary/Determination Form for further explanation.

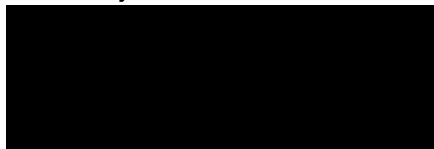
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-0750.

Mail reconsideration requests to:

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

Sincerely,



National Pollution Funds Center
U.S. Coast Guard

Enclosure: Claim Summary/Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-0750
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: \$61,529.88

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 4 May 2011, [REDACTED] (Owner) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) on behalf of [REDACTED] (Claimant) for \$61,529.88 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.¹

Claimant leases commercial space to businesses in the Panama City and Panama City Beach areas of Mississippi. Owner alleged that she provided reduced rental rates to three commercial tenants who the Claimant alleged were unable to meet their prior lease obligations due to the oil spill.² Claimant has been in business since 2 December 1996.³

APPLICABLE LAW

Under the Oil Pollution Act of 1990 (OPA), at 33 U.S.C. § 2702(a), responsible parties are liable for removal costs and damages resulting from the discharge of oil into 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

¹ Optional OSLTF Claim Form received May 2011, signed on 26 April 2011.

² Id. and cover letter from claimant dated 26 April 2011.

³ Florida Department of State entity search dated 23 May 2011.

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

Prior to presentment to the NPFC, Claimant represents having filed with the Responsible Party in December 2010.⁴ The NPFC independently verified that the Claimant presented an Emergency Advance Payment (EAP) Claim to the RP/GCCF on 17 November 2010 in the amount of \$32,000.00 and a Final Claim in the amount of \$25,000.00 on 4 December 2010. Further, GCCF Claimant ID Number [REDACTED] was assigned and applied to both of these claims.⁵ The EAP claim was denied on 4 December 2010⁶ and the Final claim was denied on 22 April 2011.⁷

On 4 May 2011, Claimant presented this claim in the amount of \$61,529.88 for loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.⁸ Claimant also presented a claim summary document indicating the amount claimed to the GCCF to be \$60,000.00.⁹

To support this claim, Claimant submitted the following documentation:

- Optional OSLTF Claim Form dated 26 April 2011 and received on 4 May 2011.
- [REDACTED] Letter dated 26 April 20 11 explaining the claim.
- Letter from [REDACTED] dated 17 November 2010 on inability to meet rent obligations.

⁴ Optional OSLTF Claim Form dated 26 April 2011 and received on 4 May 2011.

⁵ GCCF – United States Coast Guard Report (as of 5/11/2011).

⁶ GCCF letter dated 4 December 2010.

⁷ GCCF letter dated 22 April 2010.

⁸ See supra note 3.

⁹ Summary of [REDACTED]'s claim with GCCF, Numbered [REDACTED]

- Unsigned letter from [REDACTED] dated 3 November 2010 explaining claimant's reduction in monthly rent.
- Summary of rental income for [REDACTED] covering actual rental income for all of 2009 and 2010, as well as projected income for 2011 through April.
- Florida Department of State, Divisions of Corporations, listing of [REDACTED] as a Florida Profit Corporation since 12/02/1996.
- Summary of [REDACTED] claim with GCCF, Numbered [REDACTED]
- [REDACTED] Customer Ledgers for the period 1 January 2010 to 31 December 2010.
- [REDACTED] Customer Ledgers for the period 1 January 2009 to 31 December 2009.
- 2009 Form 1120S for [REDACTED] with Schedules A, B, K, L, M-1 and M-2, as well as Form 8825.
- Lease between [REDACTED] and [REDACTED] dated 8 May 2008.
- Lease between [REDACTED] and [REDACTED], dated 12 August 2008.
- Lease between [REDACTED] and [REDACTED] dated 7 August [no year indicated].

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 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.

After an initial review, the NPFC sent the Claimant a letter requesting additional information to further evaluate the claim. The letter requested, among other things, additional financial documentation to support lost profits and documentation/explanations supporting how the Deepwater Horizon oil spill caused the Claimant's business losses. The Claimant was given 14 days to respond to the letter, dated 19 May 2011 and requested an extension until 20 June 2011.

Although the Claimant has presented EAP and Interim/Final Payment claims for lost profits and earnings to the RP/GCCF, the claimed losses presented to the RP/GCCF do not amount to the \$61,529.88 requested by the Claimant to the NPFC. A spreadsheet provided by the Claimant shows the \$61,529.88 total as the sum of reduced rental income from May 2010 through April 2011.¹⁰ Although not clarified by the Claimant, the NPFC believes the EAP claim was for the first 6-month period and the Final claim added losses for the second 6-month period, ending in April 2011. The sum of the two claimed amounts presented to the RP/GCCF is \$57,000.00. Therefore, pursuant to 33 C.F.R. § 136.103(a), \$57,000 of the Claimant's alleged loss is properly before the NPFC. \$4,529.88 of the Claimant's sum certain exceeds the amount presented by the Claimant to the RP/GCCF, therefore, that amount is denied for lack of proper presentment to the RP/GCCF.

The amount of the Claimant's alleged loss (\$57,000.00) that the NPFC has determined to have been properly presented to the RP is addressed below.

¹⁰ Summary of rental income for [REDACTED] and part of 2010, as well as projected income for remainder of 2010 through April 2011.

Under 33 CFR § 136.105(a) and § 136.105(e), the Claimant bears the burden of providing to the NPFC all evidence, information and documentation deemed necessary by the director, NPFC, to support the claim. The NPFC considered all documentation presented by the Claimant.

This claim is DENIED for the following reasons: (1) Claimant has failed to meet the evidentiary burden to provide all evidence, information, and documentation deemed necessary by the Director, NPFC, to support its claim, pursuant to 33 C.F.R. § 136.105(e)(6); (2) Claimant has also failed to demonstrate its alleged loss of profits in the amount of \$57,000.00 through financial documentation; and (3) Claimant has failed to demonstrate that its alleged loss is due to injury or destruction or loss of real or personal property or a natural resource as a result of a discharge or a substantial threat of a discharge of oil.

Claim Supervisor: 

Date of Supervisor's Review: *7/8/11*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

U.S. Department of
Homeland Security

**United States
Coast Guard**



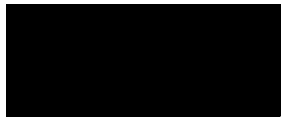
Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD



CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]



5890/DWHZ
Claim # N10036-0751
08 June 2011

Re: Claim Number: N10036-0751

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 N10036-0751 involving the Deepwater Horizon oil spill. Please see the attached Claim Summary/Determination Form for further explanation.

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

Reconsideration of the denial will be based upon the information provided. A claim may be reconsidered only once. Disposition of that reconsideration in writing will constitute final agency action. Failure of the NPFC to issue a written decision within 90 days after receipt of a timely request for reconsideration shall, at the option of the claimant, be deemed final agency action. All correspondence should include claim number N10036-0751.

Mail reconsideration requests to:

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



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

Enclosure: Claim Summary/Determination Form

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-0751
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
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 03 May 2011, [REDACTED] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$60,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

The Claimant was an independent contractor for [REDACTED] (GCO) out of Tampa, Florida and was paid on a commission basis. [REDACTED] is a distributor for [REDACTED] which manufactures spinal implants. The Claimant was a sales representative for the implants and his job consisted of attending and coordinating spinal surgeries. His territories were Pinellas, Hillsborough and Hernando counties.¹

The surgeries are elective and the Claimant alleged that the patients remain in the Tampa area while they recuperate. The Claimant stated that due to the Deepwater Horizon oil spill, patients did not want to come to the Tampa area for the procedure. As a result there was a reduction in the number of patients, and the Claimant lost commissions.² The Claimant left [REDACTED] in May 2010.³ He has continued to seek other employment.

The Claimant was unable to provide copies of his 2009 and 2010 Income Tax Returns. He stated that he did not have the money to have them prepared.⁴ The Claimant provided a copy of 2008 return with this 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.

¹Copy of hand-written GCCF 2000-I Interim Claim Form dated 01 March 2011.

²E-Mail from Claim in response to request for additional information dated 31 May 2011.

³PHONECON with Claimant on 06 June 2011.

⁴Id.

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 this claim, Claimant submitted the documentation listed in Enclosure (2). This list includes 161 pages of documentation forwarded from the GCCF at the Claimant's request on 17 May 2011. It also includes an email from the Claimant, dated 31 May 2011, in response to the NPFC's request for additional information.

Prior to presentment to the NPFC, the Claimant presented multiple claims to the RP/GCCF, including an Emergency Advance Payment (EAP) and Interim Payment Claim to the GCCF.⁵

⁵ The Claimant indicates that his GCCF Claimant ID # is [REDACTED]

These claims were for \$31,424.00 and \$57,000.00, respectively in lost profits and earnings. They were denied by the GCCF.⁶

On 03 May 2011, the Claimant presented the subject claim for \$60,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

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 Claimant was a sales representative for spinal implant devices in the Tampa area. He stated that due to the Deepwater Horizon oil spill, patients did not want to come to Florida for the procedure and recuperate there. The Claimant stated that consequently his commissions decreased and he lost earnings. The Claimant provided his 1099's from 2009 and 2010, which indicate a decrease of \$57,810.64 in nonemployee compensation from 2009 to 2010.

The 1099's notwithstanding, the NPFC requested the Claimant's 2009 and 2010 Income Tax Returns. The Claimant, however, was unable to provide the requested documentation as he asserted that he did not have the money to pay to have his taxes done.

The Claimant, additionally, could not provide evidence demonstrating that his alleged loss in the amount of \$60,000.00 is due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil. Furthermore, the Claimant failed to demonstrate proper presentment of costs to the RP for amounts in excess of \$57,000.00 pursuant to 33 C.F.R. § 136.103(a), which states that all claims for removal costs or damages must be presented first to the responsible party.

This claim is denied because (1) the Claimant's evidence does not demonstrate that his alleged loss in the amount of \$60,000.00 is due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil and (2) the Claimant has failed to make proper presentment of all costs in excess of \$57,000.00 to the RP pursuant to 33 C.F.R. § 136.103(a), which states that all claims for removal costs or damages must be presented first to the responsible party therefore this claim is denied.⁷

Claim Supervisor: *Claims Adjudication Division*

Date of Supervisor's Review: *08 June 2011*

Supervisor's Action: *Denial approved*

⁶ GCCF denial letters, dated 02 November 2010 and 22 April 2011.

⁷ Additionally, the Claimant has not presented all his alleged costs and damages to the RP pursuant to 33 C.F.R. § 136.103(a), which states that all claims for removal costs and damages be presented first to the RP. Any claimed amount of loss exceeding \$57,000.00 was not properly presented to the RP pursuant to 33 C.F.R. § 136.103(a) and is therefore denied for lack of proper presentment.

Enclosure (2): Documentation Submitted by the Claimant

- OSLTF Claim Form signed by Claimant and dated 02 May 2011
- Letter to NPFC explaining the claim dated 02 May 2011
- Profit and Loss Statement for Claimant January through December 2009 and 2010
- Hand-written letter to ██████████ at GCCF explaining claim dated 10 August 2010
- Copy of Claimant's drivers license
- Copy of hand-written GCCF 2000-I Interim Claim Form dated 01 March 2011
- Copies of various letters and e-mails seeking employment
- Form 1040 US Individual Income Tax Return for 2008
- Form 1120 US Income Tax Return for an S Corporation for 2008
- Letter to Florida Gulf Coast Claims 01 March 2011
- Form 1099 for 2009 and 2010 from ██████████
- Letter to NPFC by Claimant explaining the claim dated 20 February 2011
- Hand-written worksheet for 2008 and 2009 taxes
- Discharge of Debtor in Bankruptcy in the Middle District of Florida dated 04 February 2011
- Foreclosure by ██████████ Bank in Florida Circuit Court dated 10 January 2011
- Motion for Contempt by Circuit Court in Sarasota County, Florida dated 09 August 2010
- IRS Notice Intent to terminate your Installment Agreement dated 14 February 2011
- Listing of charges from Tampa General for November 2010
- GCCF Letter to Claimant acknowledging receipt of claim dated 31 January 2011
- Transcript of Federal Income Tax Return for 2008
- GCCF Form 2000-C Six-Month Emergency Advance Payment 25 August 2010
- GCCF Denial Letter for Interim Claim dated 22 April 2011
- GCCF computer print-out of Form 2000-I for Interim Payment dated 01 March 2011
- GCCF Letter of Denial for Emergency Advance Payment Claim dated 02 November 2011
- E-Mail from Claim in response to request for additional information dated 31 May 2011

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 # N10036-0752
07 June 2011

Re: Claim Number: N10036-0752

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 N10036-0752 involving the Deepwater Horizon oil spill. Please see the attached Claim Summary/Determination Form for further explanation.

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

Reconsideration of the denial will be based upon the information provided. A claim may be reconsidered only once. Disposition of that reconsideration in writing will constitute final agency action. Failure of the NPFC to issue a written decision within 90 days after receipt of a timely request for reconsideration shall, at the option of the claimant, be deemed final agency action. All correspondence should include claim number N10036-0752.

Mail reconsideration requests to:

Director (ca)
NPFC CA MS 7100
US COAST GUARD

Sincerely,

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

Enclosure: Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00002954

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-0752
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$6,898.46

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 13 January 2011, the Claimant filed an Interim Payment claim with the GCCF. The Claimant's GCCF Claimant Identification Number is [REDACTED] and Payment Claim Number [REDACTED]

According to the GCCF and confirmed with the Claimant¹, the Claimant received \$27,984.49 payment from the GCCF and executed a Release and Covenant Not to Sue.²

CLAIM AND CLAIMANT

On 04 May 2011, [REDACTED] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$6,898.46 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

The Claimant owns a condo in [REDACTED] in Gulf Shores, Alabama. Rentals are handled by the [REDACTED]³. The Claimant stated that he lost rental income because oil from the Deepwater Horizon oil spill accumulated on the beach and guests cancelled their reservations.⁴

APPLICABLE LAW

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

¹ PHONECON with the Claimant on 06 June 2011.

² The Claimant received \$2,984.49 on his Interim Payment and a Final Payment Offer of \$25,000.00.

³ Revenue Data Sheets for [REDACTED] for June through August 2007, 2008 and 2009.

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 this claim, Claimant submitted the following documentation:

- OSLTF Claim Form signed by the Claimant and dated 25 April 2011;
- Revenue Data Sheets for [REDACTED] for June through August 2007, 2008 and 2009; and
- Form 1040 US Individual Income Tax Returns with support Schedules for 2008 and 2009.

Prior to presentment to the NPFC, the Claimant presented multiple claims to the RP/GCCF, including an Interim Payment claim. On 02 May 2011, the GCCF offered Claimant an Interim Payment Offer of \$2,984.49 and a Final Payment Offer of \$25,000.00. On 09 June 2011, the Claimant accepted both offers for a total payment received of \$27,984.47 from the RP/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.

Based on information presented by the Claimant and information available to the NPFC, the GCCF paid a total of \$27,984.49 to the Claimant as compensation for his claim. According to information from the GCCF, Claimant executed a Release and Covenant Not to Sue in return for the Final Payment Offer.

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 \$27,984.49 Interim/Final Payment Offer for which GCCF reportedly required a final and full release of rights against any RP.

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 RP. The Fund will not pay what has already been compensated and any Fund payment is subject to acquiring all rights to recover from the RP.

If the Claimant disagrees with this determination to deny the claim based on being compensated and signing a release, he may request reconsideration. Should the Claimant decide to request reconsideration, the Claimant MUST 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 that have been received from BP or GCCF, or that any payments received are for damages other than those subject of his claim for \$6,898.46 to the NPFC, the Claimant must explain the circumstances in detail.

If the Claimant disagrees that he has signed any release associated with his claims against the RP, including any release in return for a Final Payment Offer, the Claimant must fully explain the circumstances in his request for reconsideration. Therefore, this claim is denied as the Claimant has been compensated.


Claim Supervisor: *Claims Adjudication Division*

Date of Supervisor's Review: *07 June 2011*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

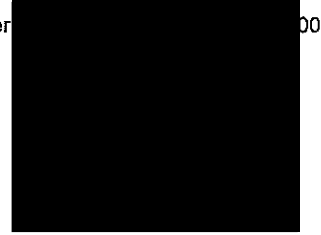
U.S. Department
of Homeland
Security

**United States
Coast Guard**



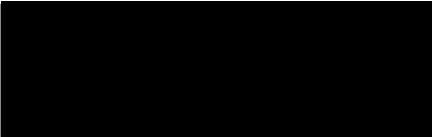
Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD



CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Number [REDACTED]



5890/DWHZ
Claim # N10036-0753
19 May 2011

Re: Claim Number: N10036-0753

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 N10036-0753 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination Form for further explanation.

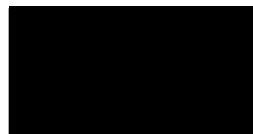
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. If, however you 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 N10036-0753

Mail reconsideration requests to:

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

Sincerely,



NPFC Claims Adjudication
U.S. Coast Guard

Enclosures: Claim Summary/Determination Form

CLAIM SUMMARY/DETERMINATION FORM

Date	17 May 2011
Claim Number	N10036-0753
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
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 certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On 5 May 2011, [REDACTED] (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Funds Center (NPFC) for \$4,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

Claimant is employed as a residential care provider at [REDACTED] in Gretna, LA.¹ Claimant stated that [REDACTED] operates a group home for persons with mental disabilities and her specific responsibilities involve assisting those persons with daily life functions.² Claimant stated that, due to the Deepwater Horizon oil spill, [REDACTED] suffered a reduction in revenue.³ Because of [REDACTED] loss of revenue, Claimant stated her days and hours working for [REDACTED] were reduced.⁴

Claimant's sum certain was calculated by comparing her W-2 forms from 2009 and 2010 and making an estimate of the difference.⁵

APPLICABLE LAW

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

¹ PHONECON between Claimant and NPFC Representative, dated 13 May 2011.

² *Id.*

³ *Id.*; Letter from [REDACTED] dated 25 July 2010, describing [REDACTED] reduction in employee hours due to the Deepwater Horizon incident.

⁴ OSLTF Claim Form, dated 5 May 2011.

⁵ PHONECON between Claimant and NPFC Representative, dated 13 May 2011.

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 the OSLTF

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

- Optional OSLTF claim form, dated 5 May 2011;

- Letter from [REDACTED] to "Fellow Employee," dated 25 July 2010;
- Check from [REDACTED] legible date;
- Checks from [REDACTED] for the periods: 2 February 2010 through 28 February 2010, 2 March 2010 through 31 March 2010, 17 June 2010 through 30 June 2010, 2 July 2010 through 15 July 2010, 17 September 2010 through 30 September 2010, 2 December 2010 through 15 December 2010, 2 February 2011 through 28 February 2011;
- 2010 1040A Federal Tax Return;
- 2009 1040A Federal Tax Return;
- 2009 Louisiana Resident Income Tax Return.

On 10 October 2011, Claimant presented an Emergency Advance Payment (EAP) and Final Payment claim each for \$7,000.00 in lost profits and earnings to the GCCF. Claimant was assigned Claimant ID Number [REDACTED] and Claim Number [REDACTED], respectively. The EAP claim was denied on 27 October 2011⁶ and the Final Payment claim on 16 April 2011.⁷

On 5 May 2011, Claimant presented this claim for \$4,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

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 documentation presented by Claimant.

To support her alleged loss, the Claimant provided a letter from her supervisor, [REDACTED] indicating that her hours were reduced because of the Deepwater Horizon oil spill.⁸ The NPFC contacted the HR Department at [REDACTED] to confirm the contents of the letter. The NPFC was informed that [REDACTED] no longer worked for [REDACTED] and, more importantly, [REDACTED] was entirely unaffected by the Deepwater Horizon oil spill.⁹ Indeed, a letter from [REDACTED], Human Resources Manager for [REDACTED] states that "[REDACTED] was fortunate to not have been affected by the disaster [Deepwater Horizon oil spill]."¹⁰ Additionally, the letter explicitly states that, "[a]t no time were any of our work sites affected and we were open for business as usual."¹¹ Specifically addressing the Claimant's work situation with [REDACTED], [REDACTED] letter states, "[i]n regards to [REDACTED] hours, she was scheduled to work a 7 day on/off schedule (11p-9a) from May of 2010-December 2010. Her hours were never affected or altered due to the oil spill and she worked as scheduled".¹² Thus, the Claimant's evidentiary support is invalidated, as is the basis for her claim.

Because Claimant has not demonstrated that her work hours were reduced due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil, this claim is DENIED.

⁶GCCF Denial Letter dated 27 October 2010.

⁷GCCF Denial Letter dated 16 April 2011.

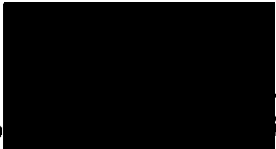
⁸ Letter from [REDACTED] to "Fellow Employee," dated 25 July 2010

⁹ PHONECON between NPFC Representative and [REDACTED] dated 13 May 2011.

¹⁰ Letter from Tara Trosclair to NPFC Representative, dated 13 May 2011.

¹¹ Id.

¹² Id.

Claim Supervisor  *Judication*

Date of Review: *5/19/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

U.S. Department
of Homeland
Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937

CERTIFIED MAIL-RETURN RECEIPT REQUESTED
Number [REDACTED]

5890/DWHZ
Claim # N10036-0754
21 June 2011

Re: Claim Number: N10036-0754

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 your claim number N10036-0754 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. If, however 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 N10036-0754.

Mail reconsideration requests to:

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

[REDACTED]
National Pollution Funds Center
U.S. Coast Guard

Encl: (1) Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00002963

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-0754
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$3,000.00

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 4 May 2011 [REDACTED] (Claimant) presented an Optional Oil Spill Liability Trust Fund ('OSLTF') Claim Form to the National Pollution Funds Center ('NPFC') seeking \$3,000.00 in lost profits and earnings that allegedly resulted from the Deepwater Horizon oil spill.

Claimant was employed by [REDACTED] out of [REDACTED]. Claimant asserted that, as a result of the Deepwater Horizon oil spill, he was unable to go offshore to work on deepwater rigs.²

Claimant did not provide a calculation for his sum certain of \$3,000.00.

Prior to presenting this Claim to the GCCF, Claimant filed an Emergency Advance Payment (EAP) claim with the GCCF for \$20,000 in loss of profits and earnings.³ Claimant was assigned Claimant ID [REDACTED] and Claim [REDACTED]. This claim was denied by the GCCF on 15 November 2010.⁴ Claimant also filed several other loss of profits and earnings claims with the GCCF, as well as subsistence and removal/clean up claims.⁵ These claims have all been denied by the GCCF.⁶

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).

¹ Pay stubs from [REDACTED] for 17 April 2010 through 30 April 2010 and 15 May 2010 through 28 May 2010

² OSLTF Claim Form.

³ Report from the GCCF dated 13 June 2011.

⁴ GCCF Denial Letter dated 15 November 2010.

⁵ Report from the GCCF dated 13 June 2011

⁶ *Id.*

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 the OSLTF

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

- Optional Oil Spill Liability Trust Fund Claim Form, dated 26 April 2011;
- Pay stubs from [REDACTED] for 17 April 2010 through 30 April 2010 and 15 May 2010 through 28 May 2010;
- Photocopies of the following: 'License to go Offshore', 'IADC RigPass', Texas Driver's License, Social Security card, 'Water Survival/H.U.E.T.'; and,
- 2009 and 2010 W-2 Federal tax forms from [REDACTED].

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 documentation presented by the Claimant.

This claim is denied because the Claimant's evidence does not demonstrate (1) the alleged loss of profits in the amount of \$3,000.00, as claimed, or (2) the correlation, if any, between this alleged loss and the Deepwater Horizon oil spill. The Claimant's documentation indicated that he earned \$42,327.28⁷ at [REDACTED] in 2009 and \$49,894.55⁸ at [REDACTED] in 2010; an increase of \$7,567.27.

It is also important to note that the Claimant has provided NO comparable financial documentation pursuant to the governing claims regulations at 33 CFR 136.233 (c) which states "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."

On 16 May 2011, the NPFC requested additional information from the Claimant to further evaluate the claim and aid in establishing a loss due to the Deepwater Horizon oil spill. The NPFC requested, among other things: Federal tax returns for 2008-2010, pay stubs from 2008-2010, copies of work schedules from 2008-2010, and documentation from the Claimant's employer evidencing that [REDACTED] experienced a financial loss due to the Deepwater Horizon oil spill. To date, no response has been received by the NPFC.

This claim is denied because the Claimant has failed to demonstrate (1) the alleged loss of profits in the amount of \$3,000.00, as claimed, or (2) that this alleged loss is 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.

[REDACTED]
Claim Supervisor: *Claims Adjudication Division*

Date of Supervisor's review: *6/21/11*

Supervisor Action: *Denial approved*

⁷ 2009 W-2 Federal tax form from [REDACTED]

⁸ 2010 W-2 Federal tax form from [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 # N10036-0755
09 May 2011

Re: Claim Number: N10036-0755

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 your claim, # N10036-0755, involving the Deepwater Horizon oil spill. Please see the attached Claim Summary/Determination Form for further explanation.

