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

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: [redacted]

DWHZ/5890
16 May 2011

[redacted]

RE: Claim Number: N10036-0800

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 N10036-0800 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 N10036-0800.

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	: 5/13/2011
Claim Number	: N10036-0800
Claimant	: [redacted]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [redacted]
Amount Requested	: $3,500.00

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 11 May 2011, [redacted] (Claimant) presented a loss of profits and impairment of earnings capacity claim the National Pollution Funds Center (NPFC) in the amount of $3,500.00.[1]

Claimant provided no explanation for his claim. A copy of an employee ID indicated that he works as a lead cook at the [redacted] in Baton Rouge, LA.[2] It is unclear how the Claimant arrived at his alleged loss of $3,500.00; however, the difference between his gross income between 2009 and 2010 is $1,685.63.[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.

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[1] Optional OSLTF Claim Form, undated and unsigned, received at the NPFC on 11 May 2011.
[2] Claimant' business ID card indicates he is a lead cook in the food and beverage department at Baton Rouge.
[3] Based on tax information provided, Claimant's gross income was $30,851.63 in 2009 and $29,166.00

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

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

- Optional OSLTF Claim Form, undated and unsigned;
- Claimant's Louisiana Personal Driver's License;
- Claimant's identification card for [redacted];
- Claimant's pay analysis from [redacted] for 5/14/2010 through 10/29/2010, including paycheck advice for the weeks—
  - 10/21/2010-10/29/2010
  - 9/23/2010-10/01/2010
  - 9/09/2010-9/17/2010
  - 8/12/2010-8/20/2010
  - 7/29/2010-8/06/2010
  - 7/01/2010-7/09/2010
  - 6/17/2010-6/25/2010
  - 5/20/2010-5/28/2010
  - 5/06/2010-5/14/2010
- 2009 W-2 Wage and Tax Statement from [redacted]
- 2010 Louisiana Resident tax form IT-540-2D (Page 1 of 4);
- 2010 Federal Form 1040A, pages 1 and 2 (unsigned);
- 2010 Schedule EIC for Form 1040A;
- Consent to Use of Tax Return Information;
- Consent to Disclosure of Tax Information;
- e-Collect Product Information page;

- Tropicana Entertainment, [redacted] pay stub for 12-16-2010 through 12/24/2010;
- Social Security Administration verification of SSN for [redacted]
- Social Security Administration verification of SSN for Claimant;
- Facsimile Transmittal Sheet to GCCF, dated 11/5/2010.

Claimant presented an Emergency Advance Payment claim to the GCCF. He was assigned GCCF Claimant ID # [redacted] and Claim # [redacted] On 24 November 2010, claim [redacted] was denied by the GCCF.

On 11 May 2011, Claimant presented this claim to the NPFC for $3,500.00 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. 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.

Claimant's financial documentation indicated a difference in income in 2010 from 2009 of $1,685.63; however, the Claimant did not provide evidence to demonstrate that this decline was due to the Deepwater Horizon oil spill.

The NPFC contacted the Claimant's employer in order to understand if the casino had been adversely impacted by the oil spill.[4] The Director of Compliance at the [redacted] was asked if an employee's hours or pay would have been affected by the oil spill. She replied, "Unequivocally, we were not affected by the oil spill. If that had happened to an employee on this property, I would know about it. We were open the entire time, fully staffed, no layoffs. It was business as usual... Guaranteed."

Claimant has failed to demonstrate that his decline in earnings 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.

In light of the foregoing, this claim is DENIED.

Claim Supervisor: [redacted]

Date of Review: ***5/16/11***

Supervisor's Actions: ***Denial approved***

Supervisor's Comments:

[4] Phone call between the NPFC and the Director of Compliance for [redacted] on 13 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
[redacted]

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: [redacted]

5890/DWHZ
Claim # N10036-0801
13 June 2011

[redacted]

Re: Claim Number: N10036-0801

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 the claim number N10036-0801 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 N10036-0801.

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

FOIA2011-3380-00003145

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-0801
Claimant	[redacted]
Type of Claimant	Corporate (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	$31,290.00

FACTS

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

CLAIM AND CLAIMANT

On 13 April 2011, [redacted], on behalf of [redacted] Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for $31,290.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.[1]

Claimant, the owner of a small construction business specializing in concrete projects, alleged that his business lost profits as a result of the oil spill because it "depends on other businesses and residents that support the tourism industry, and therefore any impact on the tourism related business directly affects [his] business."[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] Optional OSLTF Claim Form dated 13 April 2011.
[2] Letter from Claimant to GCCF, dated 27 Oct. 2010.