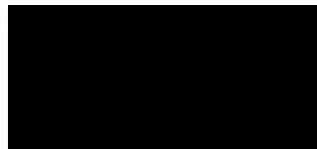
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you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

Reconsideration of the denial will be based upon the information provided. A claim may be reconsidered only once. Disposition of that reconsideration in writing will constitute final agency action. Failure of the NPFC to issue a written decision within 90 days after receipt of a timely request for reconsideration shall, at the option of the claimant, be deemed final agency action. All correspondence should include claim number N10036-0755.

Mail reconsideration requests to:

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

Sincerely,



Marine Science Technician I
Claims Manager
U.S. Coast Guard

Enclosure: (1) Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00002967

CLAIM SUMMARY/DETERMINATION FORM

Date	05 May 2011
Claim Number	N10036-0755
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. 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 May 2011, [REDACTED] (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Funds Center (NPFC) for \$10,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

Claimant worked for [REDACTED] from 20 August 1996 through 14 February 2011. [REDACTED] operates a fleet of offshore marine support vessels, serving the global offshore oil and gas exploration and production industry.² Claimant alleged that he was laid off at [REDACTED] as a result of the Deepwater Horizon oil spill.³

APPLICABLE LAW

Under the Oil Pollution Act of 1990 (OPA), at 33 U.S.C. § 2702(a), responsible parties are liable for removal costs and damages resulting from the discharge of oil into 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.

¹ Letter verifying Claimant's employment with [REDACTED] dated 16 February 2011. [REDACTED] (last visited 06 May 2011).

² 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 support his claim, Claimant submitted his OSLTF claim form; GCCF denial letter Re: Claimant's Interim Payment claim, dated 01 April 2011; Payroll Register Report; 2010 W-2 from [REDACTED] letter verifying the Claimant's employment with [REDACTED], dated 16 February 2011; Form [REDACTED] Submission; sea service record; handwritten job search record; and various earnings statements from [REDACTED]

Claimant reportedly presented an Interim Payment claim for \$9,000.00 in lost profits and earnings to the RP/GCCF.⁴ He was assigned Claimant ID # [REDACTED] and Claim # [REDACTED] 01 April 2011, this claim was denied by the GCCF.⁵

On 04 May 2011, Claimant presented this claim for \$10,000.00 in loss of profits and impairment of earnings capacity to the NPFC.

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 documentation presented by Claimant.

⁴ PHONECON between the NPFC and Claimant on 06 May 2011.

⁵ GCCF Denial Letter Re: Claimant's Interim Payment claim, dated 01 April 2011.

Under 33 C.F.R. § 136.103(a), all claims for removal costs or damages must be presented first to the responsible party (RP). Claimant presented an Interim Payment claim for \$9,000.00 in lost profits and earnings to the GCCF. Claimant then presented a loss of profits and impairment of earnings capacity claim of \$10,000.00 to the NPFC. Any claimed amount of damages exceeding \$9,000.00 was not properly presented to the RP/GCCF pursuant to 33 C.F.R. § 136.103(a) and is therefore DENIED.

The remainder of this claim is DENIED because the Claimant's evidence does not demonstrate that his alleged loss is due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil.

In reviewing this claim, the NPFC contacted [REDACTED] to verify the Claimant's employment and the circumstances of his layoff. A conversation with [REDACTED] Human Resources Administrator (HRA) revealed that the Claimant had been employed for almost fifteen years and was eligible for rehire. HRA indicated that after the Deepwater Horizon oil spill, employees were given work as spill responders for BP. HRA further indicated that as this response work declined, [REDACTED] experienced extensive permitting delays, which led to the layoff/termination of over seventy personnel, many of whom like the Claimant had been employed for many years. HRA stated simply that "no permits, no charters, no work, no jobs."⁶

In a letter dated 16 February 2011, HRA stated the following: "As a result of the economic conditions that face our particular industry and with the depressed utilization of our equipment it became necessary to lay off [REDACTED]"⁷

Because the evidence does not demonstrate that the Claimant's alleged loss is 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 but rather other factors such as permitting delays that resulted following the imposed Moratorium, this claim is DENIED.

Claim Supervisor: [REDACTED]

Date of Supervisor's Review: *5/9/11*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

⁶ PHONECON between [REDACTED] and the NPFC on 04 May 2011

⁷ Letter verifying Claimant's employment with [REDACTED], dated 16 February 2011.

U.S. Department of
Homeland Security

**United States
Coast Guard**



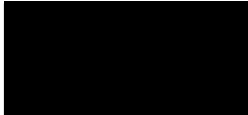
Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD

[REDACTED]
Fax: 202-493-6937
5890
5/9/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]



RE: Claim Number: N10036-0756

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 N10036-0746 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 N10036-0756.

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

FOIA2011-3380-00002971

CLAIM SUMMARY / DETERMINATION FORM

Date	: May 5, 2011
Claim Number	: N10036-0756
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 May 4, 2011, [REDACTED] (Claimant) presented a lost profits & earnings capacity claim in the amount of \$15,000.00 to the National Pollution Funds Center (NPFC) for reimbursement. The Claimant stated that she is a truck driver for [REDACTED] and hauls oilfield equipment to docks and various companies. The Claimant also stated in a letter to the NPFC that "my business is directly related to the oil industry. If there are no oil companies drilling, then I do not haul equipment to them."

The Claimant provided a copy of the denial letter for her final claim with the GCCF dated March 6, 2011.

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:

09/14/11 (a) That real or personal property or natural resources have been injured, destroyed, or lost. FOIA2011-3380-00002972

- (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 Form, dated April 3, 2011;
- Hardship letter from [REDACTED]
- Personal hardship letter explaining her claim;
- Copy of GCCF final claim denial letter;
- Photocopy of Driver's License;
- 2008, 2009, and 2010 income Tax Returns;
- List of delivery trips in 2008, 2009, and 2010;
- 2010 1099 from [REDACTED]

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 documentation presented by Claimant.

This claim is denied because the Claimant's evidence does not demonstrate (1) the alleged loss of profits in the amount of \$15,000.00, as claimed, or (2) the correlation, if any, between this alleged loss and the Deepwater Horizon oil spill.

It is also important to note that the Claimant has provided NO comparable financial documentation pursuant to the governing claims regulations at 33 CFR 136.233 (c) which states "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."

Additionally, it is important to note that the Claimant stated in a letter to the NPFC that her "business is directly related to the oil industry. If there are no oil companies drilling, then I do not haul equipment to them."

This claim is denied because the Claimant has failed to demonstrate (1) the alleged loss of profits in the amount of \$15,000.00, as claimed, or (2) that this alleged loss is 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.

Claim Supervisor 

Date of Supervisor's review: *5/9/11*

Supervisor Action: *Denial approved*

Supervisor's Comments:

U.S. Department of
Homeland Security

United States
Coast Guard



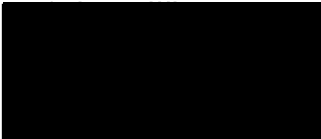
Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD

5890
5/19/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number [REDACTED]



RE: Claim Number: N10036-0758

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act of 1990, U.S.C. § 2701 et seq. (OPA) and the associated regulations at 33 C.F.R. Part 136, denies payment on the claim number N10036-0758 involving Deepwater Horizon. Please see the attached Claim Summary/Determination Form for further explanation.

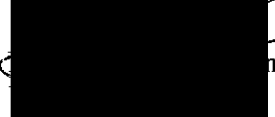
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-0758.

Mail reconsideration requests to:

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

Sincerely,



Director
National Pollution Funds Center

Encl: (1) Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00002975

CLAIM SUMMARY / DETERMINATION FORM

Date	: May 18, 2011
Claim Number	: N10036-0758
Claimant	██████████s
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
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. 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 May 5, 2011, ██████████ (Claimant), presented a claim for lost profits & earnings capacity in the amount of \$10,000.00 to the National Pollution Funds Center (NPFC) for reimbursement. The Claimant stated in her letter to the GCCF that she quit her job to work as a clean-up contractor for BP. She stated that BP promised her employment for two (2) years.

The Claimant provided no supporting documentation except for the Optional OSLTF Claim Form and a permission letter allowing us to request her claim submission from the GCCF.

APPLICABLE LAW:

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

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

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

- (a) That real or personal property or natural resources have been injured, destroyed, or lost.
- (b) That the claimant's income was reduced as a consequence of injury to, destruction of, or loss of property or natural resources, and the amount of that reduction.

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

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

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

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

DETERMINATION OF LOSS

Claimant's Submission

To support the claim, the Claimant submitted the following documentation:

- NPFC OSLTF Form, received May 4, 2011;
- GCCF claim submission provided by the GCCF;

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 documentation presented by Claimant.

This claim is denied because the Claimant's evidence does not demonstrate (1) the alleged loss of profits in the amount of \$10,000.00, as claimed, or (2) the correlation, if any, between this alleged loss and the Deepwater Horizon oil spill.

It is important to note that the Claimant made a personal decision to quit her job and seek employment with BP. When BP no longer needed the service of the Claimant she was terminated. While the Claimant asserted that she was promised two years of employment, the Claimant has not provided a copy of a written guarantee by the employer confirming a two year guarantee.

Because the Claimant has failed to demonstrate (1) the alleged loss of profits in the amount of \$10,000.00, as claimed, or (2) that this alleged loss is 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, this claim is DENIED.

Claim Supervisor: *Clai*  *ion Division*

Date of Supervisor's review: *5/19/11*

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

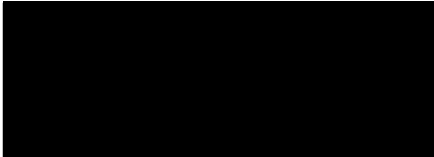
NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]

DWHZ/ 5890
28 June 2011



RE: Claim Number: N10036-0759

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 N10036-0759 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination Form for further explanation.

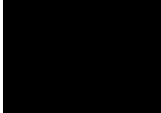
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-0759.

Mail reconsideration requests to:

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

Sincerely,



Deepwater Horizon Claims Adjudication
National Pollution Funds Center
U.S. Coast Guard

Enclosure: Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00002979

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-0759
Claimant	[REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Impairment of Earnings Capacity
Amount Requested	: \$25,000.00

FACTS

On or about 20 April 2010, the Mobile Offshore Drilling Unit Deepwater Horizon (Deepwater Horizon) exploded and sank in the Gulf of Mexico. As a result of the explosion and sinking, oil was discharged. 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 May 2011, [REDACTED] (Owner) on behalf of [REDACTED] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$25,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill (oil spill).¹

Claimant is a business that provides notary public services, including title transfers for boats, autos and trailers.² Claimant alleged that as a result of the Deepwater Horizon oil spill, its business suffered a decline.³

APPLICABLE LAW

Under the Oil Pollution Act of 1990 (OPA), at 33 U.S.C. § 2702(a), responsible parties are liable for removal costs and damages resulting from the discharge of oil into 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.

¹ Optional OSLTF Claim Form signed on 3 May 2011 and received at NPFC on 5 May 2011. Although Owner also alleges damages for losses of rental income from personally owned property on the same OSLTF Claim Form, those damages are addressed as a separate claim. Documentation provided in support of that other claim is not addressed herein.

² Claimant letter "to whom it may concern," dated 28 January 2011.

³ *Id.*
05/14/11

- 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 the claim, Claimant provided the following documentation:

- Optional OSLTF Claim Form signed 3 May 2011 and received on 5 May 2011.
- Monthly P&L sheets for [REDACTED] for Jan. 2010 through May 2010 and July 2010 through 28 Jan. 2011.
- Annual P&L sheet for [REDACTED] for the 12-month period January 2009 through December 2009.
- The [REDACTED] letter of 28 January 2010 to Gulf Coast Claims addressing impacts of the oil spill.
- Your letter of 1 November 2010 to Gulf Coast Claims addressing tax documents.
- Your letter of 1 November 2010 to Gulf Coast Claims requesting final payment.
- GCCF letter of 16 November 2010 denying your Emergency Advance Payment claim.
- GCCF letter of 6 March 2010 denying your Interim Payment/Final Payment claim.

Prior to presentation to the NPFC, Claimant presented an Interim Payment Claim to the RP/GCCF for \$76,800.00 in lost profits and earnings. On 6 March 2011, the Interim claim was denied by the GCCF.⁴

On 5 May 2011, Claimant presented the subject claim for \$25,000.00 in loss of profits and impairment of earnings capacity relative to its notary service business.

⁴ GCCF denial letter to Claimant dated 6 March 2011.

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 and conducted an independent investigation of the claim.

After an initial review, the NPFC sent the Claimant a letter requesting additional information to further evaluate the claim. The letter requested, among other things, financial documentation to support her alleged lost profits and an explanation of how the Deepwater Horizon oil spill caused the business losses. The Claimant was given 14 days to respond to the letter, dated 24 May 2011. To date, the Claimant has not responded.

Based on the foregoing, the Claimant has failed to demonstrate that her alleged reduction in earnings 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 and the Claimant has failed to demonstrate she has experienced a loss in the amount the amount claimed, therefore this claim is denied.

Claim Supervisor: NPFC  *ication Division*

Date of Review: *6/28/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

CLAIM SUMMARY / DETERMINATION FORM

U.S. Department of
Homeland Security

**United States
Coast Guard**



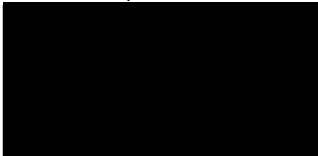
Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD

5890
11 July 2011

CERTIFIED MAIL -- RETURN RECEIPT REQUESTED

Number: [REDACTED]



Re: Claim Number: N10036-0760

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 N10036-0760 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 N10036-0760.

Mail reconsideration requests to:

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

Sincerely,

[REDACTED] on Division
National Pollution Funds Center
U.S. Coast Guard

Enclosure: (1) Claim Summary/Determination Form
(2) Documentation provided by Claimant; N10036-0760

CLAIM SUMMARY / DETERMINATION FORM

Claim Number : N10036-0760
Claimant : [REDACTED]
Type of Claimant : Corporate (US)
Type of Claim : Loss of Profits and Earning Capacity
Amount Requested : \$240,000.00

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 5 May 2011, [REDACTED] (Owner) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) on behalf of [REDACTED] (Claimant) for \$240,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.¹

Claimant is a seafood distributor, located in Panama City, FL. Claimant is a business that opened in June 2009 and closed on an unspecified date in the summer of 2010.²

APPLICABLE LAW

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

¹ Optional OSLTF Claim Form received 5 May 2011.

² Letter dated 17 December 2010, To Whom It May Concern (GCCF – Claim # [REDACTED])

- (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

Prior to presentment to the NPFC, Claimant presented an Emergency Advance Payment (EAP) Claim to the RP/GCCF on 23 August 2010 and was assigned GCCF Claimant ID Number [REDACTED]. The \$360,000.00 EAP claim was denied on 7 December 2010.³ On 21 December 2010, Claimant presented an Interim Advance Payment Claim to the RP/GCCF in the amount of \$480,000.00 which was denied on 6 March 2011.⁴

On 29 April 2011, Claimant presented this claim in the amount of \$240,000.00 for loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

To support this claim, Claimant submitted a large amount of documentation, listed in Enclosure (2).

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 reviewed and considered all documentation provided by the Claimant.

After an initial review, the NPFC sent the Claimant a letter requesting additional information to further evaluate the claim. The letter requested, among other things, financial documentation to support lost profits and other documentation and explanations supporting the Claimant's involvement in the Gulf seafood distribution business between June 2009 and 2010. The letter specifically requested evidence of the Claimant's valid licensing to sell seafood in the states

³ GCCF letter dated 7 December 2010.

⁴ GCCF letter dated 6 March 2010.

where the Claimant conducted business. The Claimant was given 14 days to respond to the letter, dated 6 June 2011.

This claim is DENIED for the following reasons: (1) Claimant has failed to meet the evidentiary burden to provide all evidence, information, and documentation deemed necessary by the Director, NPFC, to support its claim, pursuant to 33 C.F.R. § 136.105(e)(6); (2) Claimant has also failed to demonstrate its alleged loss in the amount of \$240,000.00 through financial documentation; and (3) Claimant has failed to demonstrate that its alleged loss is due to injury or destruction or loss of real or personal property or a natural resource as a result of a discharge or a substantial threat of a discharge of oil.

Claim Supervisor:  *fo*

Date of Supervisor's Review: *7/11/11*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

Below is a list of documentation that we have received to date in support of [REDACTED] claim (3 pages):

- Optional OSLTF Claim Form dated received 5 May 2011.
- 2009 Tax Form 1040, pages 1 and 2.
- 2009 Schedule SE, page 2 only
- 2009 Tax Form 4562, pages 1 and 2.
- 2009 Tax Form Schedule C, pages 1 and 2.
- 2009 Tax Form Schedule C Depreciation Report.
- 2009 Alternative Minimum Tax Depreciation Sheet.
- 2009 Tax Form Schedule M.
- Copy of Georgia Driver's License issued 6 April 2010.
- 18 November 2008 Georgia State Board of Workers' Compensation report of injury or occupational disease.
- 16 February 2010 Promissory Note with The Bank of [REDACTED].
- 30 March 2010 [REDACTED] Estates Rental Contract [REDACTED] [REDACTED] dated, with one attachment page (beginning SIX MONTH LEASE).
- 13 April 2010 Department of the Treasury letter.
- 15 April 2010 IRS letter to Claimant.
- 28 June 2010 Florida Fish and Wildlife Conservation Commission Temporary License for Saltwater Products, 2009-2010.
- 6 July 2010 ESIS check # [REDACTED] payable to [REDACTED] dba [REDACTED] [REDACTED] in the amount of \$5,000.
- 6 July 2010 BP Payment/Closing Request document.
- 12 July 2010 Bank of [REDACTED] Memo.
- 2 August 2010 [REDACTED] Fax to Mr. [REDACTED] with attached letter and Lawyer Representation page to BP dated 2 August 2010.
- 5 August 2010 Clenney, Powell & Rentz, CPA letter.
- 5 August 2010 Clenney, Powell & Rentz letter to Claimant with forecasted statement for one year and statement of significant assumptions.
- 9 August 2010 Claimant letter to Clenney, Powell, & Rentz, PC, with forecasted statement of income and summaries of significant assumptions for one year.
- 13 August 2010 Notice of Insurance Expiration.
- 16 August 2010 application for promissory note with The Bank of [REDACTED]
- 16 August 2010 Florida Fish and Wildlife Conservation Commission letter dated on expiration of extended use of 2009-2010 licenses.
- 23 August 2010 GCCF BP-GCCF transfer letter.
- 24 August 2010 UPS shipping document from Worley to The Garden City Group.
- 13 September 2010 Cash Express of Georgia, Inc. letter.
- 30 September 2010 GCCF letter to [REDACTED]
- 5 October 2010 Fax Cover Sheet, with 5 pages attached, including hardship letter, draft copy of 2009 Schedule C, letter 5 August 2010 from Clenney, Powell & Rentz,
- 17 December 2010 To Whom It May Concern (GCCF) letter.
- 12 January 2011 [REDACTED] fax to GCCF.
- 19 January 2011 [REDACTED] letter to GCCF.

- 8 February 2011 letter [REDACTED] (for Representative Sanford Bishop) to GCCF.
- 16 March 2011 IRS letter to Owner on inquiry, with attached vouchers.
- 21 March 2011 IRS letter to Claimant on 2009 taxes.
- 23 March 2011 letter from Congressman Bishop.
- 9 May 2011 letter to [REDACTED] on release of GCCF documents.
- Undated [FWC] Notice on Commercial Saltwater License Year.
- [REDACTED] Auto Service repair bill dated 1 July 2010.
- [REDACTED] Auto Service repair bill dated 13 July 2010.
- Undated GCCF cover letter to [REDACTED].
- GCCF Document Separator Sheet annotated 'Sales Receipts for Oct. '09', with order forms 661501 through 661546 bearing dates from 30 September 2009 through 28 October 2010.
- Undated UPS shipping document from The Worley Companies to The Garden City Group.
- Undated hardship letter from [REDACTED], To Whom It May Concern.
- 23 November 2010 email from [REDACTED] to GCCF dated providing additional documentation (handwritten Schedule C, 2009 W-2 Form for [REDACTED], 4 October 2010 To Whom It May Concern letter and Clenney, Powell & Rentz's 5 August letter with attachments).
- 2 December 2010, 3:08 pm email from [REDACTED] to GCCF.
- 3 December 2010, 3:58 pm email from GCCF to [REDACTED].
- 11 December 2010, 2:15 pm email from [REDACTED] to GCCF.
- 14 December 2010 GCCF letter to [REDACTED].
- 17 December 2010 The Bank of [REDACTED] default statement.
- 20 December 2010 letter from Cash Express of Georgia, Inc.
- 21 December 2010 copy of Interim Claim to GCCF dated for 8 months in the amount of \$480,000, 14 pages.
- 21 December 2010, 3:24 pm email from [REDACTED] to GCCF.
- 21 December 2010, 4:33 pm email from [REDACTED] to GCCF.
- 22 December 2010, 3:26 pm email from [REDACTED] to GCCF.
- 27 December 2010, 5:51 pm email from [REDACTED] to GCCF.
- 27 December 2010, 8:47 am email from [REDACTED] to GCCF.
- 28 December 2010, 8:50 am email from GCCF to [REDACTED].
- 28 December 2010, 8:53 am email from GCCF to [REDACTED].
- 4 January 2011, 11:28 am email from [REDACTED] to GCCF with attached letter.
- 11 January 2011, 8:36 am email from [REDACTED] to GCCF.
- 11 January 2011, 8:45 am email from GCCF to [REDACTED].
- 19 January 2011, 5:23 pm email [REDACTED] to GCCF with attached letter.
- 20 January 2011 10:40 am [REDACTED] email to GCCF.
- 21 January 2011 email from [REDACTED] to Claimant.
- 31 January 2011 GCCF acknowledgement letter.
- 11 May 2010 GCCF Global Notes for 1109268.
- 28 April 2009 three pages of products.
- Thirty-eight (38) Sale of Goods Agreements, page 1 only of each agreement.
- [REDACTED] LLC letter 10 August 2009 with 7-page attachment.
- Georgia Certificate of Title for 1988 Ford truck.
- Emergency Advance Payment claim to GCCF in the amount of \$38,725 per month.

- 2011 Registration Renewal Notice for 1988 Ford.
- Signed, but undated 12-Month Revenue pre-tax monthly P&L sheet for [REDACTED]
- Claimant letter To Whom It May Concern regarding 2010 contracts for sale of seafood.

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
5/12/2011

BY MAIL AND EMAIL

RE: Claim Number: N10036-0761

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act of 1990, U.S.C. § 2701 et seq. (OPA) and the associated regulations at 33 C.F.R. Part 136, denies payment on the claim number N10036-0761 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 N10036-0761.

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: (1) Claim Summary/Determination Form
09/14/11

FOIA2011-3380-00002990

CLAIM SUMMARY / DETERMINATION FORM

Date	: May 12, 2011
Claim Number	: N10036-0761
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. 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 May 5, 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 asserted that he was terminated from his job at [REDACTED] as a result of the oil spill. The Claimant asserted in his handwritten submission that his employer, "laid off over 150 of its employees."

The Claimant did not provide correspondence or documentation pertaining to his claim with the GCCF, but stated that his final claim was 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 the claim, the Claimant submitted the following documentation:

- NPFC OSLTF Form, 28 April 2011;
- Impact Letter dated 02 April 2011 written by Claimant;
- 2009 and 2010 W-2s;

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.

Upon receipt of the claim, the NPFC spoke with the Human Resource Department (HR) at [REDACTED] to confirm that the Claimant was terminated as a direct result of the oil spill. The HR Manager stated that the terminations occurred because contracted work was completed. She also stated that the oil spill may have played a part in not picking up additional work but they could not point directly to the oil spill.

With respect to the alleged loss of profits, the Claimant has failed to provide sufficient comparable financial information pursuant to the claims regulations found at 33 C.F.R. § 136.233, a claimant must establish the following to prove loss of profits or impairment of earning capacity:

- (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.

Additionally, the Claimant has failed to provide documentation to demonstrate that any alleged loss, if one had occurred, was 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. Based on the record, he was terminated due to a contract ending between [REDACTED] and the contracted company.

Based on the documents and information presented, this claim is denied because (1) the Claimant has not established that a loss of profits or earnings capacity occurred 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 and (2) the Claimant has failed to articulate how he derived at the alleged loss amount. Therefore, the claim is denied.

Claim Supervisor: [REDACTED]
Date of Supervisor's review: 5/12/11
Supervisor Action: <i>Denial approved</i>

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
5/11/2011

BY MAIL AND EMAIL



RE: Claim Number: N10036-0762

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act of 1990, U.S.C. § 2701 et seq. (OPA) and the associated regulations at 33 C.F.R. Part 136, denies payment on the claim number N10036-0762 involving Deepwater Horizon. Please see the attached Claim Summary / Determination Form for further explanation.

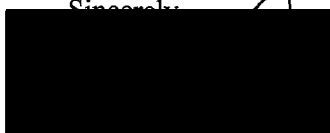
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-0762.

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: (1) Claim Summary/Determination Form
09/14/11

FOIA2011-3380-00002994

CLAIM SUMMARY / DETERMINATION FORM

Date	: May 9, 2011
Claim Number	: N10036-0762
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 May 5, 2011 [REDACTED] (Claimant) presented a lost profits & earnings capacity claim in the amount of \$6,000.00 to the National Pollution Funds Center (NPFC) for reimbursement. The Claimant stated that he was unable to sell [REDACTED] as a result of the oil spill because potential buyers' "jobs or businesses were shut down or reduced to a level where income was uncertain or they lost their jobs." Claimant stated on the Optional OSLTF Form that the customer base he sells to is made up of oil field service companies, seafood processors, seafood restaurant owners, and oil field workers.

The Claimant provided a copy the GCCF final claim denial letter dated April 16, 2011.

APPLICABLE LAW:

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

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

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

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

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

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

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

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

DETERMINATION OF LOSS

Claimant's Submission

To support the claim, the Claimant submitted the following documentation:

- NPFC OSLTF Form, dated April 26, 2011;
- GCCF Final claim denial letter dated April 16, 2011;
- 2009 & 2010 W-2s;
- Handwritten explanation of claim;
- Sales for July through August of 2010 with comparables for July through August of 2009.

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 documentation presented by Claimant.

Upon review of the Claimant's submission, the Claimant provided a W-2 for 2009 in the amount of \$9,000.00 for employment with [REDACTED] and a W-2 for 2010 in the amount of \$43,961.65 from the same employer. It is important to note that the Claimant provided no other W-2s for 2009 therefore the NPFC is unable to determine what the Claimant's overall employment was for 2009. While the Claimant's handwritten statement indicated that he began

his employment with [REDACTED] in November 2009, the Claimant has not provided a complete copy of his income tax returns for 2008, 2009, and 2010 nor has he provided a detailed copy of all sales records to support his assertion that he had a reduction of \$1,500.00 a month from May 2010 through August 2010 that was a result of the injury, destruction or loss of real or personal property or a natural resource as a result of a discharge or substantial threat of a discharge of oil as opposed to any other economic or business factors. Additionally, the Claimant has not provided the itemized data in support of the sales made in 2009 and 2010 that supports his assertion that his customer base was oil field service workers, seafood processors, seafood restaurant owners and oil field workers therefore the Claimant would need to provide the names, addresses, contact phone numbers, etc. for all sales from November 2009 to the present in order to substantiate his assertions.

This claim is denied because the Claimant's evidence does not demonstrate (1) the alleged loss of profits in the amount of \$6,000.00, as claimed, or (2) that this alleged loss is 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.

Claim Supervisor [REDACTED]

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

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

Fax: 202-493-6937

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Number [REDACTED]

5890/DWHZ
Claim # N10036-0764
11 May 2011

Re: Claim Number: N10036-0764

Dear [REDACTED]

The National Pollution Funds Center (NPFC) in accordance with the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq. (OPA) and the associated regulations at 33 C.F.R. Part 136, denies your claim, # N10036-0764, relating to the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination form for further explanation.

You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. If, however 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 N10036-0764.

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

FOIA2011-3380-00002998

CLAIM SUMMARY/DETERMINATION FORM

Date	09 May 2011
Claim Number	N10036-0764
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Claim Manager	[REDACTED]
Amount Requested	\$22,860.00

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 05 May 2011, [REDACTED] (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Funds Center (NPFC) for \$22,860.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

Claimant and her husband do business as landlords renting out a condominium property located at [REDACTED] in Destin, Florida. Claimant executed a lease of the above mentioned location between herself and [REDACTED] (Tenant), beginning 1 August 2009 and ending 31 July 2011.¹ Claimant asserted that the Tenant breached the lease by prematurely moving out on 16 November 2010. According to the Claimant, the Tenant's stated reason for breaching the lease was that his business, income and health declined due to the BP oil spill, preventing him from being able to pay his rent.² After the Tenant breached the lease and abandoned the property on 16 November 2011, the Claimant asserted the inability to find another tenant to rent the property. The Claimant's sum certain equals unpaid rental income under the lease, from 16 November to 31 July 2011.

APPLICABLE LAW

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

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

¹ Lease between Claimant and Tenant, executed 26 June 2009.

² Original form from Claimant to GCCF, dated 18 November 2010.

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

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

- OSLTF claim form;
- Letter from Claimant to GCCF in response to additional information request, dated 10 March 2011;
- Personal income tax return 1040 Schedule Es for 2009 and 2010;
- Lease between Claimant and Tenant to rent the aforementioned property;
- Email from Claimant's community association manager, dated 18 November 2010;
- Email from Claimant to GCCF, dated 18 November 2010;
- Letter from [REDACTED] re: Tenant's medical condition; and
- News article from the [REDACTED]

Procedurally, the Claimant presented an Emergency Advance Payment (EAP) and a Full Review Final Payment claim to the GCCF. She was assigned GCCF Claimant ID Number [REDACTED], and Claim Numbers [REDACTED] and [REDACTED], respectively. The EAP claim was denied on 17 November 2010, and the Final Payment claim was denied on 09 March 2011.³

On 05 May 2010, Claimant presented this claim for \$22,860.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

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 documentation presented by Claimant.

The Claimant seeks \$22,860.00 in lost past and future rents from the Tenant's breach of the lease agreement as a result of the Deepwater Horizon oil spill. Claimant asserted that "my tenant . . . has informed me that his business, income, and his health has continued to decline due to the BP oil spill and subsequently he is no longer able to pay his rent. . . ."⁴ As support, the Claimant provided a letter purportedly from [REDACTED] which stated "[Tenant] has shown elevated levels of volatile solvents in his blood including Ethylbenzene and m, p-Xylene . . . [which] are petroleum derivatives that potentially could cause several biological dysfunctions in humans and impair the neurological, immune and hormonal systems."⁵

Outside of the Claimant's assertions and this letter, there is no explanation of the Tenant's line of work or business, whether he contracted this diagnoses as a result of the Deepwater Horizon oil spill, and whether such diagnosis ultimately reduced the Tenant's income, forcing his departure and breach of the lease agreement.

Claimant has not demonstrated that her loss in the amount of \$22,860.00 is due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil as well as any amount of future loss claimed for time periods after the date the claim was filed with the NPFC, is speculative in nature and therefore not an actual loss. This claim is therefore DENIED.

Claim Supervisor [REDACTED]

Date of Review: *5/11/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

³ GCCF denial letters Re: Claimant's EAP and Final Payment claims, dated 17 November 2010 & 09 March 2011 respectively.

⁴ Email from Claimant to GCCF, dated 18 November 2010.

⁵ Letter from [REDACTED] MD re: Tenant's medical condition.

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
5/11/2011

BY MAIL AND EMAIL

[REDACTED]

[REDACTED]

RE: Claim Number: N10036-0765

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act of 1990, U.S.C. § 2701 et seq. (OPA) and the associated regulations at 33 C.F.R. Part 136, denies payment on the claim number N10036-0765 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 N10036-0765.

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

CLAIM SUMMARY / DETERMINATION FORM

Date	: May 9, 2011
Claim Number	: N10036-0765
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$873.54

FACTS:

On or about 20 April 2010, the Mobile Offshore Drilling Unit Deepwater Horizon (Deepwater Horizon) exploded and sank in the Gulf of Mexico. As a result of the explosion and sinking, oil was discharged. 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 May 5, 2011 [REDACTED] Claimant) presented a lost profits & earnings capacity claim in the amount of \$873.54 to the National Pollution Funds Center (NPFC) for reimbursement. The Claimant is requesting costs associated with her vacation trip to Orange Beach, Alabama due to the oil spill. Although the Claimant confirmed that she did still go on the trip¹, she stated that, "the beaches were inaccessible or closed."²

Based on documentation provided by the Claimant, the vacation was from July 2, 2010 to July 9, 2010. The Claimant also provided a breakdown of her sum certain, as follows:

- Airfare = \$581.60
- Rental Car = \$231.94
- Luggage = \$60.00
- Total = \$873.54

The Claimant provided a copy her GCCF claim submission. To date, the claim has not been denied and is listed as "under review".

APPLICABLE LAW:

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

¹ Email from Claimant to NPFC dated May 9, 2011

² Optional OSLTF Form dated May 6, 2011

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

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

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

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

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

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

DETERMINATION OF LOSS

Claimant's Submission

To support the claim, the Claimant submitted the following documentation:

- NPFC OSLTF Form, dated May 6, 2011;
- GCCF Interim claim submission;
- Bank statement reflecting purchases made for trip;

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 documentation presented by Claimant.

The claim is denied because the Claimant has not realized a loss as alleged. The Claimant went on the vacation to Orange Beach, AL as planned. Such a loss as the one claimed in this case, is not a damage that may be compensated from the OSLTF but rather a request for compensation of a vacation to the Gulf Coast that was never canceled 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: *5/11/11*

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 # N10036-0766
12 May 2011

Re: Claim Number: N10036-0766

Dear [REDACTED]:

The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act of 1990, U.S.C. § 2701 et seq. (OPA) and the associated regulations at 33 C.F.R. Part 136, denies payment on the claim number N10036-0766 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 N10036-0766.

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: (1) Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00003006

CLAIM SUMMARY/DETERMINATION FORM

Date	11 May 2011
Claim Number	N10036-0766
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Claim Manager	[REDACTED]
Amount Requested	\$23,250.00

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 May 2011, [REDACTED] (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Funds Center (NPFC) for \$14,200.00 in loss of profits and impairment of earnings capacity, \$9,000.00 in increased public services and \$600.00 in natural resource damages resulting from the Deepwater Horizon oil spill.¹ On 09 May 2011, Claimant clarified that she intended to allege only \$23,250.00 in loss of profits and impairment of earnings capacity.²

Claimant asserted that since November 2009, she worked as an "Executive Assistant for [the] [REDACTED] [Association]," where she reportedly was scheduled to transition into a fulltime position with the completion of the [REDACTED].³ Claimant alleged as a result of the Deepwater Horizon oil spill, "investors and income from various ministries cut their contribution and/or flat out decided not to continue investing [in the project], which rendered the Claimant's scheduled position unavailable."⁴

Claimant also alleged that as a result of the oil spill, among other things, she has had to pay increased utility costs to comply with a boil water notice issued in Waveland, MS for the period of July through November 2010.⁵

APPLICABLE LAW

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

¹ On her OSLTF claim form, Claimant alleges a total loss amount of \$29,000.00; however, the separate claims she alleges amount to a total loss of \$23,800.00. It is unclear how Claimant accounts for the \$5,200.00 difference.

² Claimant EMAIL to the NPFC, dated 09 May 2011.

³ Claimant financial hardship letter to the GCCF, undated. The [REDACTED] is a 60 acre master-planned retirement community in Gulfside, MS. [REDACTED]

⁴ Id.; OSLTF claim form.

⁵ Claimant final payment (hardship and additional information) letter, dated 02 December 2010.

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 her claim, Claimant submitted the following documentation:

- OSLTF claim form;
- Claimant letter to the NPFC, enumerating effects of the oil spill, undated;
- Claimant letter (illegible);
- Claimant financial hardship letter, undated;
- Employment verification letter from the ██████████ Association, dated 30 April 2010;
- Claimant final payment (hardship and additional information), dated 02 December 2010;
- Claimant assorted tax documentation;
- Claimant various check stubs;

- Claimant various bills;
- Claimant job hunting costs; and
- Claimant additional information.

Claimant presented Emergency Advance Payment (EAP), Interim Payment, and Final Payment claims to the RP/GCCF. Claimant was assigned GCCF Claimant ID # [REDACTED] and [REDACTED] respectively. Claimant received compensation in the amount of \$7,100.00 on her EAP claim.⁶

On 06 May 2011, Claimant presented this claim for \$23,250.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

NPFC Determination

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

To support her claim, the Claimant submitted a letter, purportedly signed by [REDACTED], CEO of the [REDACTED] Association ([REDACTED]), which indicated that the Claimant's last pay day at Gulfside was 30 April 2010. The NPFC contacted Gulfside to verify this letter. [REDACTED] denied writing the letter and indicated that her middle initial is not K, as reflected in the letter, and the Claimant's last pay date was 26 March 2010, not 30 April 2010 as the letter indicated. [REDACTED] further stated that the signature on the letter was not hers.⁷

Although the Claimant alleged increased utility costs to comply with a three month boil water notice in Waveland, MS as a result of the Deepwater Horizon oil spill, the NPFC discovered that the official City of [REDACTED] notice cited "one or more line breaks" as the cause for the boil water notice.⁸

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.

This claim is denied for FRAUD.

Claim Supervisor: [REDACTED] *g*

Date of Supervisor's Review: *5/12/11*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

⁶ GCCF Notice of Determination EAP, dated 01 November 2010.

⁷ PHONECON between [REDACTED] and the NPFC on 10 May 2011; EMAIL form [REDACTED] to the NPFC, dated 11 May 2011.

⁸ City of [REDACTED] water system notice, effective 13 July 2010.

U.S. Department of
Homeland Security

United States
Coast Guard



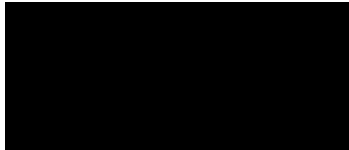
Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937
5890
6/21/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]



RE: Claim Number: N10036-0767

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act of 1990, U.S.C. § 2701 et seq. (OPA) and the associated regulations at 33 C.F.R. Part 136, denies payment on the claim number N10036-0767 involving Deepwater Horizon. Please see the attached Claim Summary/Determination Form for further explanation.

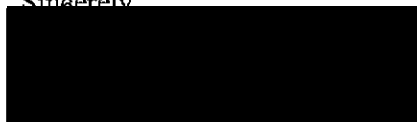
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-0767.

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

Encl: (1) Claim Summary/Determination Form
09/14/11

FOIA2011-3380-00003010

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-0767
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: \$10,038.07

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 June 10, 2011, [REDACTED] (Claimant) presented a lost profits & earnings capacity claim on behalf of his company, [REDACTED] in the amount of \$10,038.07 to the National Pollution Funds Center (NPFC) for reimbursement. The Claimant also provided a signed letter dated May 11, 2011 authorizing [REDACTED] to fully act on his behalf in connection with the claim. The Claimant asserted that "due to the oil spill, the amount of visitors has decreased and, therefore, [REDACTED] has experienced a decrease in revenue."¹

The Claimant provided a copy of his GCCF denial letter for his final claim. The claim was denied on March 6, 2011.

APPLICABLE LAW:

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

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

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

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

¹ Letter from Claimant to NPFC
09/14/11

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

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

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

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

DETERMINATION OF LOSS

Claimant's Submission

To support the claim, the Claimant submitted the following documentation:

- Optional OSLTF Claim Form;
- Letter of explanation regarding the claim;
- Denial letter from the GCCF;
- Owner Annual Summary for 2008, 2009, and 2010;
- Copy of Sub-lease;
- W-9 for [REDACTED];
- Property Rental Management Agreement with [REDACTED];
- [REDACTED] Agreement;
- Letter from AVL confirming accounting services;
- Letter from [REDACTED];
- 2010 Master Daily Rates for rental property;
- List of three (3) cancellations;
- 2008 and 2009 tax returns;
- 2009, 2010, and 2011 monthly profit and loss statements;
- 2009 and 2010 profit and loss statement summary

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 documentation presented by the Claimant.

This claim is denied because the Claimant's evidence does not demonstrate (1) the alleged loss of profits in the amount of \$10,038.07, as claimed, or (2) the correlation, if any, between this alleged loss and the Deepwater Horizon oil spill.

Should the Claimant choose to come back on reconsideration, he will need to provide contact information and names of the guests who cancelled their reservations allegedly due to the oil spill so that the NPFC can make a proper determination with regards to the nexus between the cancellations and the oil spill. The NPFC reached out to the [REDACTED] company and requested assistance in providing us the contact information for the guests who cancelled. In an email, the [REDACTED] company stated that "due to privacy restrictions I would not be able to give you that reservation information."² It is critical that the NPFC verify that the cancellations were solely due to the oil spill therefore without the requested information, the Claimant fails to meet the burden of proof pursuant to our governing claims regulations.

This claim is denied because the Claimant has failed to demonstrate (1) the alleged loss of profits in the amount of \$10,038.07, as claimed, (2) that this alleged loss is 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, and (3) failed to provide sufficient documentation as requested by the NPFC pursuant to 33 C.F.R. § 136.105(a) and 136.105(e)(6).

Claim Supervisor: [REDACTED]

Date of Supervisor's review: *6/21/11*

Supervisor Action: *Denial approved*

Supervisor's Comments:

² Email from [REDACTED] dated June 15, 2011
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
5890
5/16/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]

[REDACTED]

RE: Claim Number: N10036-0768

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act of 1990, U.S.C. § 2701 et seq. (OPA) and the associated regulations at 33 C.F.R. Part 136, denies payment on the claim number N10036-0768 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 N10036-0768.

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

FOIA2011-3380-00003014

CLAIM SUMMARY / DETERMINATION FORM

Date	: May 16, 2011
Claim Number	: N10036-0768
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Real or Personal Property
Claim Manager	: [REDACTED]
Amount Requested	: \$46,228.93

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 May 6, 2011, Mr. [REDACTED] (Claimant) presented a Real or Personal Property claim in the amount of \$46,228.93 to the National Pollution Funds Center (NPFC) for reimbursement. The Claimant also provided a signed letter dated May 6, 2011 authorizing [REDACTED] to fully act on his behalf in connection with the claim. The Claimant asserted that he was unable to use, and later sell a pleasure craft due to the oil spill. The Claimant stated that he bought the pleasure craft on or about February 8, 2010 in the amount of \$126,129.00. He “purchased the boat with the intention to use it during the summer.”¹ The Claimant went on to say that he, “was unable to use the boat as the waters were closed the entire summer...After the summer I decided to sell the boat as I had no use for it.”² The vessel was sold on or about January 14, 2011 for \$88,000.00.

The Claimant is requesting the original purchase price of \$126,129.00, plus additional expenses of \$25,442.66, minus the depreciation at \$17,342.73. The total of \$134,228.93 minus the sale price of \$88,000.00 arrives at the sum certain of \$46,228.93.

The Claimant provided a copy of his GCCF denial letter dated April 30, 2011.

APPLICABLE LAW:

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

¹ Letter of explanation dated May 5, 2011

² Letter of explanation dated May 5, 2011

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

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

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

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

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

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

DETERMINATION OF LOSS

Claimant's Submission

To support the claim, the Claimant submitted the following documentation:

- NPFC OSLTF Form, May 6, 2011;
- Letter of explanation dated May 5, 2011;
- Copy of GCCF denial dated April 30, 2011;
- Bill of sale for purchase of vessel;
- Buyer's closing statement from [REDACTED];
- Bill of sale for sale of vessel;

- [REDACTED] Bank Funds Availability Agreement;
- Affidavit from [REDACTED] of [REDACTED];
- NBOA Marine Insurance policy invoice;
- State of MS Dept of Revenue taxes on vessel;
- State of MS Dept of Revenue tax assessment on vessel;
- Invoice from [REDACTED];
- Invoice from [REDACTED];
- Invoice from [REDACTED];
- Invoice from [REDACTED];
- Invoice from [REDACTED];
- Invoice from [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. The NPFC considered all the documentation submitted by the Claimant.

With respect to the alleged loss of real or personal property, the Claimant has failed to prove the injury to, or economic losses resulting from the destruction of, real or personal property pursuant to the claims regulations found at 33 C.F.R. § 136.215(a), a claimant must establish the following to prove loss of real or personal property:

- (2) That the property was injured or destroyed;
 - (3) The cost of repair or replacement; and
 - (4) The value of the property both before and after injury occurred.
- (b) In addition, for each claim for economic loss resulting from destruction of real or personal property, the claimant must establish—
- (1) That the property was not available for use and, if it had been, the value of that use;
 - (2) Whether or not substitute property was available and, if used, the costs thereof; and
 - (3) That the economic loss claimed was incurred as the result of the injury to or destruction of the property.

Based on the documents and information presented, this claim is denied because (1) the Claimant has not established that a loss real or personal property occurred as a result of a discharge or substantial threat of a discharge. Therefore, the claim is denied.

Claim Supervisor:	[REDACTED]
Date of Supervisor's review:	<i>5/16/11</i>
Supervisor Action:	<i>Denial approved</i>

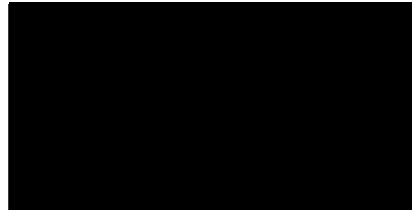
U.S. Department
of Homeland
Security

United States
Coast Guard



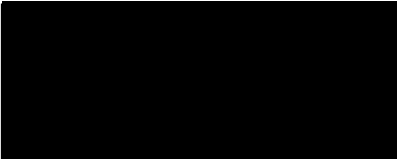
Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD



CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number [REDACTED]

5890/DWHZ
Claim # N10036-0769
27 May 2011



Re: Claim Number: N10036-0769

De [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 N10036-0769 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 N10036-0769.

Mail reconsideration requests to:

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

Sincerely,



Director
National Pollution Funds Center
U.S. Coast Guard

Enclosure: (1) Claim Summary/Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	N10036-0769
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
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 7 May 2011, [REDACTED] on behalf of [REDACTED] Claimant), presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$15,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.¹

Claimant is a restaurant in Ocean Springs, MS that opened in late 2008.² Owner indicated that a vast majority of the restaurant menu consists of seafood and that the seafood it serves is all fresh and locally caught. The Owner stated that, after the oil spill, it attempted to serve seafood from Asia and the Atlantic Ocean, but customers were not receptive.³

Owner asserted that, because of the Deepwater Horizon, the Claimant lost many customers and sales opportunities, including cancelled catering events and decreased catering bookings. Further, "sales were dramatically affected to the point where I could not pay rent."⁴ Owner indicated that he has now been able to return to serving local seafood, but he believes that there are lingering doubts concerning the quality and safety of Gulf Coast seafood.

Owner calculated the loss of \$15,000 by measuring the difference between gross sales for October through December of 2010 versus the same time period in 2009. He then reduced this amount by the saved expenses experienced in food and payroll costs.⁵

APPLICABLE LAW

Under the Oil Pollution Act of 1990 (OPA), at 33 U.S.C. § 2702(a), responsible parties are liable for removal costs and damages resulting from the discharge of oil into or upon the navigable

¹ Owner, [REDACTED] originally submitted a separate claim to the NPFC for his individual lost wages in the amount of \$16,574.00. After reviewing both claims, the NPFC requested that the claims be consolidated under the business claim due to the difficulty in differentiating between the Owner's individual loss and the restaurant's loss. The attorney for both Claimant and Owner agreed to withdraw the individual claim and have both claims considered under this (the restaurant's) claim.

² Letter of explanation from Claimant to "Sir/Madam" at the NPFC, dated 6 May 2011

³ Id.

⁴ Id.

⁵ Id.

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:

- Optional OSLTF claim form for Claimant, undated;
- Letter of explanation from Claimant to "Sir/Madam" at the NPFC, dated 6 May 2011;
- GCCF Notice of Determination for Emergency Advance Payment;
- GCCF Interim Payment Determination Letter with Final Offer, dated 3 May 2011;
- Monthly profit and loss statements for January of 2009 through December of 2010;
- State of Mississippi Certificate of Formation;
- [REDACTED]
- Optional OSLTF claim form for Owner, dated 4 28 2011;

- Letter of explanation from Owner to "Sir/Madam" at the NPFC, dated 28 April 2011;
- Denial letter from GCCF for Owner's individual Final Payment claim, dated 6 April 2011;
- 2009 Form 1040 Joint Federal Tax Return, including Schedule K-1;
- 2009 State of Mississippi Joint Tax Return for Owner;
- Bank Statements from Community for Bank for February 2010;
- Copies of Social Security Cards for Owner and Agent/Wife;
- State of Mississippi Registration Receipt for Road and Bridge Privilege Tax;
- 2010 Mississippi Homestead Application;
- Mississippi Homeowner's Policy;
- Driver's License for Owner and Agent/Wife;
- Wind and Hail Insurance Coverage Policy;
- HUD Settlement Statement;
- Email from Claimant to Accountant, dated 2 April 2010;
- 2009 Mortgage Interest Statement;
- Agent/Wife's 2009 Form W-2 from [REDACTED];
- 2009 Form 1065 Income Return for Claimant;
- 2009 State of Mississippi Tax Return for Claimant;
- Letter of authorization for Agent/Wife to represent Owner's individual claim, dated 6 May 2011; and
- Letter of authorization for Agent/Wife to represent Claimant.

Claimant seeks a total of \$15,000.00 in loss of profits and earnings allegedly resulting from the Deepwater Horizon oil spill.