09/14/11 FOIA2011-3380-00003146

profits or earnings for the same or similar activities outside of the area affected by the incident also must be established.

(d) Whether alternative employment or business was available and undertaken and, if so, the amount of income received. All income that a claimant received as a result of the incident must be clearly indicated and any saved overhead and other normal expenses not incurred as a result of the incident must be established.

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

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

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

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support this claim, Claimant submitted the following documentation:

- OSLTF optional claim form;
- Letter from Claimant to GCCF, responding to request for additional information, dated 3 May 2011;
- Copy of Deficiency Letter on Interim Payment/Final Payment Claim from GCCF to Claimant, dated 20 April 2011;
- Letter from Claimant to GCCF describing loss of business, dated 27 Oct. 2010;
- Document created by Claimant, titled "Projected Income Statement" showing projected earned income of $11,305.00, and monthly gross profit of $2,000.00;
- Copy of Business Plan, describing services to commercial and residential customers;
- City of Panama Business Tax Receipt for 2010;
- City of Panama Business Tax Receipt for 2011;
- Letter from Claimant to GCCF, noting attachment of requested additional information, dated 22 Nov. 2010;
- Letter from GCCF to Claimant, dated 29 Jan. 2011, requesting financial information;
- Letter from GCCF to Claimant, dated 16 Nov. 2010, requesting additional information;
- Letter from GCCF to Claimant, dated 16 Dec. 2010, denying Emergency Advance Payment and noting failure to provide SS# or EIN#;
- Letter from GCCF to Claimant, dated 22 Dec. 2010, denying Emergency Advance Payment;
- E-mail from Claimant, noting new business EIN#, dated 13 April 2011;
- E-mail from Claimant to GCCF, with attached projected income statement, dated 4 Dec. 2010;

- Letter from [redacted] ated 8 Nov. 2010;
- Letter from IRS, assigning Claimant's EIN Number, and;
- 2010 1040, listing business income of $5,805.

Prior to presentment to the NPFC, Claimant presented a claim for an Emergency Advance Payment for $31,290.00 in lost profits and earnings to the RP/GCCF. Claimant was assigned GCCF Claimant ID [redacted]. On 16 December 2010, the EAP claim was denied by the GCCF.[3]

On 13 April 2011, Claimant presented this claim for $31,290.00 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, 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 his claim.

The NPFC reviewed all information and documentation provided by the Claimant. This review included contacting a contractor, [redacted] who had employed the Claimant as a subcontractor prior to the oil spill.[4] The contractor verified that he had provided work for the Claimant. The contractor, however, was not able to provide documentation such as contracts to support a working relationship with the Claimant.

Additionally, the Claimant provided a projected income statement for 2010, estimating gross profits of $2,000/month.[5] However, the Claimant provided no evidence of past earned business, nor any evidence of business contracts following the spill to support his estimate.

This claim is denied because the Claimant has failed meet the requirements of 33 C.F.R. § 136.233 to establish a claim for loss of profits and impairment of earnings capacity. Claimant namely failed to demonstrate the amount of his profits or earnings in comparable periods and during the period when the claimed loss or impairment was suffered; and to demonstrate that his income was reduced as a consequence of injury to, destruction of, or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil.

[redacted]

Claim Supervisor: ***NPFC Claims Adjudication Division***

Date of Supervisor's Review: ***6/13/11***

Supervisor's Action: ***Denial approved***

Supervisor's Comments:

[3] GCCF denial letter, dated 16 December 2010.
[4] PHONECON: Claimant and NPFC Staff, 23 May 2011.
[5] 2011 Projected Income Statement, provided by Claimant.

FOIA2011-3380-00003148

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

BY MAIL AND EMAIL
[redacted]

[redacted]

5890
5/16/2011

RE: Claim Number: N10036-0802

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 N10036-0802 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 N10036-0802.

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 FOIA2011-3380-00003149

CLAIM SUMMARY / DETERMINATION FORM

Date	: May 13, 2011
Claim Number	: N10036-0802
Claimant	: [redacted]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [redacted]
Amount Requested	: $108,000.00

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 13, 2011, [redacted] (Claimant) presented a lost profits & earnings claim in the amount of $108,000.00 to the National Pollution Funds Center (NPFC) for reimbursement. The Claimant provided very little information in the claim and only stated that "due to the oil spill I have been unemployed since June 2010."[1]

The Claimant provided no information regarding his claim