On 24 August 2010, Claimant presented a six-month Emergency Advance Payment (EAP) claim of \$66,000.00 in lost profits and earnings to the GCCF.⁶ Claimant was assigned GCCF Claimant II [REDACTED] and Claim [REDACTED]. Claimant was paid \$66,000 by the GCCF.⁷ Claimant additionally filed an Interim claim with the GCCF on 3 January 2011 in the amount of \$37,199.98.⁸ Claimant was calculated as having no uncompensated loss for the Interim claim on 3 May 2011.⁹

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 documentation presented by Claimant.

The claim is denied because, based on a review of the documentation provided and the Owner's admissions, the NPFC concludes that the Claimant has already been fully compensated by the RP for all potential losses sustained. The GCCF has already paid Claimant \$66,000.00, which exceeds the potential losses for the Claimant as calculated by the NPFC based on the supporting documentation.

Notably, the Claimant's earnings had already decreased significantly in 2010 prior to the Deepwater Horizon oil spill, compared to 2009 earnings. Further, the Claimant's earnings appeared to actually increase in the months directly following the Deepwater Horizon oil spill, rather than decreasing.

⁶ Report from the GCCF, dated 20 May 2011.

⁷ GCCF Notice of Determination for Emergency Advance Payment.

⁸ Report from the GCCF, dated 20 May 2011.

⁹ GCCF Interim Payment Determination Letter with Final Offer, dated 3 May 2011.

Because the Claimant has failed to demonstrate an uncompensated loss that was suffered 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 NPFC has determined that the Claimant has been fully compensated by the RP, this claim is denied.

Claim Supervisor: *NPFC* 

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

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

Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: [REDACTED]

5890/DWHZ
Claim # N10036-0771
8 July 2011

Re: Claim Number: N10036-0771

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 N10036-0771 involving the Deepwater Horizon oil spill. Please see the attached Claim Summary/Determination Form for further explanation.

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

Reconsideration of the denial will be based upon the information provided. A claim may be reconsidered only once. Disposition of that reconsideration in writing will constitute final agency action. Failure of the NPFC to issue a written decision within 90 days after receipt of a timely request for reconsideration shall, at the option of the claimant, be deemed final agency action. All correspondence should include claim number N10036-0771.

Mail reconsideration requests to:

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

Sincerely,

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

Enclosure: Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00003023

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-0771
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$20,400.00

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. 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 May 2011, [REDACTED] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$20,400.00 for damage to real or personal property.¹ Claimant, a landlord, alleged that the oil spill resulted in her inability to lease two rental properties in New Orleans.²

Review of the claim indicated that the Claimant seeks to recover rental income lost due to her inability to lease her homes following the oil spill as opposed to physical injury or damage to real or personal property. Therefore, the NPFC has reclassified this claim as a claim for lost profits and earnings capacity in the amount of \$20,400.00.

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.
- (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

¹ Optional OSLTF Claim Form dated 3 May 2011.

² *Id.*

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 this claim, Claimant submitted the following documentation:

- Optional OSLTF claim form, dated 3 May 2011;
- Fax to NPFC Staff noting Claimant's separation of business and personal claims, dated 6 May 2011;
- Certified copy of contract, dated 15 May 2008, transferring deed to property at [REDACTED] New Orleans, LA 70114 to Claimant;
- Letter to Claimant, dated 12 Oct. 2010, from [REDACTED] asserting that Claimant has defaulted on loan and should remit \$115,446.08;
- Copy of form, titled "Donation Inter Vivos," dated 22 Nov. 2006, transferring property at [REDACTED] to Claimant;
- Notice of seizure of property, dated 28 January, 2011, regarding property on S [REDACTED] Street;"
- Fax Cover Sheet dated 18 May 2011, indicating inclusion of P&L Statements and Lease Agreements;
- Copy of signed lease agreement for property on [REDACTED] indicating a one-year lease term starting in Oct. 2009, with rental rate of \$800/month.
- Copy of signed lease agreement for property on [REDACTED], indicating a six-month lease term, starting on 1 Jan, 2010, and a rental rate of \$750.00.

Prior to presentment to the NPFC, Claimant presented an Emergency Advance Payment Claim (EAP), as well as an Interim Payment/Final Payment Claim to the RP/GCCF, on behalf of her business, [REDACTED]. She was assigned Claimant ID Number [REDACTED].

Claimant's EAP was denied on 28 October 2011, and Final/Interim Payment Claim was denied on 26 May 2011.

NPFC Determination

Under 32 U.S.C. § 2712(b)(2)(B), real or personal property, a Claimant may recover damages for injury to, or economic loss resulting from the destruction of, real or personal property, which shall be recoverable by a Claimant who owns or leases the property. In this case, the Claimant has not alleged that his property has been physically damaged by the oil spill. Rather, she claims that the property has suffered decreased marketability. As the property itself was not damaged, the Claimant's alleged losses cannot be classified as real or personal property damage. Accordingly, as discussed *supra*, this claim has been reclassified by the NPFC as a claim for loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

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, destruction or loss of real or personal property or of a natural resource as a result of a discharge or substantial threat of a discharge of oil. Under 33 C.F.R. § 136.105(a) and § 136.105(e)(6), the Claimant bears the burden of providing to the NPFC all evidence, information, and documentation deemed necessary by the Director, NPFC, to support her claim.

The NPFC reviewed all information and documentation submitted by the Claimant. The leases on the Claimant's two properties for which she is asserting a loss of rental income, were slated to end on 1 July, 2010 and 1 October, 2010. According to the Claimant, those properties were not re-rented because potential renters in the New Orleans area were financially harmed by the oil spill and unable to afford to rent the Claimant's property.³ However, the Claimant has not provided documentation to show that any potential renters were affected by the oil spill, nor has she provided evidence to indicate that either rental agreement was breached as a result of the oil spill.

Furthermore, the Claimant has not responded to an NPFC request for information to provide contact information for past tenants, and has not indicated how the oil spill affected the ability of any particular tenant to pay rent on her properties.⁴

This claim is denied because the Claimant has failed to show that any alleged loss in the amount of \$20,400 is due to the destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil.

Claim Supervisor:  *NPFC Claims Determination Division*

Date of Supervisor's Review: *7/8/11*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

³ PHONECON: Claimant and NPFC Staff, 31 May 2011.

⁴ Letter from NPFC to Claimant, 31 May 2011.

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)

5890
5/27/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]

[REDACTED]

RE: Claim Number: N10036-0772

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 N10036-0772 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]

U.S. Coast Guard

ENCL: Claim Summary / Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Date	: 5/27/2011
Claim Number	: N10036-0772
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$27,888.00

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 09 May 2011, [REDACTED] (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) for \$27,888.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

Claimant asserted that he worked for [REDACTED] where he worked on vessels that were responsible for getting diesel to the oil platforms.¹

REQUEST FOR RECONSIDERATION:

On May 23, 2011, the Claimant faxed a request for reconsideration to the NPFC stating he would like the NPFC to reconsider his claim. The NPFC denied the claim originally on May 12, 2011 because the Claimant provided no evidence to demonstrate that his loss of employment was attributable to the Deepwater Horizon oil spill. A conversation with [REDACTED] Human Resources revealed that the Claimant was laid off on 26 April 2010 due to a lack of work that had "nothing to do with the oil spill."² HR reported the Claimant's period of employment with [REDACTED], [REDACTED] as 18 January 2010 to 26 April 2010.³ Inquiries were made to receive a copy of the notification of termination but HR informed the NPFC that the company had made a decision to not provide documentation supporting or refuting oil spill claims by their employees.⁴

Based on the foregoing, the claim was denied because the Claimant has failed to demonstrate (1) his alleged loss in the amount of \$27,888.00 as claimed or (2) that this alleged loss is due to the

¹ OSLTF claim form.

² PHONECON between [REDACTED] HR Representative and the NPFC Staff on 10 May 2011

³ PHONECON between [REDACTED] HR Representative and the NPFC Staff on 10 May 2011

⁴ PHONECON between [REDACTED] HR Representative and the NPFC Staff on 10 May 2011

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 only presented a letter dated May 23, 2011 that said he does not agree with our denial determination for several reasons. The Claimant asserted that there was a meeting where his employer discussed that employees would be laid off due to the oil spill. Claimant further alleged that he and about ten (10) more people were laid off on April 26, 2010. He also stated that each day there were about ten (10) people laid off and he knew this because he was in communication with his co-workers.

Additionally, the Claimant explained his sum certain by stating he made \$960.00 a week with [REDACTED] therefore he took his weekly salary and multiplied times the number of weeks the spill lasted giving him his amount claimed of \$27,888.00. The Claimant stated that due to the oil spill, he has been unable to find a job and is still presently unemployed.

In closing, the Claimant stated that he did not ask for his dismissal from his employment and he was laid off. He stated he expects a prompt response and he already sent all documents needed for his claim.

RECONSIDERATION CLAIM ANALYSIS:

The claimant requested reconsideration via facsimile received by the NPFC on May 23, 2011. To support his request for reconsideration, the claimant provided a letter making his reconsideration argument. Aside from the letter, no new information has been provided by the Claimant in support of his reconsideration request.

NPFC Determination on Reconsideration

Under 33 CFR 136.105(a) and 136.105(e)(6), the claimant bears the burden of providing to the NPFC all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim. Under 33 CFR § 136.233, a claimant must establish loss of profits or impairment of earning capacity. The NPFC considered all the documentation submitted by the Claimant. The request for reconsideration must be in writing and include the factual or legal grounds for the relief requested, providing any additional support for the claim. 33 CFR 136.115(d).

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

The NPFC performed a complete review of the documentation presented by the Claimant. The Claimant has failed to provide any evidence that would demonstrate a loss of profits as alleged. While the Claimant argues that he disagrees with our denial which is based on confirmation from the employer that the Claimant's termination was not due to the oil spill, the Claimant has not provided information to prove otherwise therefore the Claimant has failed to establish an alleged loss 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, it is important to note that the Claimant provided a copy of his joint 2009 Income Tax Return which indicated that he earned \$43,712.00 with [REDACTED] as a pipefitter. That income is corroborated by a copy of his corresponding W-2 for 2009. The Claimant also provided a copy of his 2010 Income Tax Return and associated W2s for that year. The Income Tax Return for 2010 on line 7 shows annual reported wages by the Claimant as \$7,263.00 which

is incorrect. The Claimant provided two W2s for 2010 which indicate wages earned of \$11,435.72 from employment with [REDACTED] and \$1,063.34 with [REDACTED]. The Claimant also received \$9,550.00 in unemployment compensation from the State of Florida in 2010. Based on the W2s, the Claimant's line 7 is miscalculated making his copy of his 2010 Income Tax Return inappropriate to use as a comparable financial document.

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

This claim is denied upon reconsideration.

Claim Supervisor: [REDACTED]

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

Supervisor Action: *Denial on reconsideration approved*

Supervisor's Comments:

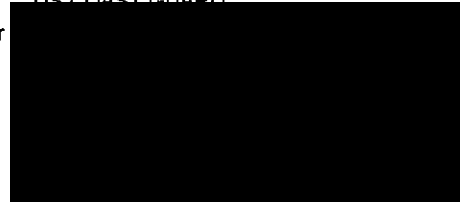
U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD




CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Number: 

5890/DWHZ
Claim# N10036-0773
06 June 2011



RE: Claim Number: N10036-0773

Dear 

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 N10036-0773 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 N10036-0773.

Mail reconsideration requests to:

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

Sincerely,



Claims Adjudication Division
National Pollution Funds Center
Claims Manager

Enclosure: Claim Summary/Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	N10036-0773
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity and Subsistence Use
Amount Requested	\$3,033.00

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 May 2011, [REDACTED] Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$3,000.00 in loss of subsistence use of natural resources and \$33.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

Claimant seeks \$3,000 for seafood that he claims he would have caught and used to feed himself and his family if not for the oil spill.¹ Claimant also seeks the cost of his Alabama residential freshwater and saltwater fishing license—\$33.00—which he claimed he could not use as a result of the Deepwater Horizon oil spill.²

APPLICABLE LAW

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

The 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.

Subsistence Use Loss Claims Requirements

Under 33 C.F.R. §§ 136.219-223, each claim for subsistence use must:

- (a) be for lost subsistence use by an eligible client;
- (b) identify and describe the actual subsistence use of each natural resource for which compensation is being claimed;
- (c) describe how and to what effect the claimant's subsistence use was affected by injury to or loss of each specific natural resource;
- (d) describe efforts to mitigate the subsistence loss;
- (e) be based on the reasonable cost to replace the lost subsistence use of natural resources; and
- (f) be reduced by the amount of all compensation made available to the claimant to compensate for the loss, all income which was derived utilizing the time which otherwise would have been used to obtain the subsistence resources, and any avoided costs associated with the subsistence

¹ Handwritten letter from Claimant explaining claim submitted to the NPFC 05 May 2011.

² Copy of Alabama Conservation License.

activity, such as gas for vehicles or boats, bait, and other overhead costs not incurred due to the spill.³

Lost Profits and Earnings Capacity Claims Requirements

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—

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

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support his claim, Claimant submitted the following documentation:

- (1) Optional OSLTF claim form;
- (2) Claimant's residential fresh and salt water fishing license from the state of Alabama, valid from 29 March 2011 – 31 August 2011;
- (3) Letter from the claimant with further explanation of his loss;
- (4) Claimant's 1099-G;
- (5) GCCF denial letter Re: Claimant's Interim/Final Payment claim, dated 20 April 2011;
- (6) GCCF verification of Claimant's filing with the GCCF; and
- (7) GCCF letter requesting additional information, dated 29 January 2011.

Prior to presentment to the NPFC, Claimant presented a Full Review Final Claim to the GCCF and was issued GCCF Claimant ID [REDACTED] and Claim [REDACTED]. On 20 April 2011, the GCCF denied his claim.⁴

On 5 May 2011, Claimant presented the subject claim for \$3,000.00 in loss of subsistence use of natural resources and \$33.00 in loss of profits and impairment of earnings o capacity resulting from the Deepwater Horizon oil spill.

³ Additional information about subsistence use claims is available at <http://www.uscg.mil/npfc/Claims/DWH.asp>.

⁴ GCCF denial letter Re: Claimant's Interim/Final Payment claim, dated 20 April 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 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 their claim. The NPFC considered all the documentation submitted by the Claimant.

Loss of Subsistence Use

The NPFC finds that [REDACTED] has not met his burden of proving a subsistence use loss as defined by the Oil Pollution Act (OPA, 33 U.S.C. 2701 et seq.) and OPA claims regulations (33 C.F.R. Part 136). His claim is denied because:

- (1) He has not adequately described a regular pattern of subsistence use (for example, where he fished and the types and quantity of fish he caught prior to the spill).
- (2) He has not provided sufficient basis to support his claim that he suffered a \$3,000 loss of subsistence use. For example, the NPFC cannot determine the period of claimed loss or the actual increased costs incurred to replace the fish that he would have caught and eaten if the spill had not occurred (i.e., insufficient receipts or statements were provided to support damages incurred in the amount claimed).

Loss of Earning Capacity

The claim is denied because the alleged loss in the amount of \$33.00 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 \$33.00 residential fishing license was for fresh and salt water fishing in the state of Alabama. Not all waters in Alabama were closed or impacted by the Deepwater Horizon oil spill and thus the Claimant's right of use established by the license was not extinguished.

Claimant therefore has not suffered a loss 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 his claim is denied.

Claim Supervisor: *NPFC C [REDACTED] tion Division*

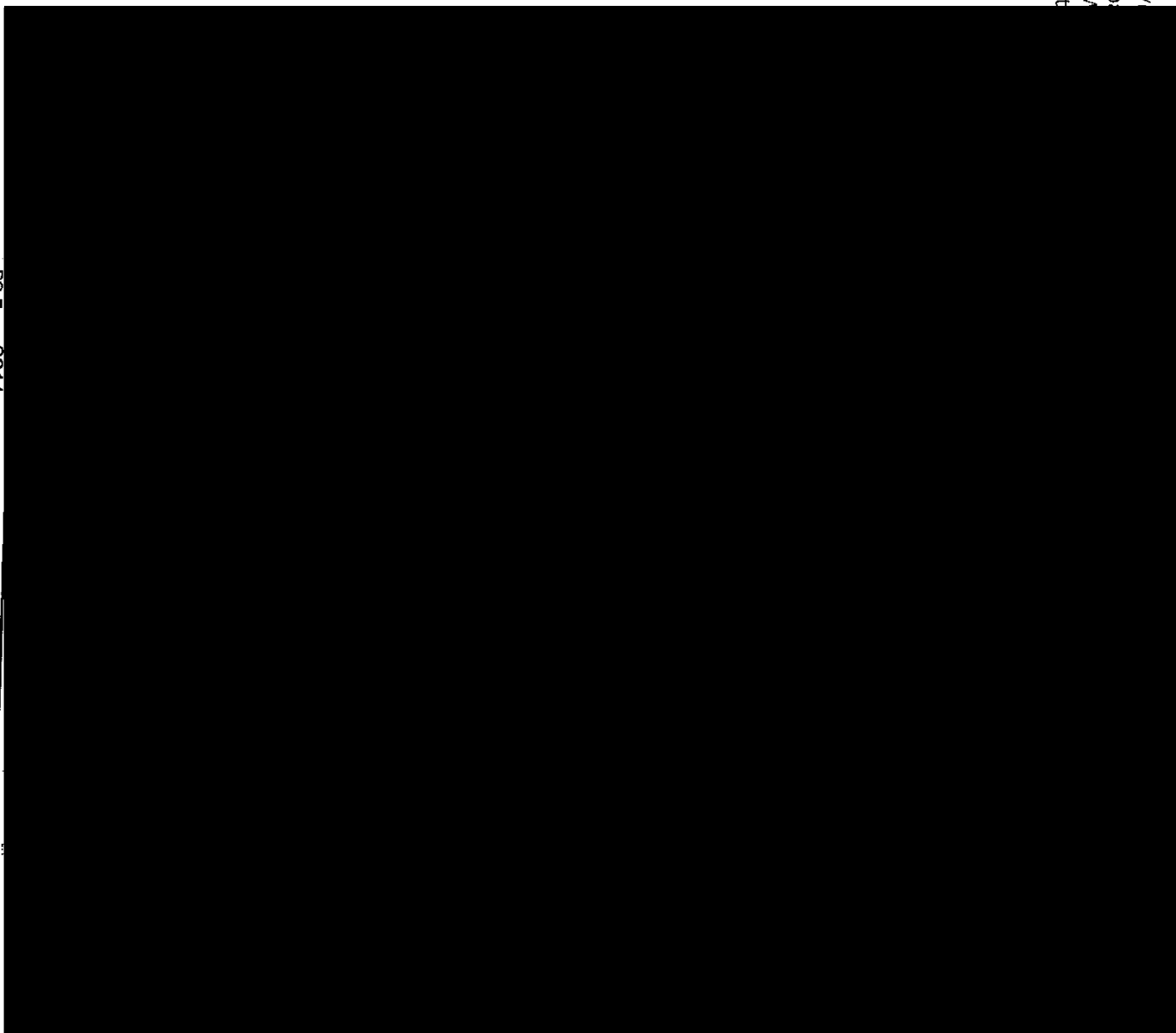
Date of Supervisor's Review: *6/6/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

NPFC/
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4200 V
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GENERAL INVESTIGATIVE



US OFFICIAL MAIL
\$000 Penalty
For Return to US
\$05.000
5.25.11
DEPT FROM 2011
US POSTAGE

NAME LAHVE
at Notice 5-28-11

and Notice

Agent
 Addressee
Date of Delivery

Yes
 No

Merchandise

Yes

2011 JUN 23 AM 11:13

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

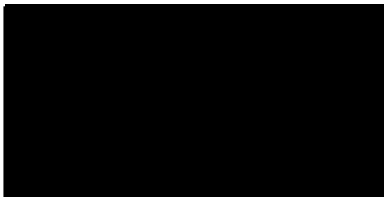
U.S. Department of
Homeland Security

United States
Coast Guard



Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100

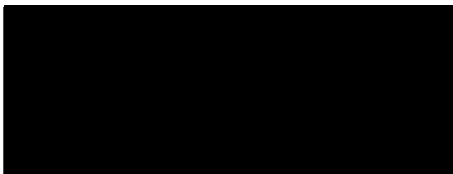


Fax: 202-493-6937

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim# N10036-0774
23 May 2011



Claim Number: N10036-0774

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 N10036-0774 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination Form for further explanation.

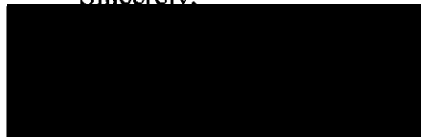
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-0774.

Mail reconsideration requests to:

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

Sincerely,



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

Enclosure: Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00003036

CLAIM SUMMARY / DETERMINATION FORM

Date	17 May 2011
Claim Number	N10036-0774
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
Amount Requested	\$20,000,000.00

FACTS

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

CLAIM AND CLAIMANT

On 6 May 2011, [REDACTED] (Claimant) through [REDACTED] (Owner) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$20,000,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

In 2009, the Owner started the Claimant business, as a bulk bait and tackle distributor for charter, commercial, retail and commercial fishermen along the Gulf Coast.¹ Owner indicated that from an initial investment of \$1,830.50, the Claimant generated \$40,000.00 in 2009.² Based on this success, the Owner estimated that the Claimant would have earned a net worth of \$20,000,000.00 by 2015.

Claimant alleged that as a result of the Deepwater Horizon oil spill, it went out of business. Claimant seeks its estimated net worth by 2015.

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.

¹ Claimant letter of explanation to the GCCF.

² Claimant's Form 1065 US Return of Partnership Income for 2009 shows gross sales of \$48,022 and a net profit of \$18,729.

- (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 OSTLF

To support the claim, Claimant submitted for following documents:

1. OSTLF Form signed 26 April 2011
2. Letter to GCCF from Claimant explaining his claim
3. Bank Statements 31 March 2009 through December 2009. Name of bank unknown
4. Escambia County Florida Wholesale License September 2009
5. Florida Certificate of Title on Sunbird Boat June 30, 2008 issued to [REDACTED]
6. Florida Corporate Articles of Incorporation filed 06 March 2009 for [REDACTED]
7. Application to Collection Florida Sales Taxes
8. Cash Flow Statement for the year ended December 31, 2009 for [REDACTED]
9. F-1065 Florida Partnership Return for 2009
10. Form 1065 US Return of Partnership Income for 2009 with attachments
11. Narrative of CG [REDACTED] business plan
12. Gulf Coast [REDACTED] price list
13. GCCF 2000-C for Six-Month Emergency Advance
14. Profit & Loss Statement for 2010
15. Letter to GCCF from Claimant providing additional information on claim
16. E-mail from Claimant to GCCF dated 17 October 2010 about status of claim
17. Copy of Claimant's Florida drivers license
18. GCCF Claim form for Full Review Final Payment Claim dated 31 December 2010
19. Florida Sales Tax Return for January through March, April through June, July through September 2010 and October through December 2010
20. GCCF Letter to Claimant dated 31 January 2011 acknowledging receipt of Final Claim

On 10 May 2011, the NPFC sent the Claimant a letter requesting additional information in order to further evaluate the claim. On 16 May 2011, the Claimant spoke to the NPFC Claims Adjuster in response to the request.

On 5 September 2010, the Claimant presented an Emergency Advance Payment claim for \$150,000.00 in lost profits and earnings to the GCCF. Claimant was issued GCCF Claimant II [REDACTED] and Claim # [REDACTED]. On 27 September 2010, Claimant received full compensation (\$150,000.00) for the claim.³

³GCCF Claim form for Full Review Final Payment Claim dated 31 December 2010
09/14/11

On 24 January 2011, the Claimant presented a Full Review Final Payment claim [REDACTED] for \$20,000,000.00 in lost profits and earnings to the GCCF.

On 6 May 2011, the Claimant presented this claim for \$20,000,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

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 seeks the estimated net worth of its business through 2015. Under OPA and the associated regulations at 33 C.F.R. Part 136, the OSLTF is available to pay for actual losses that have been suffered 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. Prospective losses, as Claimant has alleged herein, are not compensable from OLSTF.

The Claimant's Form 1065 US Return of Partnership Income for 2009 shows gross sales of \$48,022.00 and a net profit of \$18,729.00.⁴ To date, the Claimant has been compensated \$150,000.00 by the RP/GCCF. Based on this information, the Claimant appears to have been fully compensated for alleged losses suffered as a result of the Deepwater Horizon oil spill.

Because the Claimant appears to have been compensated in excess of its alleged loss, this claim is denied.

[REDACTED]
Claim Supervisor: *Claims Adjudication Division*

Date of Supervisor's Review: *5/23/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

⁴Form 1065 US Return of Partnership Income for 2009 with attachments

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



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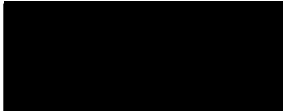
CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Number: [Redacted]

5890/DWHZ

Claim# N10036-0775

12 May 2011



RE: Claim Number: N10036-0775

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 N10036-0775 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 N10036-0775.

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	10 May 2011
Claim Number	N10036-0775
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 certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On 09 May 2011, To [REDACTED] (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Funds Center (NPFC) for \$6,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

Claimant's submission contained only an OSLTF claim form which lacks any description of the nature or extent of his damages, and also fails to indicate how he calculated his damages or how the incident caused his damages. The only information that Claimant's OSLTF claim form imparts is that he has gout, which requires him to maintain a seafood-only diet.

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

Claimant presented a signed OSLTF claim form, dated 02 May 2010.

Claimant stated that he previously presented his claim to the RP on 16 September 2010, but has provided no evidence of this, nor has he provided any information by which NPFC can verify presentment.

On 09 May 2011, Claimant presented this claim for \$6,000.00 in loss of profits and impairment of earnings capacity to the NPFC.

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 documentation presented by Claimant.

This claim is DENIED because Claimant has failed to meet the minimum general requirements for a claim presented to the OSLTF as enumerated in 33 C.F.R. § 136.105. Additionally, Claimant fails to demonstrate proper presentment pursuant to 33 C.F.R. § 136.103(a), which states that all claims for removal costs or damages must be presented first to the responsible party. Lastly, Claimant's alleged loss appears to be tied to his medical condition (gout). Under OPA and the associated regulations at 33 C.F.R. Part 136, claims for personal injury are not covered claims. Should the Claimant decide to request reconsideration, he will need to provide three years worth of comparable financial documentation, evidence that there was absolutely no seafood available for purchase, and must demonstrate how the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil is the direct cause of his alleged loss.

For the foregoing reasons, the claim is DENIED.

Claim Supervisor: 

Date of Supervisor's Review: 5/12/11

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

09/14/11

FOIA2011-3380-00003042

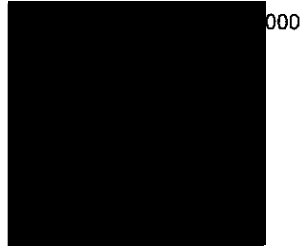
U.S. Department
of Homeland
Security

United States
Coast Guard



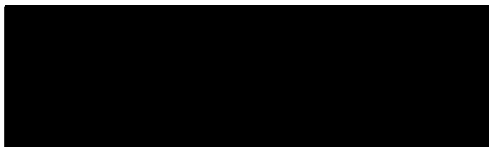
Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD



CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Number: [REDACTED]



5890/DWHZ
Claim # N10036-0776
22 June 2011

Re: Claim Number: N10036-0776

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 your claim number N10036-0776 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. If, however 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 N10036-0776.

Mail reconsideration requests to:

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

Sincerely,



Director
National Pollution Funds Center

U.S. Coast Guard

Enclosures: (1) Claim Summary/Determination Form

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-0776
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$3,000.00

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 9 May 2011, [REDACTED] (Claimant) presented an Optional Oil Spill Liability Trust Fund ('OSLTF') Claim Form to the National Pollution Funds Center ('NPFC') seeking \$3,000.00 in lost profits and earnings that allegedly resulted from the Deepwater Horizon oil spill.

Claimant stated that she was employed at a restaurant¹ and because of the Deepwater Horizon oil spill, the restaurant was forced to stop selling seafood due to the taint of oil.² Claimant asserted that this inability to sell seafood resulted in the restaurant reducing her wages and ultimately laying her off for three months.³

Claimant calculated her sum certain of \$3,000.00 by comparing the difference in her salary from 2009 to 2010.⁴

Prior to presenting her claim to the NPFC, Claimant filed an Emergency Advance Payment (EAP) claim with the GCCF in the amount of \$2,000.00.⁵ She was assigned Claimant ID # [REDACTED] and Claim [REDACTED]. This claim was denied by the GCCF on 1 December 2010.⁶ Claimant also filed Final and Full Review Final claims with the GCCF.⁷ These claims were denied by the GCCF on 15 April 2011.⁸

¹ Claimant did not provide a name or location for the restaurant

² Optional OSLTF form, dated 28 April 2011; Handwritten information with continued explanation of questions 9 and 10 from OSLTF Form.

³ Id.

⁴ Id.

⁵ Report from the GCCF, dated 31 May 2011

⁶ Denial letter from the GCCF, dated 1 December 2010

⁷ Report from the GCCF, dated 31 May 2011

⁸ Denial letter on Interim Payment/Final Payment claim, dated 15 April 2011

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 the OSLTF

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

- Optional OSLTF Form, dated 28 April 2011;
- 2009 version of W-2 from [REDACTED] LLC;
- 2010 version of W-2 from [REDACTED] LLC; and
- Handwritten information with continued explanation of questions 9 and 10 from OSLTF Form.

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 documentation presented by the Claimant.

This claim is denied because the Claimant's evidence does not demonstrate (1) the alleged loss of profits in the amount of \$3,000.00, as claimed, or (2) the correlation, if any, between this alleged loss and the Deepwater Horizon oil spill.

It is also important to note that the Claimant has provided NO comparable financial documentation pursuant to the governing claims regulations at 33 CFR 136.233 (c) which states "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."

Lastly, the only supporting documents submitted by the Claimant in support of her claim are W-2 forms from [REDACTED] for 2009 and 2010. However, [REDACTED] is a private security provider that has no connection to the restaurant industry.⁹ On 19 May 2011, the NPFC requested additional information from the Claimant to further evaluate the claim. The NPFC requested, among other things, tax returns, pay stubs, and an explanation of how Alamos [REDACTED] was connected to the restaurant industry. To date, no response has been received by the NPFC.

Because the Claimant has failed to demonstrate (1) the alleged loss of profits in the amount of \$3,000.00, as claimed, or (2) the correlation, if any, between this alleged loss and the Deepwater Horizon oil spill, this claim is denied.

⁹ h [REDACTED]

Claim Supervisor: [REDACTED] n

Date of Supervisor's review: *6/22/11*

Supervisor Action: *Denial approved*

Supervisor's Comments:

U.S. Department of
Homeland Security

**United States
Coast Guard**



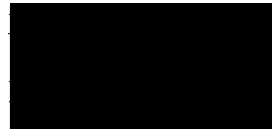
Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937
5890
5/16/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number [REDACTED]



RE: Claim Number: N10036-0777

Dear [REDACTED]

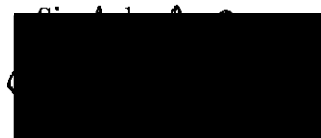
The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act of 1990, U.S.C. § 2701 et seq. (OPA) and the associated regulations at 33 C.F.R. Part 136, denies payment on the claim number N10036-0777 involving Deepwater Horizon. Please see the attached Claim Summary/Determination 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 N10036-0777.

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: (1) Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00003048

CLAIM SUMMARY / DETERMINATION FORM

Date	: May 16, 2011
Claim Number	: N10036-0777
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$40,800.00

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. 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 May 11, 2011, [REDACTED] (Claimant) presented a lost profits & earnings claim in the amount of \$40,800.00 to the National Pollution Funds Center (NPFC) for reimbursement. The Claimant asserted that he was terminated from his job at [REDACTED] as a result of the oil spill. The Claimant provided a signed letter from [REDACTED], stating that, "due to the oil spill, [REDACTED] cancelled or suspended several projects for their facility and [REDACTED] was laid off."¹

The Claimant did not provide correspondence or documentation pertaining to his claim with the GCCF, but the NPFC confirmed that his interim claim was denied on April 22, 2011.

APPLICABLE LAW:

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

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

¹ Letter from [REDACTED] dated November 16, 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 the claim, the Claimant submitted the following documentation:

- NPFC OSLTF Form, May 3, 2011;
- Impact Letter dated November 16, 2010 written by [REDACTED]
- 2010 W-2s;
- 2010 1099-G for unemployment benefits received;
- Paystubs from March 15, 2010 through August 1, 2010;
- Claimant's submission to the GCCF;
- Four (4) emails between the Claimant and 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.

With respect to the alleged loss of profits, the Claimant has failed to provide sufficient comparable financial information pursuant to the claims regulations found at 33 C.F.R. § 136.233, a claimant must establish the following to prove loss of profits or impairment of earning capacity:

- (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.

Additionally, the Claimant has failed to provide documentation to demonstrate that any alleged loss, if one had occurred, was 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. Based on the record, he was laid-off from [REDACTED] due to [REDACTED] cancelling or suspending projects for their facility. Therefore, the Claimant's loss was not the direct result of the oil spill.

Based on the documents and information presented, this claim is denied because (1) the Claimant has not established that a loss of profits or earnings capacity occurred 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 and (2) the Claimant has failed to articulate how he derived at the alleged loss amount. Therefore, the claim is denied.

Claim Supervisor: [REDACTED]

Date of Supervisor's review: *5/16/11*

Supervisor Action: *Denial approved*

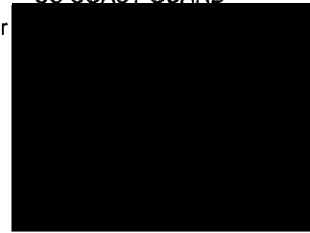
U.S. Department
of Homeland
Security

United States
Coast Guard



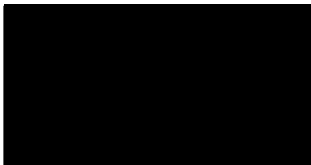
Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD



CERTIFIED MAIL-RETURN RECEIPT REQUESTED
Number: [REDACTED]

5890/DWHZ
Claim # N10036-0778
26 May 2011



Re: Claim Number: N10036-0778

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 your claim number N10036-0778 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination Form for further explanation.

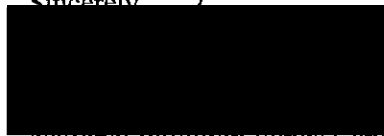
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. If, however you 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 N10036-0778.

Mail reconsideration requests to:

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

Sincerely,



National Pollution Funds Center
U.S. Coast Guard

Enclosures: Claim Summary/Determination Form

CLAIM SUMMARY/DETERMINATION FORM

Date	24 May 2011
Claim Number	N10036-0778
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
Amount Requested	\$22,000.00

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 10 May 2011, [REDACTED] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$22,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

Claimant was employed as a print and online advertising representative for a local newspaper, the [REDACTED], Florida.¹ After a period of unemployment, the Claimant was employed as an independent contractor with a different local newspaper, [REDACTED] Newspaper.² Claimant stated that due to the Deepwater Horizon oil spill, third party business ceased advertising in the [REDACTED], resulting in a drop in the newspaper's revenue.³ Due to this loss of revenue, the [REDACTED] terminated the Claimant in mid-July 2010.⁴ Claimant stated that he was out of work from 15 July 2010 until 30 October 2010, when he began his current employment.⁵

Claimant's sum certain was calculated by adding his reduced profit from the time of the oil spill, 20 April 2010 until the [REDACTED] laid him off in July 2010, to his reduced earning capacity from the time he was laid-off until gaining new employment in November 2010.⁶

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,

¹ Letter from Claimant, undated, describing Claimant's employment history as it relates to the Deepwater Horizon oil spill and PHONECON between Claimant and NPFC Representative, dated 17 May 2011.

² PHONECON between Claimant and NPFC Representative, dated 17 May 2011 and Letter from [REDACTED] dated 12 December 2011 stating Claimant's present employment with [REDACTED].

³ Letter from Claimant, undated, describing Claimant's employment history as it relates to the Deepwater Horizon incident

⁴ PHONECON between Claimant and NPFC Representative dated 17 May 2011.

⁵ *Id.*

⁶ *Id.*

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 the OSLTF

To support his claim, Claimant presented the following documentation:

- Optional OSLTF claim form, dated 10 May 2011;
- Letter from Claimant to GCCF, undated ;
- Hand-drawn graph indicating Claimant's income levels in 2009 and 2010;
- GCCF Claim Form, page 7;

- Maps printed from GoogleMaps indicating his advertising territory while employed with the [REDACTED];
- Letter from [REDACTED] indicating Claimant's employment with [REDACTED];
- 2008 Federal tax form, W-2;
- 2010 Federal tax form, W-2;
- Checks from the [REDACTED]: 28 June 2009-25 July 2010;
- Cover letter responding to Request for Additional Information dated 18 May 2011;
- Letter from [REDACTED] Office Manager f [REDACTED], dated 17 May 2011;
- Email from [REDACTED] for [REDACTED] Coastal Properties dated 8 June 2010.

Prior to presentment to the NPFC, the Claimant presented a claim to BP and received \$4,022.00 in compensation. Claimant then presented three separate claims to the GCCF, including an Interim Payment claim for \$22,000.00 in lost profits and earnings. He was assigned Claim ID # [REDACTED] and Claim # [REDACTED]. On 15 April 2011, Claimant's Interim Payment claim was denied by the GCCF.

On 10 May 2011, Claimant presented the subject claim to the NPFC for \$22,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

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 documentation presented by Claimant.

Claimant provided a letter from his former employer, [REDACTED], which indicated that he was terminated on 16 July 2010. After contacting the [REDACTED] to verify the circumstances of the Claimant's termination, the NPFC was informed that the Claimant's employment was terminated for reasons wholly unrelated to the oil spill.⁸ Indeed, a letter from the [REDACTED] states that, "the BP oil spill of 2010 had no bearing on [REDACTED] being terminated from [REDACTED] Inc. d/b/a [REDACTED] in July 2010."⁹

Because the Claimant has not demonstrated that his alleged loss in earnings of \$22,000.00 is due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil, this claim is denied.

Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Review: *5/26/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

⁷ GCCF denial letter Re: Claimant's Interim Payment claim, dated 15 April 2011.

⁸ PHONECON between the [REDACTED] and NPFC dated 24 May 2011.

⁹ Letter from [REDACTED] dated 24 May 2011.

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 # N10036-0779
26 May 2011

Re: Claim Number: N10036-0779

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 your claim number N10036-0779 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. If, however 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 N10036-0779.

Mail reconsideration requests to:

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

Sincerely,

[REDACTED]

National Pollution Funds Center
U.S. Coast Guard

Enclosures: (1) Claim Summary/Determination Form

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-0779
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
Amount Requested	\$2,129.00

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 11 May 2011, [REDACTED] Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$2,129.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

Claimant is employed in the shipping department at [REDACTED] specifically at the Grand [REDACTED] in Point Clear, Alabama.¹ Claimant stated in a phone conversation with the NPFC that during the entirety of 2009 she was unemployed but was hired on 6 April 2010 by [REDACTED] to work in the dishwashing department (Claimant has since been promoted to work in her current position).² Claimant further stated that, due to the Deepwater Horizon oil spill, her hours at [REDACTED] were reduced from her standard forty hour workweek.³

Claimant's sum certain was calculated by taking the difference between the income she would have received if she worked the full forty hours per week in 2010 and 2011 and the income she earned from reduced hours after the Deepwater Horizon oil spill.⁴

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

¹ PHONECON between Claimant and NPFC Representative, dated 18 May 2011.

² *Id.*

³ *Id.*; EMAIL from Claimant dated 27 April 2011 noting the Deepwater Horizon oil spill's effect on her employment.

⁴ PHONECON between Claimant and NPFC Representative, dated 18 May 2011.

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 the OSLTF

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

- Handwritten claim form received 11 May 2011 requesting \$2,129.00;
- Email from Claimant dated 27 April 2011 describing the nature of her claim;
- ██████████ Hotels and Resorts, Inc. Pay Stubs from: 7 May 2010, 4 June 2010, 2 July 2010- 31 December 2010, 28 January 2011, 11 February 2011, 25 March 2011, 8 April 2011-22 April 2011.

Prior to presentment to the NPFC, on 22 October 2010, the Claimant presented an Emergency Advance Payment (EAP) Claim for \$3,600.00 in lost profits and earnings to the GCCF. She was assigned Claimant ID Number ██████████ and Claim Number ██████████. The EAP Claim was denied on 22 December 2010.⁵

⁵ GCCF Denial Letter dated 22 December 2010.

Additionally, on 4 January 2011, the Claimant presented a Final Payment Claim for \$35,000.00 in lost profits and earnings to the GCCF. She was assigned Claim Number [REDACTED]. The Final Payment Claim was denied on 22 April 2011.⁶

On 11 May 2011, the Claimant presented the subject claim for \$2,129.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

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 documentation presented by Claimant.

Claimant alleged that she lost earnings while employed at the [REDACTED] from 6 April 2010 through 11 May 2011. Claimant also asserted that her forty hour work week was reduced due to the effects of the Deepwater Horizon oil spill on her employer. The NPFC attempted to verify the Claimant's assertion with her employer, but the NPFC's repeated attempts to contact the employer went unanswered.⁷

Additionally, the Claimant failed to produce evidence demonstrating her entitlement to an 40 hour work week, or that the [REDACTED] reduced her hours as a result of the Deepwater Horizon oil spill.

In sum, the Claimant has not established that her income was reduced 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 nor has the Claimant provided comparable financials such as three years of complete Income Tax Returns, including copies of any and all W-2s and applicable Schedules to the respective Income Tax Returns. Because Claimant has not met her evidentiary burden prescribed in 33 C.F.R. Part 136, this claim is denied.

Claim Supervisor [REDACTED] *Division*

Date of Review: *5/26/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

⁶ GCCF Denial Letter dated 22 April 2011.

⁷ PHONELOG between [REDACTED] and NPFC dated 24 May 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# N10036-0780
23 May 2011

Claim Number N10036-0780

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 N10036-0780 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 N10036-0780.

Mail reconsideration requests to:

Director (ca)
NPFC CA MS 7100
US COAST GUARD

Sincerely,

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

Enclosure: Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00003060

CLAIM SUMMARY / DETERMINATION FORM

Date	20 May 2011
Claim Number	N10036-0780
Claimant	██████████
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
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 10 May 2011, ██████████ (Claimant) through ██████████ (Agent) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$60,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

Claimant began operations in 2009. Claimant indicated that it primarily provides supplemental staffing of minimally skilled workers to hotels and casinos.¹ These include housekeepers, valet parking, and prep cooks. At the time of the Deepwater Horizon oil spill, the Claimant was providing workers to ██████████. Claimant alleged that as a result of the oil spill's impact on tourism in LA, the Claimant lost these two customers and its income dropped to zero.

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,

¹ Letter from ██████████ in response to NPFC's requested for additional information received 19 May 2011.
09/14/11

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:

1. OSLTF Claim Form signed 02 May 2011
2. Letter to NPFC from [REDACTED] explaining claim dated 02 May 2011
3. Letter to NPFC from [REDACTED] explaining claim dated 03 May 2011
4. Monthly Profit & Loss Statement for [REDACTED] January through December 2009 and 2010
5. GCCF Denial Letter of Interim Payment/Final Payment Claim dated 21 April 2011
6. Letter to GCCF from [REDACTED] explaining claim dated 04 April 2011
7. United States Postal Service Track & Confirm delivered 05 March 2011
8. Letter to GCCF from [REDACTED] designated [REDACTED] Authorized Representative dated 28 February 2011
9. GCCF Letter to [REDACTED] concerning designation of [REDACTED] Authorized Representative dated 17 February 2011
10. Letter to GCCF from [REDACTED] transmitting certain documentation dated 11 February 2011
11. Letter to GCCF from [REDACTED] concerning designation of [REDACTED] Authorized Representative
12. Letter to GCCF from [REDACTED] designated [REDACTED] Authorized Representative dated 08 February 2011
13. GCCF Letter to [REDACTED] acknowledging receipt of claim dated 31 January 2011

14. Letter from [REDACTED] in response to NPFC's requested for additional information received 19 May 2011
15. Form 1040 Schedule C for [REDACTED] for 2009 and 2010
16. Income by Customer Summary for February through December 2010
17. List of [REDACTED] Customer Contact May 2010
18. Memo from [REDACTED] regarding amount of the claim

On 12 May 2011, the NPFC sent Claimant a letter requesting additional information in order to further evaluate its claim. The Claimant responded to the letter on 19 May 2011.

On 22 November 2010, Claimant presented a Final Payment claim for \$169,409.60 in lost profits and earnings to the GCCF. Claimant was issued GCCF Claimant ID # [REDACTED] and Claim # [REDACTED]. On 21 April 2011, the GCCF denied the claim.²

On 10 May 2011, Claimant presented this claim for \$60,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

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 \$60,000.00 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 stated that the Deepwater Horizon oil spill adversely affected tourism in LA. Claimant attributed the loss of two customers and its resulting loss of income in 2010 to the impact of the oil spill. Claimant, however, has not provided evidence demonstrating the impact of the oil spill on its customer base and how this impact compelled its customers to forego its staffing services. Claimant additionally has not provided evidence further demonstrating that its inability to secure other customers for its services in 2010 resulted from the impact of the oil spill.

Because Claimant has failed to demonstrate that its alleged loss in the amount of \$60,000.00 is due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil, this claim is denied.

Claim Supervisor: *Claims Adjudication Division*

Date of Supervisor's Review: *5/23/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

²GCCF Denial Letter of Interim Payment/Final Payment Claim dated 21 April 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# N10036-0781
27 May 2011

RE: Claim Number: N10036-0781

[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 N10036-0781 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 N10036-0781.

Mail reconsideration requests to:

Director (ca)
NPFC CA MS 7100
US COAST GUARD

Sincerely,

[REDACTED]

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

Enclosure: Claim Summary/Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	N10036-0781
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
Amount Requested	\$7,784.15

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 May 2011, [REDACTED] (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form seeking \$7,784.15 in lost profits and earning capacity to the National Pollution Funds Center (NPFC) alleging damages resulting from the Deepwater Horizon oil spill.

Claimant works as a member of management for [REDACTED] at [REDACTED] in Ft. Walton Beach, Florida.¹ She asserted that she lost her quarterly bonuses that are based on the hotel's occupancy and actual revenue compared to the budgeted revenue forecast outlined in the [REDACTED] General Managers Bonus Program 2010. The Claimant asserted that the loss of her quarterly bonuses in turn negatively affected her year-end bonus due to the Deepwater Horizon oil spill.

APPLICABLE LAW

Under the Oil Pollution Act of 1990 (OPA), at 33 U.S.C. § 2702(a), responsible parties are liable for removal costs and damages resulting from the discharge of oil into or upon 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

To support her claim, Claimant submitted

- Optional OSLTF claim form dated 19 April 2011.
- Florida driver's license.
- Employment letter from [REDACTED] Asst. General Manager dated 06 October 2010
- 2008 U.S. Individual Income Tax Return form 1040.
- 2009 U.S. Individual Income Tax Return form 1040.
- 2010 U.S. Individual Income Tax Return form 1040.
- Work Document titled "[REDACTED] General Managers Bonus Program 2010".

Claimant is requesting lost earnings and wages in the amount of \$7,784.15

Claimant presented an Emergency Advance Payment claim to the GCCF and was issued GCCF Claimant ID # [REDACTED] and Claim [REDACTED]. On 23 December 2010 the GCCF denied her claim.²

NPFC Determination

Under 33 CFR 136.105(a) and 136.105(e)(6), the claimant bears the burden of providing to the NPFC all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim. Under 33 CFR § 136.233, a claimant must establish loss of profits or impairment of earning capacity. The NPFC considered all the documentation submitted by the Claimant.

This claim is denied because the Claimant's loss is speculative. The Claimant's entire claim hinges on [REDACTED] General Managers Bonus Program 2010, which presumably applies to the Claimant and outlines metrics for triggering an annual bonus distribution. [REDACTED] owns the [REDACTED] Claimant alleged that but for the Deepwater Horizon oil spill, the [REDACTED] where the Claimant is under a bonus structure from [REDACTED], would have achieved sufficient numbers in the metrics outlined in the bonus plan to trigger the Claimant's alleged annual bonus.

Regardless of the merits of the Claimant's argument, the bonus plan is discretionary and subject to unilateral modification. As stated in the plan "[t]he company, at its sole discretion may modify the plan, repeal the plan, or direct discontinuance of granting awards under the Plan either temporarily or permanently at any time." Further, the plan's terms and conditions include the following: "[REDACTED] has the right to amend or terminate this bonus plan at its sole discretion. This bonus plan is not an employment contract or an agreement of any kind between [REDACTED] and the participants. This bonus plan shall not be construed to confer upon the participant's right to continued employment".³ It also includes the following language: "Any and all payments under this Plan are also subject to the approval of and funding by the Owner of the Hotel. The Company assumes no liability for any payment under the Plan not funded by the Owner."⁴

Based on this language, even if the resort had achieved numbers sufficient to trigger the metrics in the annual bonus plan, [REDACTED] or the Owner of the Hotel had no obligation to pay the Claimant the alleged annual bonus, and therefore the Claimant has failed to meet her burden to demonstrate (1) that she had a loss of profits and (2) that the incentive pay was a guarantee. Accordingly, her claim is denied.

Claim Supervisor: *Claims Adjudication Division*

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

Supervisor's Action: *Denial approved*

Supervisor's Comments:

² See GCCF Filing Report ([REDACTED]) or GCCF Claimant's Status Page/Report

³ See [REDACTED] General Managers Bonus Program 2010

U.S. Department of
Homeland Security

**United States
Coast Guard**



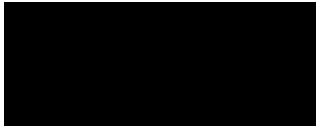
Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD



CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: [REDACTED]

5890/DWHZ
Claim # N10036-0782
8 June 2011



Re: Claim Number: N10036-0782

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 N10036-0782 involving the Deepwater Horizon oil spill. Please see the attached Claim Summary/Determination Form for further explanation.

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

Reconsideration of the denial will be based upon the information provided. A claim may be reconsidered only once. Disposition of that reconsideration in writing will constitute final agency action. Failure of the NPFC to issue a written decision within 90 days after receipt of a timely request for reconsideration shall, at the option of the claimant, be deemed final agency action. All correspondence should include claim number N10036-0782.

Mail reconsideration requests to:

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

Sincerely,



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

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

FOIA2011-3380-00003068

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-0782
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$40,000.00

FACTS

On or about 20 April 2010, the Mobile Offshore Drilling Unit Deepwater Horizon (Deepwater Horizon) exploded and sank in the Gulf of Mexico. As a result of the explosion and sinking, oil was discharged. 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 May 2011, [REDACTED] Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$40,000.00 in loss of profits and earning capacity resulting from the Deepwater Horizon oil spill.

Claimant worked as an oil spill clean-up worker for [REDACTED] in Houma, LA.¹ Prior to this job, she was contracted to work for [REDACTED].² Claimant indicated that she was laid off from her job as a clean-up worker in August of 2010 and that the economy has been slow since the Deepwater Horizon oil spill.³ Claimant did not indicate how she calculated her claimed damages of \$40,000.00.

APPLICABLE LAW

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

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

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

- a) That real or personal property or natural resources have been injured, destroyed, or lost.
- b) That the claimant's income was reduced as a consequence of injury to, destruction of, or loss of property or natural resources, and the amount of that reduction.
- c) The amount of the claimant's profits or earnings in comparable periods and during the period when the claimed loss or impairment was suffered, as established by income tax

¹ Letter from Claimant to "Whom It May Concern," undated.

² Letter from [REDACTED] at [REDACTED] to "Whom It May Concern," dated 26 April 2011.

³ Letter from Claimant to "Whom It May Concern," undated.

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:

- Optional OSLTF form, dated 10 May 2011;
- Letter from Claimant to "Whom It May Concern," undated;
- Denial letter from GCCF for Interim/Final Payment Claim, dated 16 April 2011;
- Letter from [REDACTED] at [REDACTED] to "Whom It May Concern," dated 26 April 2011;
- Employment Verification from [REDACTED];
- Payment Summary List from Texas Unemployment Benefit Services for 4 October 2009 through 5 February 2011;
- Individual Federal Income Tax Returns from 2009 and 2010;
- 2010 Form W-2 from [REDACTED];
- 2010 Form W-2 from [REDACTED];
- 2009 and 2010 Form 1099-G from Texas Workforce Commission;
- 2009 Form W-2 from [REDACTED] and [REDACTED];
- Paystubs from [REDACTED] for 26 July 2010 through 5 September 2010.

Prior to presentment to the NPFC, Claimant presented multiple claims to the RP/GCCF. On 19 October 2010, Claimant filed a six-month Emergency Advance Payment (EAP) claim of \$14,083.00 with the GCCF for lost profits and earnings.⁴ Claimant was assigned GCCF Claimant ID [REDACTED] and Claim [REDACTED]. This claim was denied by the GCCF on 24 November 2010.⁵ Claimant additionally filed a Full Review Final claim with the GCCF on 4

⁴ Report from the GCCF, dated 31 May 2011.

⁵ GCCF Determination letter, dated 24 November 2010.

January 2011 in the amount of \$40,000.00.⁶ That claim was denied by the GCCF on 16 April 2011.⁷

On 10 May 2011, Claimant presented the subject claim for \$40,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

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.

The claim is denied because Claimant's evidence does not demonstrate that she suffered a loss due to the Deepwater Horizon oil spill. Claimant stated that, prior to her work as an oil spill clean-up worker; she was employed with [REDACTED] Claimant provided a letter from her contracting agency, [REDACTED], indicating that she was employed with [REDACTED] from 5 February 2010 through 16 July 2010.⁸ The NPFC contacted [REDACTED] to verify this employment. The [REDACTED] from [REDACTED] confirmed the letter, but also added that Claimant voluntarily left her employment with [REDACTED] to pursue employment as an oil spill clean-up worker.⁹

Further, Claimant's 2010 W-2 from [REDACTED] indicated that she earned over \$11,000 in her one month of employment as an oil spill clean-up worker. Not only did Claimant fail to suffer a loss due to the Deepwater Horizon oil spill, she earned more than 1/3 of her previous year's salary in the span of one month.¹⁰

Because the Claimant has failed to demonstrate that she has suffered a loss due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil, this claim is denied.

[REDACTED]
Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *6/8/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

⁶ Report from the GCCF, dated 31 May 2011.

⁷ Denial letter from GCCF for Interim/Final Payment Claim, dated 16 April 2011.

⁸ Letter from [REDACTED] at [REDACTED] to "Whom It May Concern," dated 26 April 2011.

⁹ PHONECON between NPFC Representative and [REDACTED] HR Representatives on 18 May 2011.

¹⁰ 2009 Federal Tax Return.

U.S. Department
of Homeland Security

United States
Coast Guard



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

U.S. Coast Guard Stop 7100

16480

25 May 2011

CERTIFIED MAIL Number [REDACTED]

M
13
N

RE: Claim Number: N10036- 0783

D [REDACTED]

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

Background

On or about 20 April 2010, the Mobile Offshore Drilling Unit Deepwater Horizon exploded and sank in the Gulf of Mexico. As a result, oil was discharged and the federal government and Gulf coast states closed certain waters to commercial and recreational fishing. 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 individual and business claims on behalf of BP.

Facts

In December 2010, you submitted a claim to the GCCF following the Deepwater Horizon spill for lost subsistence use of natural resources in the amount of \$10,000, which was denied. On 11 May 2011, the NPFC received your claim in the same amount.

Applicable Law

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

General Claim Requirements

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

Subsistence Use Loss Claim Requirements

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

- 1) be for lost subsistence use and submitted by an eligible claimant;
- 2) identify and describe the actual subsistence use of each specific natural resource for which compensation is being claimed;
- 3) describe how and to what extent the claimant's subsistence use was affected by injury to or loss of each specific natural resource;
- 4) describe efforts to mitigate the subsistence use loss;
- 5) be based on the reasonable cost to replace the lost subsistence use of natural resources; and
- 6) be reduced by the amount of all compensation made available to the claimant to compensate for the loss, all income which was derived by utilizing the time which otherwise would have been used to obtain the subsistence resources, and any avoided costs associated with the subsistence activity, such as gas for vehicles or boats, bait, and other overhead costs not incurred due to the spill.

NPFC has provided more detail about these claim requirements at:
http://www.uscg.mil/npfc/Claims/DWH_faqs.asp.

Claim Submission and Documentation

The claim received by the NPFC on 11 May 2011, included the following supporting documents: your Louisiana Department of Wildlife and Fisheries basic and residential fishing licenses for years 2000-2001, 2001-2002, 2003-2004, 2006-2007, and what

appears to be 2008-2009, valid through June 30 for each period; and a statement signed by your sisters [REDACTED] and [REDACTED] attesting that you provided them with fish.

NPFC Determination

The NPFC finds that you have not met your burden of proving a subsistence use loss as defined by the Oil Pollution Act (OPA, 33 U.S.C. 2701 et seq.) and OPA claims regulations (33 C.F.R. Part 136). Your claim is denied because you have not documented:

- 1) the extent to which the spill impacted your subsistence use, for example, the location and dates of closures in your area;
- 2) the type and amount of natural resources you are claiming to have lost (beyond a general statement of "fish") based on a demonstrated pattern of past use;
- 3) the period of your claimed loss; or
- 4) how you determined your claimed loss of \$10,000 (i.e., the actual costs incurred to replace your claimed loss).

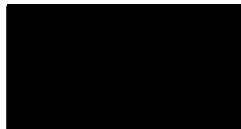
Request for Reconsideration

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

Should you choose to request NPFC reconsideration of this determination, please mail the request and additional claim information with the appropriate claim number (N10036-0783) to:

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

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



Natural Resource Damage Claims Division
National Pollution Funds Center
U.S. Coast Guard

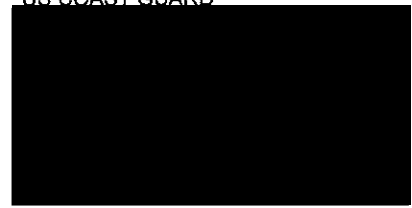
U.S. Department of
Homeland Security

United States
Coast Guard



Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD



CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: [REDACTED]

DWHZ/5890
26 May 2011



RE: Claim Number: N10036-0784

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 N10036-0784 involving the Deepwater Horizon oil spill. Please see the attached Claim Summary/Determination Form for further explanation.

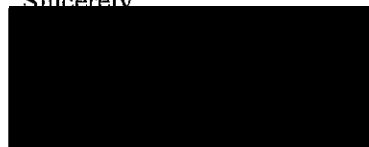
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you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

Reconsideration of the denial will be based upon the information provided. A claim may be reconsidered only once. Disposition of that reconsideration in writing will constitute final agency action. Failure of the NPFC to issue a written decision within 90 days after receipt of a timely request for reconsideration shall, at the option of the claimant, be deemed final agency action. All correspondence should include claim number N10036-0784.

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

Encl: Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00003076

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-0784
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
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 May 11, 2011, [REDACTED] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$5,000.00 in loss of profits and impairment of earnings resulting from the Deepwater Horizon oil spill.

Claimant stated on his OSLTF form claim that “the spill took profit from my finances due to me being a fisherman and holder of Mississippi Fisherman Lic [sic].”¹ Claimant also stated that he “los[t] . . . wages due to not fishing because of the oil spill.”² Claimant provided no documentation or further explanation to support his claim.

APPLICABLE LAW:

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

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

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

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

¹ Optional OSLTF Claim Form dated May 11, 2011.

² Id.
09/14/11

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

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

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

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

DETERMINATION OF LOSS

Claimant's Submission

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

- NPFC OSLTF Form, dated May 11, 2011

On 17 May 2011 the claimant was contacted and additional information was requested to support the claim. To date the Claimant has not responded to our request for additional information.

Claimant has not provided any evidence demonstrating that his claim had been presented to the responsible party (RP). In fact, the Claimant indicated on his OSLTF claim form that he has not submitted his claim to the RP.³

NPFC Determination

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

³ Claimant OSLTF claims form.
09/14/11

This claim is denied because (1) the Claimant indicated that he has not presented his claim to the RP as required by 33 C.F.R. § 136.103(a); (2) the Claimant has not met the minimum evidentiary requirements of 33 C.F.R. § 136.105, which includes providing evidence to support the claim; and (3) Claimant has not met the specific requirements of 33 C.F.R. § 136.233 to establish a claim for loss of profits and impairment of earnings capacity. Claimant, for example, does not demonstrate that his income was reduced as a consequence of injury to, destruction of, or loss of the property or natural resources; and he does not provide the amount of his earnings in comparable periods and during the period when the claimed loss or impairment was suffered.

For all the foregoing reasons, this claim is denied.

Claim Supervisor:  *Claims Adjudication Division*

Date of Supervisor's review: *5/26/11*

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 # N10036-0785
15 July 2011

Re: Claim Number: N10036-0785

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 N10036-0785. 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 N10036-0785.

Mail reconsideration requests to:

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

Sincerely,

[REDACTED]
National Pollution Funds Center
U.S. Coast Guard

Enclosure: (1) Claim Summary/Determination Form
(2) Documentation Provided in Support of Claim N10036-0785

09/14/11

FOIA2011-3380-00003080

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-0785
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Real or Personal Property
Amount Requested	\$1,300,000.00

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

On 11 May 2011, [REDACTED] presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$1,300,000.00 in alleged damages to real or personal property resulting from the Deepwater Horizon oil spill. In a Letter of Authorization from Claimant to NPFC, Claimant authorized her husband, [REDACTED] to act as her agent throughout the adjudication process.¹ [REDACTED] has since been the primary point of contact and correspondence with the NPFC.²

Claimant owns two properties in Pensacola, FL, which he alleges have been damaged as a result of the Deepwater Horizon oil spill. According to Claimant, his properties, [REDACTED] (Property "A"), and [REDACTED] Pensacola, [REDACTED] sustained (1) diminution of property values, and (2) lost marketability and the potential for sale, as a direct result of the Deepwater Horizon oil spill.³

Claimant assessed the sum certain as the aggregate "loss of value" of Properties A and B, which was calculated as the difference between the properties "Value Before the Spill . . . Based on the Fair Market Value in a Normally Functioning Market" and the properties' "Value after the Spill . . . Based on the Fair Liquidation Value in a Non Functioning Market."⁴ Based on these calculations, Claimant reached a sum of \$700,000.00 in damages for Property "A" and \$600,000.00 in damages for Property "B," totaling a sum certain of \$1,300,000.00.

Claimant references 33 U.S.C. § 2702(b)(2)(B) and 33 C.F.R. § 136.213(a) to allege that the property values for Properties A and B sustained real or personal property damage and injury. Claimant explains that the "damage" for "injury" to real property, for which he is seeking compensation, includes the diminution of value and Claimant's continued inability to effectively market the properties.⁵ Claimant further contends that "as a result of substantial injury to our real properties, and the continued threat of ongoing or future oil pollution, the values of our

¹ Letter of Authorization from Claimant dated 28 April 2011

² It is unclear why only [REDACTED] is the claimant when all records provided to the NPFC reflect that both [REDACTED] and [REDACTED] hold title to the two properties and are both liable for the mortgages for the properties.

³ See, Attachment: IV.B. Claims for Real or Personal Property Damage (B.4)

⁴ See, Attachment: IV.B. Claims for Real or Personal Property Damage (B.4)

⁵ See, Original NPFC claim submission

properties have decreased so significantly, it is now impossible for us to sell the properties for anywhere near the amounts they would have to be sold for, in order to pay off the mortgages.”⁶

Claimant also maintains a baseline assertion that “subject residential properties relative uniqueness and value (over \$1,000,000 before oil spill value) . . . should be classified as a [REDACTED]” as, according to Claimant, buyers of these properties “are more likely to be influenced by fluctuations in the stock market.”⁷

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 that result from such incident.

Covered damages under OPA include (1) damages for injury to, or economic losses resulting from destruction of, real or personal property which shall be recoverable by a claimant who owns or leases the property and (2) 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 an claimant. 33 U.S.C. § 2702(b)(2)(B) and (E).

The OSLTF, which is administered by the NPFC, is available pursuant to pay claims for removal costs consistent with the National Contingency Plan and uncompensated damages. 33 U.S.C. § 2712(a)(4).

With certain exceptions all claims for removal costs and damages shall be presented first to the responsible party or guarantor of the source. 33 U.S.C. § 2713(a).

The President shall publish claims regulations detailing procedures and requirements for presenting claims to the Oil Spill Liability Trust Fund 33 U.S.C. § 2712(e). These regulations are found at 33 C.F.R. Part 136. .

The applicable regulations for real or personal property damage and loss of profits or impairment of earning capacity are found at 33 C.F.R. § 136.213 - .217, and 33 C.F.R. 233 - .235 respectively.

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 the OSLTF

To support this claim, Claimant submitted the documentation listed in Enclosure (2).

⁶ See, Email from Claimant to the NPFC dated Wednesday, 08 June 2011, 2:27 PM

⁷ See, Attachment: IV.B. Claims for Real or Personal Property Damage (B.4)

Prior to presentment to the NPFC, Claimant presented two Interim Payment Claims to the RP/GCCF. Claimant was assigned GCCF Claimant ID [REDACTED]. The Interim Payment Claims were denied by the GCCF on 30 April 2011.⁸

Claimant seeks \$1,300,000.00 in real or personal property damages from the OSLTF.

NPFC Determination

Claimant seeks compensation for an alleged “diminution of value of two properties” that he argues was damaged by the incident; whether he is seeking compensation under 33 U.S.C. § 2702(b)(2)(B), which is the statute providing for damages to the real or personal property, or under a loss of profits or impairment of earning capacity provided 33 U.S.C. § 2702(b)(2)(E), his claim is denied for the reasons discussed below.

Section 2702(b)(2)(B) provides that damages for injury to, or economic losses resulting from destruction of real or personal property may be recoverable by a claimant owning or leasing the property. While [REDACTED] has established that he and [REDACTED] own the two properties, he has not established that either of the properties suffered “damages” resulting from the incident under this subsection. [REDACTED] argues that a diminution in value is an injury to or destruction of the property and he provides several definitions of “injury.” However, the regulations reflect that “injury” or “destruction” means physical injury or destruction. 33 CFR 136.215(a)(2)-(4) provides that a claimant must establish: (1) that the property was injured or destroyed; (2) the cost or repair or replacement, and (3) the value of the property before and after the injury occurred. Further, a claimant must establish that the property was not available for use, whether or not substitute property was available and if so, the costs thereof. Finally, the amount of compensation allowed is the lesser of the actual or estimated net cost of repairs to restore the property to substantially the same condition existing before the damage, the difference between the value of the property before and after the incident, or the replacement value. 33 CFR 136.217. These provisions reflect that there must be physical injury or destruction in order to be compensated under this theory.


Section 2702(b)(2)(E) provides that damages equal to the loss of profits or impairment of earning capacity due to the injury to, destruction, or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant. [REDACTED] also seems to argue that he has suffered a loss of profits because the two properties have lost value and he cannot sell them due to the incident.⁹ He provides self appraisals alleging that Property A was valued at \$1,100,000 at some point in time and that today it is worth \$500,000. He asserts that Property B was valued at \$1,300,000 at some point in time and today is valued at \$600,000.

⁸ GCCF denial letter dated 30 April 2011.

⁹ It must be noted that records provided by [REDACTED] reflect that Property (A), the condominium unit 401, was on the market from October 2008 and, according to MLS listings the price was reduced from an initial selling price of \$1.599 million to \$1.289 million in September 2009, at least seven months prior to the incident. It is unknown if the property is still on the market or if so, there is a listed selling price.

The OSLTF is available for the payment of uncompensated damages. 33 U.S.C. 2712(a)(4). At this time he still owns the properties and has not suffered a loss of profits or damages for which he is uncompensated.

In accordance with the foregoing, this claim is denied.

Claim Supervisor: 

Date of Supervisor's Review: 15 July 2011

Supervisor's Action: *Final Approval*

Supervisor's Comments:

Enclosure (2)
Documentation Provided in Support of Claim N10036-0785

- Optional OSLTF Claim Form, dated 03 April 2011, received 11 May 2011
- Letter of Authorization to the NPFC for [REDACTED] to act as a claim representative, dated 28 April 2011
- Copy of GCCF Denial Letter on Interim Payment/Final Payment Claim, dated 30 April 2011
- Copy of GCCF Interim Payment/Final Payment Claim request for additional information, dated 29 January 2011
- Copy of GCCF Claim Cover Letter dated 30 March 2011
- Copy of GCCF Interim Payment Claim Form (pgs. 1, 2, 5, 6, 6, 11, 13 & 14)
- Attachment: IV.B. Claims for Real or Personal Property Damage, Property "A"
- Attachment: IV.B. Claims for Real or Personal Property Damage, Property "B"
- Email correspondence between [REDACTED] and the NPFC, 09 May 2011, 4:40 PM
- Email correspondence between [REDACTED] and the NPFC, 10 May 2011, 4:53 PM
- News article titled *Measures of damages in property loss cases, Oct, 2002*
- Property Value Appraisal: Appraisal Approach to Evaluating Stigma Damage
- Wikipedia article: *Luxury Real Estate*
- The Wall Street Journal.com article: *Market for Vacation Homes is on the Rise*, 10 January 2011
- Ezine Articles article: *Naples Luxury Homes Sales Up 63%*
- World Property Channel.com article: *BP Oil Spill Now Impacting Real Estate Markets Beyond Gulf Coast Cities*
- America Online: [REDACTED] excerpt: *The Long Road Ahead*
- Document, *Palms of Perdido Last 3 years sales history and clear evidence of "Crisis" impacts*
- Document, *Inability to use or rely on county property appraisers valuations*
- Document, *Palms and Perdido Key Sales and Listing Data for 2010, December 5, 2010*
- Document, *Sales on Perdido Drive/"Gulf Front"/Before and After April BP Oil Spill for 11 month period*
- MLS Listing for [REDACTED], Pensacola, FL 32507
- Thursday, January 06, 2011 America Online: [REDACTED]
- [REDACTED] Escambia County Property Appraiser, Real Estate Record Search, 06 January 2011
- Escambia County Clerk of the Circuit Court Official Records Search
- Email correspondence between [REDACTED] and the NPFC, 10 May 2011, 11:19 AM
- Email correspondence between [REDACTED] and the NPFC, 10 May 2011, 1:10 PM
- Harvard Law School, John C.P. Goldberg, *Liability for Economic Loss in Connection with the Deepwater Horizon Spill*, Nov. 22, 2010
- Gulf Coast Claims Facility Protocol for Interim and Final Claims, February 8, 2011
- Gulf Coast Claims Facility Document Requirements
- National Pollution Funds Center Claimant's Guide, April 2003, Updated November 2009
- Email correspondence between [REDACTED] and the NPFC, 10 May 2011, 4:45 PM
- Document, *Errors in Hedonic Modeling Regressions: Compound Indicator Variables and Omitted Variables*
- [REDACTED] Advisors LLC: *The Gulf Oil Spill – Updated, 25 October 2010*
- Email correspondence between [REDACTED] and the NPFC, 09 May 2011, 5:13 PM
- Document, *Warranty Deed, State of Florida, County of Escambia*
- Document, *Escambia County Tax Collector, Real Estate 2010*
- Email correspondence between [REDACTED] and the NPFC, 07 May 2011, 5:19 PM

- Email correspondence between [REDACTED] and the NPFC, 09 May 2011, 7:29 PM
- Email correspondence between [REDACTED] and the NPFC, 09 May 2011, 5:19 PM
- Google search for Perdido Oil Tar Mats March 2011 articles
- Incident Report Description
- Federal Science Report Analyzes Environmental Risks and Benefits
- Document, *Operational Science Advisory Team, Summary Reporting for Fate and Effects of Remnant Oil Remaining in the Beach Environment*
- Document, article: *Gulf Oil May Not Degrade for Decades*
- Document, article: *In effort to limit BP payout, compensation fund head says gulf recovery imminent*
- Document, article: *First study of dispersants in Gulf spill suggests a prolonged deepwater fate, January 26, 2011, 9:45 am*
- Document, article: *Letter from BK Lim to Congressmen Fred Upton and John Simkus regarding the BP Gulf Oil Spill*
- Document: *Recent January 2011 Oil Findings*
- Florida Department of Health, *Health advisory issued for portion of beach due to oil spill*
- Florida Department of Environmental Protection: NOAA Gulf of Mexico Fisheries Closures
- Document, article: *The oil's stain on science*
- Email correspondence between [REDACTED] and the NPFC, 03 June 2011, 12:57 PM
- Email correspondence between [REDACTED] and the NPFC, 03 June 2011, 12:21 PM
- Document: *Section 2702 of OPA Law, Title 33>Chapter 40>Subchapter I> § 2702*
- Email correspondence between [REDACTED] and the NPFC, 03 June 2011, 12:57 PM
- Document: Definitions of "damage" and "injury"
- Email correspondence between [REDACTED] and the NPFC, 03 June 2011, 1:31 PM
- Email correspondence between [REDACTED] and the NPFC, 08 June 2011, 2:27 PM
- Email correspondence between [REDACTED] and the NPFC, 06 June 2011, 4:44 PM
- Email correspondence between [REDACTED] and the NPFC, 03 June 2011, 5:16 PM
- Various articles regarding the oil spill and OPA, provided by Claimant
- Email correspondence between [REDACTED] and the NPFC, 03 June 2011, 4:58 PM
- Email correspondence between [REDACTED] and the NPFC, 03 June 2011, 10:45 AM

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 # N10036-0786
27 May 2011



Re: Claim Number: N10036-0786

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 N10036-0786 involving Deepwater Horizon. Please see the attached Claim Summary/Determination Form for further explanation.

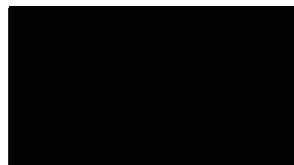
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-0786.

Mail reconsideration requests to:

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

Sincerely,



Division
National Pollution Funds Center
U.S. Coast Guard

Enclosure: (1) Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00003087

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-0786
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
Amount Requested	\$9,000.00

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 May 2011, [REDACTED] (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) for \$9,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

Claimant advised that her “hours were cut” at [REDACTED] between “the time frame of 1-20-10 to 5-19-10 . . . all because of the oil spill and economy.”¹ Claimant also asserted that she lost hours at her second job as a nursing assistant for an elderly individual named [REDACTED] because “her family that paid me was also affected by the oil spill.”²

APPLICABLE LAW

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

¹ Optional NPFC Claim Form, dated 04 May 2011 and Letter from Claimant to the GCCF dated 02 November 2010.

² GCCF Claim Form, Section 7, dated 17 December 2010 and Letter from Claimant to the GCCF dated 17 February 2010.

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:

- OSLTF claim form;
- Letter to the NPFC dated 4 May 2011 authorizing the NPFC to obtain the Claimant's GCCF file;
- Paid receipts for sitting assistance provided to [REDACTED] for various periods from 18 August 2010 to 19 January 2011;
- 2010 W-2 Wage and Tax Statements;
- [REDACTED] Statement dated 14 March 2010;
- Letter from [REDACTED] dated 5 May 2010;
- Letter from [REDACTED] dated 16 June 2010;
- GCCF EAP claim denial letter dated 06 December 2010;
- Letter from [REDACTED] dated 16 December 2010;
- Letter from Claimant re: Tax ID #; and
- GCCF Claim Form dated 17 December 2010.

Prior to presentment to the NPFC, Claimant presented multiple claims to the RP/GCCF, including an Emergency Advance Payment (EAP) Claim for \$9,000.00 in lost profits and earnings. She was assigned Claimant ID [REDACTED] and Claim [REDACTED]. Her EAP claim was denied on 6 December 2010.⁴

³ See discussion of authenticity of letter *infra*, NPFC Determination

⁴ GCCF EAP claim denial letter dated 06 December 2010

On 10 May 2011, Claimant presented the subject claim to the OLSTF for \$9,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

NPFC Determination

Under 33 C.F.R. § 136.105(a) and 136.105(e)(6), Claimant bears the burden of providing to the NPFC all evidence, information and documentation deemed necessary by the director, NPFC, to support the claim. The NPFC considered all documentation presented by the Claimant as well as her entire GCCF claim file.

The NPFC also contacted the Claimant's prior employer [REDACTED]. According to [REDACTED] [REDACTED] the Claimant's employment was terminated for reasons unrelated to the oil spill.⁵ To the extent that the Claimant's claim for lost [REDACTED] wages is severable from her claim for lost nursing wages, the Claimant has failed to establish that her alleged [REDACTED] wage loss is due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil. Accordingly, this portion of Claimant's submission is denied.

The NPFC also attempted to verify a letter which was purportedly hand-written by Mrs. [REDACTED] [REDACTED] who passed away on 1 February, 2011. The NPFC was unable to verify the authenticity of the letter provided by the Claimant. The NPFC believes that the subject letter was written on the same notebook paper and in the same hand as numerous letters submitted by the Claimant. Accordingly, the NPFC has reason to believe that the letter in question was forged by the Claimant. Should the Claimant disagree with the NPFC's determination regarding the letter purportedly written by the deceased client, the Claimant would need to obtain a handwriting sample from the Estate of [REDACTED] in order to provide corroboration that the letter was in fact written by [REDACTED]. The sample will need to be accompanied by a notarized statement from one of the family members in charge of the Estate.

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.

As to Claimant's lost nursing wages, this portion of Claimant's claim is denied for fraud.

Claim Supervisor: *NPFC* [REDACTED]

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

Supervisor's Action: *Denial approved*

Supervisor's Comments:

⁵ PHONECON between [REDACTED] and NPFC staff dated 23 May 2011
09/14/11

U.S. Department
of Homeland Security

United States
Coast Guard



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

U.S. Coast Guard Stop 7100

16480

June 3 2011

CERTIFIED MAIL Number: [REDACTED]

RE: Claim Number: N10036- 0787

Dear [REDACTED]

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

Background

On or about 20 April 2010, the Mobile Offshore Drilling Unit Deepwater Horizon exploded and sank in the Gulf of Mexico. As a result, oil was discharged and the federal government and Gulf coast states closed certain waters to commercial and recreational fishing. 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 individual and business claims on behalf of BP.

Facts

You submitted a claim to the GCCF following the Deepwater Horizon spill for lost subsistence use of natural resources, which was denied on 20 April 2011. On 11 May 2011, the NPFC received your claim for \$10,000 as damages for lost subsistence use and enjoyment of natural resources resulting from this spill.

Applicable Law

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

General Claim Requirements

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

Requirements for Subsistence and Public Use Loss Claims

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

- 1) be for lost subsistence use and submitted by an eligible claimant;
- 2) identify and describe the actual subsistence use of each specific natural resource for which compensation is being claimed;
- 3) describe how and to what extent the claimant's subsistence use was affected by injury to or loss of each specific natural resource;
- 4) describe efforts to mitigate the subsistence use loss;
- 5) be based on the reasonable cost to replace the lost subsistence use of natural resources; and
- 6) be reduced by the amount of all compensation made available to the claimant to compensate for the loss, all income which was derived by utilizing the time which otherwise would have been used to obtain the subsistence resources, and any avoided costs associated with the subsistence activity, such as gas for vehicles or boats, bait, and other overhead costs not incurred due to the spill.

Under OPA, public use losses include lost cultural and recreation use of natural resources and may only be claimed by a designated federal, state, or tribal natural resource trustee. For the Deepwater Horizon incident, the National Oceanic and Atmospheric Administration, U.S. Department of the Interior, and affected states are the designated trustees.

NPFC has provided more detail about these claim requirements at:
http://www.uscg.mil/npfc/Claims/DWH_faqs.asp.

Claim Submission and Documentation

Your claim received by the NPFC on 11 May 2011, included the Optional OSLTF Claim Form, your denial letter from the GCCF, but no other supporting documentation.

NPFC Determination

The NPFC finds that you have not met your burden of proving a loss as defined by OPA, (33 U.S.C. 2701 et seq.) and the OPA claims regulations (33 C.F.R. Part 136). Your claim for lost subsistence use is denied because you have not documented that you subsist upon natural resources or suffered a loss due to the spill. That is, you have not provided any evidence to support a regular pattern of catch that you or your family relied upon (e.g., statements or affidavits that address the frequency and amount of subsistence catch and consumption), nor have you explained how you determined your claimed loss of \$5,000 (i.e., the actual costs incurred to replace your claimed loss). Your claim of \$5,000 for lost use and enjoyment of natural resources for cultural and recreation purposes is also denied because you are not a designated trustee of public resources and, therefore, not eligible to claim such losses.

Request for Reconsideration

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

Should you choose to request NPFC reconsideration of this determination, please mail the request and additional claim information with the appropriate claim number (N10036-0787) to:

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

If you have any questions about reconsideration, please feel free to contact the NPFC at the above address or by phone at 800-280-7118.

Sincerely,



National Pollution Funds Center
U.S. Coast Guard

U.S. Department of
Homeland Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD



CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Number [REDACTED]

5890/DWHZ
Claim # N10036-0788
8 June 2011

Re: Claim Number: N10036-0788

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 your claim number N10036-0788 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination Form for further explanation.

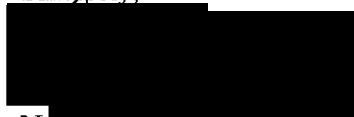
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. If, however you 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 N10036-0788.

Mail reconsideration requests to:

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

Sincerely,



[REDACTED] n
National Pollution Funds Center
U.S. Coast Guard

Enclosures: Claim Summary/Determination Form

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-788
Claimant	[REDACTED]
Type of Claimant	Business
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$24,650.00

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 11 May 2011, [REDACTED] (Owner) on behalf of [REDACTED] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$24,650.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

Owner runs a yacht service business¹, specifically involving yacht maintenance and logistical support services for yacht owners.² Claimant's clients are made up of businesses that rely on the tourism industry in southwest Florida.³ Owner asserted that as a result of the Deepwater Horizon oil spill, the tourism industry collapsed, creating a drop in revenues for the Claimant.⁴

Owner calculated the Claimant's sum certain by determining the difference between the Claimant's 2009 and 2010 Yacht Services revenue during the months of May-December.⁵ This final number totaled \$24,650.00.⁶

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

¹ Claimant also operates an internet merchant business and a dry-goods storage business. The revenue for those businesses is not a part of Claimant's claim to the NPFC.

² Attachment to Owner's submission describing nature of Claimant's business and alleged loss.

³ Id.

⁴ Id.

⁵ Claimant Response to NPFC Request for Additional Information.

⁶ OSLTF Claim Form.

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 the OSLTF

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

- Optional Oil Spill Liability Trust Fund Claim Form;
- Attachment to Owner's submission describing nature of Claimant's business model;
- Profit and loss summary for 2008, 2009 and 2010;
- Profit and loss spreadsheet from January 2008-December 2008;
- Profit and loss spreadsheet from January 2009-December 2009;
- Profit and loss spreadsheet from January 2010-December 2010;
- News article from Marconews.com;
- Guest opinion article for [REDACTED];
- Answers to Request for Additional Information;

- Invoices dated 25 February 2008, 30 March 2008, 5 May 2008, 1 June 2008, 8 August 2008, 15 September 2008, 30 October 2008, 15 December 2008, 1 May 2009, 1 June 2009, 15 June 2009, 30 June 2009, 1 July 2009, 19 July 2009, 1 August 2009, 25 August 2009, 10 September 2009, 30 September 2009, 9 October 2009, 19 November 2009, 2 December 2009;
- Bank Statements from 1 May 2008-31 December 2008;
- Bank Statements from 1 May 2009-31 December 2009;
- Bank Statements from 1 May 2010-31 December 2010;
- 2008 version of 1120S federal income tax filing;
- 2009 version of 1120S federal income tax filing;
- 2010 version of 1120S federal income tax filing.

Prior to presenting this claim to the NPFC, Claimant presented two Final Payments claims to the RP/GCCF. Claimant was assigned GCCF Claimant ID [REDACTED]. The Final Payment claims each were for \$10,197.76 in lost profits and earnings. The claims were denied by the GCCF.⁷

On 11 May 2011, the Claimant presented the subject claim for \$24,650.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

NPFC Determination

Under 33 C.F.R. § 136.103(a), all claims for removal costs or damages must be presented first to the responsible party (RP). Claimant presented a Final Payment Claim and a Full Review Final claim, both in the amount of \$10,197.76 for lost profits and earnings to the GCCF. Claimant then presented a claim for loss of profits and impairment of earnings capacity in the amount of \$24,650.00 to the NPFC. Any claimed amount of damages exceeding \$10,197.76 was not properly presented to the RP/GCCF pursuant to 33 C.F.R. § 136.103(a) and is therefore denied.

The remainder of this claim is denied because the Claimant's evidence does not demonstrate that its alleged loss is due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil.

Claimant's documentation indicated that revenue for its yacht-business decreased significantly from 2009 to 2010.⁸ The yacht-business revenue fell from \$74,706.52 in 2009 to \$47,019.19 in 2010.⁹ Concentrating on the time period surrounding the Deepwater Horizon oil spill, the Claimant's revenue in March and April 2010 closely matched the revenue generated for those months in 2009. Revenue in May, June, July and August 2010, however, dropped considerably compared to those months in 2009.¹⁰

Although the Owner provided financial information documenting a reduction in the Claimant's revenue after the Deepwater Horizon oil spill, the data does not demonstrate that the reduction in revenue is due to the Deepwater Horizon oil spill. Owner asserted that the oil spill caused tourism in Naples, Florida to plummet, which resulted in a diminution of available customers and from that lower revenue for the Claimant. Owner, however, did not provide documentary evidence to support this assertion. Despite noting in its initial submission to the NPFC that the Claimant possessed contracts with vessels in Naples, the Claimant did not provide the NPFC with any documentary evidence concerning existing or cancelled

⁷ GCCF denial letters, dated 30 April and 28 May 2011.

⁸ Profit and loss spreadsheet from January 2008-December 2008, Profit and loss spreadsheet from January 2009-December 2009, Profit and loss spreadsheet from January 2010-December 2010.

⁹ Id.

¹⁰ Id.

contracts with clients in 2009 or 2010.¹¹ Additionally, the Claimant pledged to provide information from the [REDACTED] regarding the reduced business in yachting and tourism in southwest Florida yet never provided it.¹² Finally, the Claimant ignored the NPFC's request for information relating to the Claimant's customer contracts and statistics from local marinas regarding yachting and tourism in 2010.¹³

Nevertheless, the NPFC obtained statistics provided by the official visitor website for Collier County, which included Marco Island and Naples that do not support the assertion that tourism substantially decreased in this region after the Deepwater Horizon oil spill.¹⁴ After the oil spill in May and June, the tourism numbers in fact increased from 2009 by 3.9%¹⁵ and 2.7%,¹⁶ respectively. For the months of July through September, there was an overall decrease by 2.4%.¹⁷ Claimant, however, generated higher revenue in September 2010 than September 2008 or 2009.¹⁸ After September, however, the numbers rebounded strongly in October and November, with increases of 11%¹⁹ and 4.7%,²⁰ respectively. Overall tourism in 2010 increased by 3.3% over 2009.²¹

Because the Claimant has failed to (1) make proper presentment of some of the costs claimed to the RP pursuant to 33 C.F.R. § 136.103(a), and (2) demonstrate that its alleged loss is due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil, this claim is denied.

Claim Supervisor: *NE [REDACTED] Application Division*

Date of Review: *6/8/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

¹¹ Attachment to Owner's submission describing nature of Claimant's business and alleged loss.

¹² *Id.*

¹³ NPFC's Request for Additional Information dated 20 May 2011.

¹⁴ [http://www.p\[REDACTED\]center/research.php](http://www.p[REDACTED]center/research.php).

¹⁵ [http://www.p\[REDACTED\]center/research_files/1277149233_May%20Collier%20May%202010.pdf](http://www.p[REDACTED]center/research_files/1277149233_May%20Collier%20May%202010.pdf).

¹⁶ [http://www.p\[REDACTED\]center/research_files/1280235197_Collier%20June%202010.pdf](http://www.p[REDACTED]center/research_files/1280235197_Collier%20June%202010.pdf).

¹⁷ [http://www.p\[REDACTED\]center/research_files/1288812067_CollierSep2010-REV.pdf](http://www.p[REDACTED]center/research_files/1288812067_CollierSep2010-REV.pdf).

¹⁸ Profit and loss spreadsheet from January 2009-December 2009, Profit and loss spreadsheet from January 2010-December 2010.

¹⁹ [http://www.p\[REDACTED\]center/research_files/1291397085_Collier%20October%202010.pdf](http://www.p[REDACTED]center/research_files/1291397085_Collier%20October%202010.pdf).

²⁰ [http://www.p\[REDACTED\]center/research_files/1292861030_Collier%20November%202010.pdf](http://www.p[REDACTED]center/research_files/1292861030_Collier%20November%202010.pdf).

²¹ [http://www.p\[REDACTED\]center/research_files/1305311135_TOURISM%20IMPACT%20FACTS%2010.doc](http://www.p[REDACTED]center/research_files/1305311135_TOURISM%20IMPACT%20FACTS%2010.doc).

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
6/7/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]



RE: Claim Number: N10036-0789

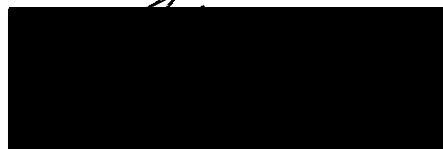
Dear [REDACTED]

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 N10036-0789 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

ENCL: Claim Summary / Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-0789
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: \$90,000.00

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 11 May 2011, [REDACTED] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$90,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

The Claimant owns a tropical fish business in Florida and asserted that the “threat of oil and contaminants in water caused a buyer to back out of [a] business purchase.”¹ The Claimant filed an Emergency Advance Payment (EAP) claim with the GCCF on September 1, 2010 in the amount of \$13,000.00. The Claimant was assigned GCCF Claimant II [REDACTED]. The Claimant also filed an Interim claim in the amount of \$90,000.00 on January 4, 2011. The NPFC has confirmed that both claims were denied by the GCCF.

REQUEST FOR RECONSIDERATION:

On June 6, 2011, the Claimant sent a request for reconsideration to the NPFC stating he would like the NPFC to reconsider his claim. The Claimant submitted a one page letter in support of his reconsideration along with an Addendum letter from [REDACTED] and a blank copy of a Marine Life Endorsement Transfer Form showing a commercial saltwater license can only be transferred in the State of Florida between September 1 and November 30 each year.

The NPFC denied the claim originally on May 26, 2011 because the Claimant submitted a statement from his alleged purchaser, [REDACTED] wherein [REDACTED] stated that he decided “not to continue in these *negotiations* due to the strong possibilities of destructive oil...”² The correspondence from [REDACTED] evidenced that the sale of the subject business was merely in the negotiation stages between January 2010 and July 2010³, and that a sale was therefore speculative at that stage. As such, the Claimant had not realized a loss from the potential sale. Furthermore, any loss suffered by the Claimant was not due to the injury, destruction or loss of

¹ Optional OSLTF Claim Form dated 04 May 2011.

² Undated statement of [REDACTED] (emphasis added).

³ Claimant letter dated May 4, 2011.

property or natural resources as a result of a discharge or substantial threat of a discharge of oil but the result of business transactions conducted with the potential buyer.

Accordingly, the Claimant's request for compensation of his alleged loss in the amount of \$90,000.00 was denied.

On reconsideration, the Claimant presented a letter that was received by the NPFC on June 6, 2011. The letter stated... "Please reconsider this claim with this additional information; Addendum letter from [REDACTED] and [REDACTED] form (which shows limited transfer period)".

RECONSIDERATION CLAIM ANALYSIS:

The claimant requested reconsideration which was received by the NPFC on June 6, 2011. To support his request for reconsideration, the claimant provided a letter making listing two new pieces of information to support his request for reconsideration.

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 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. After the NPFC performed another review of the claim submission, the NPFC has determined that the Claimant has not demonstrated a loss since he still owns his tropical fish business and has not suffered a loss of profits. . The NPFC incorporates the original denial dated May 26, 2011 as part of this reconsideration determination.

Additionally, while the Claimant has provided two signed letters from an alleged potential buyer of his business, the Claimant has not provided any information relative to the "tropical fish" business he allegedly owns, the Claimant has not been able to provide proof there was a contract to purchase the business as opposed to months of verbal discussions nor has the Claimant has provided no comparable financials from the business to demonstrate three years of comparable financials for the business which would demonstrate the existence of his tropical fish business.

The NPFC again denies the claim because (1) the Claimant has failed to meet the burden to demonstrate that he has a loss of profits in the amount claimed since the Claimant stills owns his alleged tropical fish business. Until the Claimant sells his business, the alleged loss remains prospective in nature and has not actually been realized by the Claimant and (2) that the alleged loss was due to the injury to, destruction of, or loss of property or natural resources as a result of a discharge or substantial threat of discharge of oil.

This claim is denied upon reconsideration.

Claim Supervisor: 

Date of Supervisor's review: *6/7/11*

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
Natural Resource Damage (NRD)
Claims Division

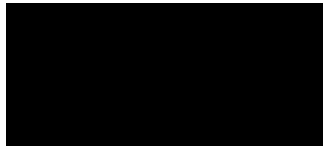
U.S. Coast Guard Stop 7100



16480

3 June 2011

CERTIFIED MAIL Number: [REDACTED]



RE: Claim Number: N10036- 0790

Dear [REDACTED]

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

Background

On or about 20 April 2010, the Mobile Offshore Drilling Unit Deepwater Horizon exploded and sank in the Gulf of Mexico. As a result, oil was discharged and the federal government and Gulf coast states closed certain waters to commercial and recreational fishing. 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 individual and business claims on behalf of BP.

Facts

You submitted a claim to the GCCF following the Deepwater Horizon spill for lost subsistence use of natural resources, which was denied on 20 April 2011. On 11 May 2011, the NPFC received your claim for \$6,000 in damages resulting from lost natural

resources that you would have eaten. The NPFC considers this to be a claim for lost subsistence use of natural resources¹.

Applicable Law

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

General Claim Requirements

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

Subsistence Use Loss Claim Requirements

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

- 1) be for lost subsistence use and submitted by an eligible claimant;
- 2) identify and describe the actual subsistence use of each specific natural resource for which compensation is being claimed;
- 3) describe how and to what extent the claimant's subsistence use was affected by injury to or loss of each specific natural resource;
- 4) describe efforts to mitigate the subsistence use loss;
- 5) be based on the reasonable cost to replace the lost subsistence use of natural resources; and
- 6) be reduced by the amount of all compensation made available to the claimant to compensate for the loss, all income which was derived by utilizing the time which otherwise would have been used to obtain the subsistence resources, and any avoided costs associated with the subsistence activity, such as gas for vehicles or boats, bait, and other overhead costs not incurred due to the spill.

NPFC has provided more detail about these claim requirements at:
http://www.uscg.mil/npfc/Claims/DWH_faqs.asp.

¹ Natural resource damages (NRD) under OPA are public use losses as described in the implementing regulations at 33 C.F.R. Part 136.207-136.211, and may only be submitted by appropriate federal, state, or tribal natural resource trustees.

Claim Submission and Documentation

Your claim received by the NPFC on 11 May 2011, included the Optional OSLTF Claim Form, two signed testaments from you stating that you fish for yourself and your family and rely on your catch for food; your social security card and driver's license, three receipts for food; a picture of fish that you say are representative of the fish that you caught prior to the spill; and your resident basic and saltwater fishing license from the Louisiana Department of Wildlife and Fisheries valid from 5 October 2010, until 30 June 2011.

NPFC Determination

The NPFC finds that you have not met your burden of proving a subsistence use loss as defined by the Oil Pollution Act (OPA, 33 U.S.C. 2701 et seq.) and OPA claims regulations (33 C.F.R. Part 136). Your claim is denied because you have not documented:

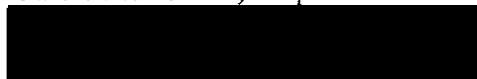
- 1) a regular pattern of catch that you or your family relied upon based on a demonstrated pattern of past use (e.g., statements or affidavits that address the frequency and amount of subsistence catch and consumption, and a copy of your fishing license valid prior to the spill to document a legal pattern of subsistence use);
- 2) how and where you traditionally obtained the resources you claim to have used for subsistence purposes;
- 3) the period of your claimed loss; nor
- 4) how you determined your claimed loss of \$6,000 (i.e., the actual costs incurred to replace your claimed loss or documentation to establish reasonable estimates of replacement costs based on your pattern of subsistence use).

Request for Reconsideration

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

Should you choose to request NPFC reconsideration of this determination, please mail the request and additional claim information with the appropriate claim number (N10036-0790) to:

Chief (Cn)
National Pollution Funds Center
U.S. Coast Guard, Stop 7100



If you have any questions about reconsideration, please feel free to contact the NPFC at the above address or by phone at 800-280-7118.

Sincerely,



Natural Resource Damage Claims Division
National Pollution Funds Center
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

[REDACTED]
DWHZ/ 5890
8 June 2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]

[REDACTED]

RE: Claim Number: N10036-0791

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act of 1990, U.S.C. § 2701 et seq. (OPA) and the associated regulations at 33 C.F.R. Part 136, denies payment on the claim number N10036-0791 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 N10036-0791.

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

Encl: (1) Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00003108

CLAIM SUMMARY / DETERMINATION FORM

Date	: June 8, 2011
Claim Number	: [REDACTED]
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: \$150,000.00

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 May 25, 2011, [REDACTED] Claimant) presented a lost profits & earnings capacity in the amount of \$150,000.00 to the National Pollution Funds Center (NPFC) for reimbursement. The Claimant stated on the Optional OSLTF form that "we were layed [sic] off due to BP oil. Contract was breached."¹

The Claimant did not provide an explanation regarding how he arrived at his requested amount. The Claimant did not provide any documentation to indicate any communication with the Responsible Party.

APPLICABLE LAW:

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

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

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

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

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

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

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

DETERMINATION OF LOSS

Claimant's Submission

To support the claim, the Claimant submitted the following documentation:

- NPFC OSLTF Form, dated May 11, 2011.

On May 17, 2011 and June 1, 2011, the NPFC contacted the Claimant by phone and requested additional information. To date the claimant has not responded to any of our request.

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 documentation presented by Claimant.

This claim is denied because the Claimant's evidence does not demonstrate (1) the alleged loss of profits in the amount of \$150,000.00, as claimed, (2) the correlation, if any, between this alleged loss and the Deepwater Horizon oil spill and (3) the Claimant has failed to properly present his claim first to the RP as required by regulation.

The Claimant did not provide any supporting documentation, such as copies of written communication from the RP, copies of financial information, a statement on how the spill caused a loss of income and the rationale for how he calculated his alleged loss of profits in the amount of \$150,000. It is also important to note that the Claimant failed to provide the comparable financial documentation we requested pursuant to the governing claims regulations at 33 CFR 136.233 (c) which states..."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". Additionally, the Claimant has failed to make proper presentment of his claim first to the RP as required by § 136.103 it states..." (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 or guarantor of the source designated under §136.305".

Because Claimant has failed to demonstrate (1) the alleged loss of profits in the amount of \$150,000.00, as claimed, (2) that this alleged loss is 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, and (3) the Claimant has failed to properly present his claim first to the RP as required by regulation, this claim is DENIED.


Claim Supervisor: *Claims Adjudication Division*

Date of Supervisor's review: *6/8/11*

Supervisor Action: *Denial approved*

Supervisor's Comments:

U.S. Department of
Homeland Security

**United States
Coast Guard**



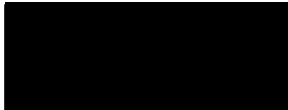
Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937
5890
5/18/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number [REDACTED]



RE: Claim Number: N10036-0792

Dear [REDACTED]:

The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act of 1990, U.S.C. § 2701 et seq. (OPA) and the associated regulations at 33 C.F.R. Part 136, denies payment on the claim number N10036-0792 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 N10036-0792.

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: (1) Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00003112

CLAIM SUMMARY / DETERMINATION FORM

Date	: May 17, 2011
Claim Number	: N10036-0792
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 May 12, 2011 [REDACTED] (Claimant) presented a lost profits & earnings capacity claim in the amount of \$15,000.00 to the National Pollution Funds Center (NPFC) for reimbursement. The Claimant stated that he worked as a PM Supervisor at the [REDACTED] in Fort Myers, Florida. Due to the lack of tourism, the company could no longer afford to have a PM Manager and the Claimant was demoted back to being a night auditor, resulting in an hourly wage cut and no overtime hours.

The Claimant did not provide correspondence or documentation pertaining to his claim with the GCCF. Also, based on the Claimant's Optional OSLTF Claim Form, the claim has not been presented 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:

- NPFC OSLTF Form, dated April 30, 2011;
- Hardship letter from Claimant, undated;
- Signed letter from [REDACTED] dated May 2, 2011;
- 2009 & 2010 W-2

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.

This claim is denied because the Claimant failed to meet presentment requirements set forth in 33 U.S.C. § 2713(a), all claims for removal or damages shall be presented first to the responsible party or guarantor of the source designated... (c)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.

Claim Supervisor: 

Date of Supervisor's review: *5/18/11*

Supervisor Action: *Denial approved*

Supervisor's Comments:

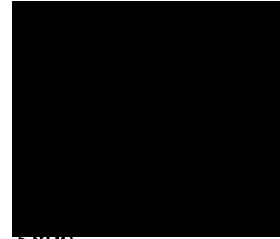
U.S. Department of
Homeland Security

United States
Coast Guard



Director
National Pollution Funds Center
United States Coast Guard

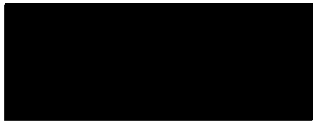
NPFC CA MS 7100
US COAST GUARD



5890
6/6/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number [REDACTED]



RE: Claim Number: N10036-0793

D [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act of 1990, U.S.C. § 2701 et seq. (OPA) and the associated regulations at 33 C.F.R. Part 136, denies payment on the claim number N10036-0793 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 N10036-0793.

Mail reconsideration requests to:

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

Sincerely,



National Pollution Funds Center
U.S. Coast Guard

Encl: (1) Claim Summary/Determination Form
09/14/11

FOIA2011-3380-00003116

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-0793
Claimant	[REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: \$8,008.00

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 May 12, 2011 [REDACTED] (Claimant) presented a lost profits & earnings capacity claim in the amount of \$8,008.00 to the National Pollution Funds Center (NPFC) for reimbursement. The Claimant provided no written explanation with regards to what type of work he does or how his work was affected by the oil spill. However, the Claimant did provide an affidavit from [REDACTED] of the [REDACTED] Human Resources Department, that stated "due to the oil spill incident in the Gulf of Mexico, our onshore and offshore oil and gas fabrication activity has suffered greatly from a lack of work and unfortunately the company has closed and all employees have been terminated."¹

The Claimant did not provide copies of the denial letter for his final claim with the GCCF but the NPFC did confirm that the claim was denied on April 15, 2011.

APPLICABLE LAW:

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

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

¹ Affidavit from [REDACTED] dated April 20, 2011
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 the claim, the Claimant submitted the following documentation:

- NPFC OSLTF Form, dated May 2, 2011;
- Affidavit from previous employer, dated April 20, 2011;
- 2008, 2009, & 2010 Individual Income Tax Return;
- 2008, 2009, & 2010 W-2;
- Weekly paystubs from April 11, 2010 through October 10, 2010;

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 documentation presented by Claimant.

This claim is denied because the Claimant's evidence does not demonstrate (1) the alleged loss of profits in the amount of \$8,008.00, as claimed, or (2) the correlation, if any, between this

alleged loss and the Deepwater Horizon oil spill. The Claimant should be able to demonstrate that his employer was directly affected by the oil spill. The NPFC contacted [REDACTED] on May 16, 2011 and spoke with him regarding the impact [REDACTED] suffered as a result of the oil spill. At that time, [REDACTED] stated he would provide a letter proving that numerous vessels were unable to dock at the [REDACTED] shipyard because the waterways were closed as a result of the oil spill. To date, the NPFC has not received any additional information from [REDACTED]

It is also important to note that the Claimant has provided NO comparable financial documentation pursuant to the governing claims regulations at 33 CFR 136.233 (c) which states... "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."

Because the Claimant has failed to demonstrate (1) the alleged loss of profits in the amount of \$8,008.00, as claimed, or (2) that this alleged loss is 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, this claim is DENIED.

Claim Supervisor: *Claims Adjudication Division* [REDACTED]

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

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



CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: 

5890/DWHZ
Claim # N10036-0794
03 June 2011



Re: Claim Number: N10036-0794

Dear 

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 N10036-0794 involving the Deepwater Horizon oil spill. Please see the attached Claim Summary/Determination Form for further explanation.

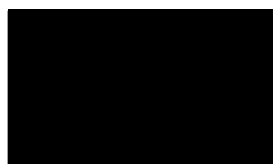
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you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

Reconsideration of the denial will be based upon the information provided. A claim may be reconsidered only once. Disposition of that reconsideration in writing will constitute final agency action. Failure of the NPFC to issue a written decision within 90 days after receipt of a timely request for reconsideration shall, at the option of the claimant, be deemed final agency action. All correspondence should include claim number N10036-0794.

Mail reconsideration requests to:

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

Sincerely,



Division
National Pollution Funds Center
U.S. Coast Guard

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-0794
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
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 12 May 2011, [REDACTED] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$15,000.00 for removal costs and real or personal property impacts resulting from the Deepwater Horizon oil spill.

Claimant asserted that he moved to Pensacola, Florida to retire with his wife but due to the oil spill and "because of health and general lifetime fear of contamination" he left Florida to return to Michigan.¹ Claimant advised that he suffers from heart disease and COPD and his physician, when initially asked about writing a letter supporting his need to relocate, "didn't want to get involved."² Claimant did provide a letter from his physician indicating that "due to the Deepwater Horizon Spill in the Gulf, it was not in the best health interest of [Claimant] who suffers from COPD to stay in the area."³

Claimant seeks \$3,000.00 in moving expenses, \$4,800.00 in rental costs, and \$7,200.00 for the loss of his car, which he had to sell.⁴

APPLICABLE LAW

Under OPA 90, at 33 USC § 2702(a), responsible parties are liable for removal costs and damages resulting from the discharge of oil into navigable waters and adjoining shorelines, as described in Section 2702(b) of OPA 90. 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 USC § 2702(b)(1)(B).

Under 33 CFR 136.105(b) each claim must be in writing, for a sum certain for each category of uncompensated damages or removal costs resulting from an incident. In addition, under 33 CFR 136, the claimant bears the burden to prove the removal actions were reasonable in response to the scope of the oil spill incident, and the NPFC has the authority and responsibility to perform a

¹ Letter to the NPFC dated 10 May 2011.

² Letter to the RP dated 15 June 2010.

³ Letter from physician dated 28 October 2010.

⁴ OSLTF claim form.

reasonableness determination. Specifically, under 33 CFR 136.203, “a claimant must establish—

- (a) That the actions taken were necessary to prevent, minimize, or mitigate the effects of the incident;
- (b) That the removal costs were incurred as a result of these actions;
- (c) That the actions taken were determined by the FOSC to be consistent with the National Contingency Plan or were directed by the FOSC.”

Under 33 CFR 136.205 “the amount of compensation allowable is the total of uncompensated *reasonable* removal costs of actions taken that were determined by the FOSC to be consistent with the National Contingency Plan or were directed by the FOSC. Except in exceptional circumstances, removal *activities* for which costs are being claimed must have been coordinated with the FOSC.” [Emphasis added].

Another type of damages available pursuant to 33 C.F.R. § 136.213 is a claim for injury to, or economic losses resulting from the destruction of, real or personal property. Such a claim may be presented only by a claimant either owning or leasing the property.

Under 33 C.F.R. § 136.215(a), a claimant must establish the following:

- (a) An ownership or leasehold interest in the property;
- (b) That the property was injured or destroyed;
- (c) The cost of repair or replacement; and
- (d) The value of the property both before and after injury occurred.

Under § 136.217(a), the amount of compensation allowable for damaged property is the lesser of—

- (1) Actual or estimated net cost of repairs necessary to restore the property to substantially the same condition which existed immediately before the damage;
- (2) The difference between value of the property before and after the damage; or
- (3) The replacement value.

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support this claim, Claimant submitted the following documentation:

- Optional OSLTF Claim Form, dated 10 May 2011, received on 12 May 2011;
- Letter to the NPFC explaining Claimant's situation, dated 10 May 2011;
- Letter to the RP explaining Claimant's situation, dated 15 June 2011;
- Letter from [REDACTED] confirming a lease agreement for a property in Pensacola, FL from 01 August 2009 until 01 July 2010;
- Medical documentation confirming Claimant's prescriptions;
- [REDACTED] documentation;
- Letter from [REDACTED] D.O. dated 28 October 2010;
- Various photographs and news articles in support of Claimant's position;
- Various letters explaining Claimant's situation and providing requested feedback to the RP/GCCF; and

- Documents verifying Claimant's identification.

Claimant presented multiple claims for subsistence loss, personal injury and real/personal property damage to the RP/BP. He was assigned GCCF Claimant II [REDACTED]. All claims were denied by the GCCF.

On 12 May 2011, Claimant presented the subject claim for \$15,000.00 in damages resulting from the Deepwater Horizon oil spill. Claimant classifies his moving expenses as removal costs and his rental costs and the loss of his car, which he sold, as real or personal property damage.

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 his claim. The NPFC reviewed all information and documentation provided by Claimant.

As noted, the Claimant seeks 3,000.00 in moving expenses, \$4,800.00 in rental costs, and \$7,200.00 for the loss of his car, which he had to sell, for a total claimed loss of \$15,000.00.⁵ This loss results from the Claimant's health complications which arose in the wake of the Deepwater Horizon oil spill and allegedly forced him to move away from the Gulf Coast, thereby incurring the expenses he claims herein.

Under OPA (33 U.S.C. § 2701 et seq.) and the associated regulations at 33 C.F.R. Part 136, claims for personal injury are not compensable from the Oil Spill Liability Trust Fund (OSLTF). Because the Claimant's loss results from his alleged illness (a personal injury), this loss is not compensable under OPA and is therefore denied.⁶

Claim Supervisor: *NPFC [REDACTED] Division*

Date of Supervisor's Review: *6/3/11*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

⁵ OSLTF claim form.

⁶ Additionally, Claimant does not demonstrate how moving expenses qualify as removal costs and his claimed rental and car costs qualify as real or personal property damage under OPA.

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

5890/DWHZ
Claim # N10036-0795
26 May 2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]



Re: Claim Number: N10036-0795

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 N10036-0795 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 N10036-0795.

Mail reconsideration requests to:

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

[REDACTED] Division
National Pollution Funds Center
U.S. Coast Guard

Enclosure: Claim Summary/Determination Form

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-0795
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
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 11 May 2011, [REDACTED] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$5,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

Claimant asserted that "BP oil rig was ruptured and oil spilled into the gulf refusing me the right to fish and work, making me stop my profits and income to decrease [sic]." ¹ Claimant provided no documentation or further explanation to support 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.
- (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.

¹ Claimant's Optional OSLTF Claim Form dated 11 May 2011.

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 this claim, Claimant submits the following documentation:

- OSLTF optional claim form.

Claimant does not provide any evidence demonstrating that her claim had been presented to the responsible party (RP). In fact, the Claimant indicated on her OSLTF claim form that she has not submitted her claim to the RP.²

Claimant seeks \$5,000.00 in loss of profits and impairment of earnings capacity, allegedly resulting from the Deepwater Horizon oil spill, from the OLSTF.

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 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 her claim.

This claim is denied because (1) Claimant indicated that she has not presented her claim to the RP as required by 33 C.F.R. § 136.103(a); (2) Claimant has not met the minimum evidentiary requirements of 33 C.F.R. § 136.105, which includes providing evidence to support the claim; and (3) Claimant has not met the specific requirements of 33 C.F.R. § 136.233 to establish a claim for loss of profits and impairment of earnings capacity. Claimant, for example, does not demonstrate that her income was reduced as a consequence of injury to, destruction of, or loss of the property or natural resources; and she does not provide the amount of her earnings in comparable periods and during the period when the claimed loss or impairment was suffered.

For all the foregoing reasons, this claim is denied.

Claim Supervisor:  *Claims adjudication Division*

Date of Supervisor's Review: *5/26/11*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

² Claimant OSLTF claim form.

U.S. Department of
Homeland Security

United States
Coast Guard



Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim # N10036-0796
26 May 2011

Re: Claim Number: N10036-0796

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 N10036-0796 involving the Deepwater Horizon oil spill. Please see the attached Claim Summary/Determination Form for further explanation.

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

Reconsideration of the denial will be based upon the information provided. A claim may be reconsidered only once. Disposition of that reconsideration in writing will constitute final agency action. Failure of the NPFC to issue a written decision within 90 days after receipt of a timely request for reconsideration shall, at the option of the claimant, be deemed final agency action. All correspondence should include claim number N10036-0796.

Mail reconsideration requests to:

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

Sincerely,

[REDACTED]
National Pollution Funds Center
U.S. Coast Guard

Enclosure: Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00003127

CLAIM SUMMARY/DETERMINATION FORM

Date	23 May 2011
Claim Number	N10036-0796
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
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 11 May 2011, [REDACTED] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$5,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

Claimant alleged that as a result of the Deepwater Horizon oil spill, he was terminated from employment with [REDACTED] on 22 April 2010.¹ Claimant asserted that due to this termination, he was forced to purchase a vehicle and calculated his claimed amount based upon loss of income and newly incurred costs.²

APPLICABLE LAW

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

¹ Typed letter in original submission package, fax dated 10 May 2011.

² Id.

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 OLSTF

To support this claim, Claimant presented the following documentation:

1. NPFC Optional OSLTF Claim Form, dated 8 May 2011;
2. Claimant letter explaining his situation; and
3. Partial section of his *Transition and Separation Agreement* from The [REDACTED] Company.

Prior to presentment to the NPFC, on 19 October 2010, the Claimant presented an Emergency Advance Payment (EAP) claim for \$9,000.00 in lost profits and earnings to the RP/GCCF. He was assigned Claimant Identification Number [REDACTED] and Claim Number [REDACTED]. Claimant's EAP claim was denied by the GCCF.

On 10 January 2011, the Claimant presented a Full Review Final Payment claim for \$9,000.00 in lost profits and earnings to the RP/GCCF. By letter dated 6 May 2011, the Claimant's Final Payment claim was denied.³

On 11 May 2011, the Claimant presented the subject claim for \$5,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

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)

³ GCCF denial letter Re: Claimant's Final Payment claim, dated 6 May 2011.

and § 136.105(e)(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 all information and documentation provided by the Claimant. The NPFC also conducted an investigation to verify if the Claimant was terminated from employment at the [REDACTED], as a result of the Deepwater Horizon oil spill. In response to the NPFC's investigation, the [REDACTED] confirmed that the Claimant was terminated from employment, but indicated that he was "among a group of field service associates from across the country that were let go as part of a general downsizing effort by the company during the months of March and April 2010."⁴

In light of this information, the Claimant has failed to establish that his claimed loss of earnings is 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. This claim is therefore denied.

Claim Supervisor: [REDACTED]

Date of Supervisor's Review: 5/26/11

Supervisor's Action: *Denial approved*

Supervisor's Comments:

⁴ Letter from the Director of Benefits and Payroll at [REDACTED] to the NPFC, dated and received 20 May 2011.

U.S. Department
of Homeland Security

United States
Coast Guard



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

U.S. Coast Guard Stop 7100

16480

3 June 2011

CERTIFIED MAIL Number: [REDACTED]

RE: Claim Number: N10036- 0797

Dear [REDACTED]

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

Background

On or about 20 April 2010, the Mobile Offshore Drilling Unit Deepwater Horizon exploded and sank in the Gulf of Mexico. As a result, oil was discharged and the federal government and Gulf coast states closed certain waters to commercial and recreational fishing. 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 individual and business claims on behalf of BP.

Facts

You submitted a claim to the GCCF following the Deepwater Horizon spill for lost subsistence use of natural resources, which was denied on 20 April 2011. On 11 May 2011, the NPFC received your claim for \$1,500.

Applicable Law

OPA provides that the Oil Spill Liability Trust Fund is available to pay claims for damages resulting from oil pollution incidents (33 U.S.C. § 2712(a)(4)). Damages

include lost subsistence use of natural resources (33 U.S.C. § 2702(b)(2)(C)) (i.e., resources relied upon for food). The regulations at 33 C.F.R. Part 136 include general claim requirements and requirements specific to lost subsistence use claims.

General Claim Requirements

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

Subsistence Use Loss Claim Requirements

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

- 1) be for lost subsistence use and submitted by an eligible claimant;
- 2) identify and describe the actual subsistence use of each specific natural resource for which compensation is being claimed;
- 3) describe how and to what extent the claimant's subsistence use was affected by injury to or loss of each specific natural resource;
- 4) describe efforts to mitigate the subsistence use loss;
- 5) be based on the reasonable cost to replace the lost subsistence use of natural resources; and
- 6) be reduced by the amount of all compensation made available to the claimant to compensate for the loss, all income which was derived by utilizing the time which otherwise would have been used to obtain the subsistence resources, and any avoided costs associated with the subsistence activity, such as gas for vehicles or boats, bait, and other overhead costs not incurred due to the spill.

NPFC has provided more detail about these claim requirements at:
http://www.uscg.mil/npfc/Claims/DWH_faqs.asp.

Claim Submission and Documentation

Your claim received by the NPFC on 11 May 2011, included the Optional OSLTF Claim Form, your denial letter from the GCCF, but no other supporting documentation.

NPFC Determination

The NPFC finds that you have not met your burden of proving a subsistence use loss as defined by the Oil Pollution Act (OPA, 33 U.S.C. 2701 et seq.) and OPA claims

regulations (33 C.F.R. Part 136). Your claim is denied because you have not documented that you subsist upon natural resources or suffered any loss due to the spill. That is, you have not provided any evidence to support a regular pattern of catch that you or your family relied upon (e.g., statements or affidavits that address the frequency and amount of subsistence catch and consumption), nor have you explained how you determined your claimed loss of \$1,500 (i.e., the actual costs incurred to replace your claimed loss or documentation to establish reasonable estimates of replacement costs based on your pattern of subsistence use).

Request for Reconsideration

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

Should you choose to request NPFC reconsideration of this determination, please mail the request and additional claim information with the appropriate claim number (N10036-0797) to:

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

If you have any questions about reconsideration, please feel free to contact the NPFC at the above address or by phone at 800-280-7118.

Sincerely,



National Pollution Funds Center
U.S. Coast Guard

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD



CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Number: [REDACTED]



5890/DWHZ
Claim # N10036-0798
19 May 2011

Re: Claim Number: N10036-0798

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 # N10036-0798. Please see the enclosed Claim Summary/Determination Form for further explanation.

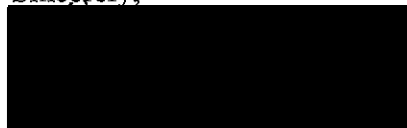
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-0798.

Mail reconsideration requests to:

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

Sincerely,



National Pollution Funds Center
U.S. Coast Guard

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

FOIA2011-3380-00003134

CLAIM SUMMARY / DETERMINATION FORM

Date	: 05/18/2011
Claim Number	: N10036-0798
Claimant	[REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
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. 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 May 2011, [REDACTED] (Claimant) presented an optional Oil Spill Liability Trust (OSLTF) claim form to the National Pollution Funds Center (NPFC) for \$10,000.00 in real or personal property damages resulting from the Deepwater Horizon oil spill.

Claimant indicated that she wants to claim the loss of her personal belongings, which include electronics and clothes. She does not explain how the Deepwater Horizon oil spill allegedly damaged her personal property. Claimant indicated that because she could no longer afford to pay rent and subsequently moved in with a relative in Miami, FL. Claimant stated that \$10,000.00 would help her get back on her feet.¹

APPLICABLE LAW

Under the Oil Pollution Act of 1990 (OPA), at 33 U.S.C. § 2702(a), responsible parties are liable for removal costs and damages resulting from the discharge of oil into or upon the navigable waters or adjoining shorelines or the exclusive economic zone, as described in 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. § 136.213 is a claim for injury to, or economic losses resulting from the destruction of, real or personal property. Such a claim may be presented only by a claimant either owning or leasing the property.

Under 33 C.F.R. § 136.215(a), a claimant must establish the following:

- a) An ownership or leasehold interest in the property;
- b) That the property was injured or destroyed;
- c) The cost of repair or replacement; and

¹ All this information was gleaned from a PHONECON with the Claimant on 12 May 2011. Claimant provides little to no information on her OSLTF claim form, which is the only document she submitted to the NPFC.

d) The value of the property both before and after injury occurred.

Under § 136.217(a), the amount of compensation allowable for damaged property is the lesser of—

- a) Actual or estimated net cost of repairs necessary to restore the property to substantially the same condition which existed immediately before the damage;
- b) The difference between value of the property before and after the damage; or
- c) The replacement value.

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support her claim, Claimant submitted the following documentation:

- OSLTF claim Form, dated May 11, 2011

Although the Claimant indicated that she presented a claim to the RP, she provided no evidence to support this assertion.

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

The claim is denied because the Claimant has failed to (1) demonstrate that she made proper presentment of the costs claimed to the NPFC pursuant to 33 C.F.R. § 136.103(a), and (2) demonstrate that the Claimant has suffered an uncompensated loss due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil, this claim is DENIED.

Claim Supervisor: **M [REDACTED] ion**

Date of Supervisor's review: **5/19/11**

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# N10036-0799
08 June 2011



RE: Claim Number: N10036-0799

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 N10036-0799 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination Form for further explanation.

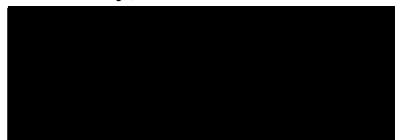
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-0799.

Mail reconsideration requests to:

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

Sincerely,



National Pollution Funds Center
Claims Manager

Enclosure: Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00003137

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	N10036-0799
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$2,800.00

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. 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 May 2011, [REDACTED] Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$2,800.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

Claimant was a recruiter for [REDACTED] in Clearwater, Florida. She indicated that she recruited many laborers for the Deepwater Horizon oil spill response clean-up. Claimant alleged that she lost wages and ultimately her job, as an [REDACTED] recruiter, because [REDACTED] hired too many temporary laborers and overextended itself, straining resources and leading to bounced payroll checks and mass layoffs.

Claimant indicated that she was laid off in September 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 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:

- 1) Optional OSLTF claims form dated 22 April 2011
- 2) Hardship letter from Claimant explaining claim
- 3) Letter to GCCF about Claimant's final payment claim
- 4) GCCF Full Review Final Payment Claim Form filled out by Claimant
- 5) Check Inquiry Report from [REDACTED] for Claimant for 30 April 2010 through 28 September 2011
- 6) 2010 W-2 from [REDACTED] located in Clearwater FL
- 7) Miami Herald article citing [REDACTED] as a fraudulent staffing agency for training
- 8) St. Petersburg Times article dated 15 April 2011 citing the owner of [REDACTED]

Prior to presentment to the NPFC, Claimant presented multiple claims to the RP/GCCF, including a Final Payment claim for \$5,000.00 in lost profits and earnings. The Final Payment claim was denied by the GCCF.¹

On 11 May 2011, Claimant presented the subject claim for \$2,800.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

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 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)

¹ GCCF denial letter Re: Claimant's Final Payment claim, dated 22 April 2011.

and § 136.105(e)(6), the 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.

Claimant indicated that [REDACTED] overextended itself in hiring too many temporary laborers (presumably for the oil spill clean-up), which strained company resources and led to bounced paychecks. Claimant also provided a newspaper article from the St. Petersburg Times, which indicated that corporate malfeasance occurred at [REDACTED] and contributed to its downfall. Claimant, however, has not demonstrated how her alleged loss in the amount of \$2,800.00 is due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil.

Because the Claimant failed to demonstrate that her alleged loss is due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil, this claim is denied.

Claim Supervisor: [REDACTED]

Date of Supervisor's Review: *6/8/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments: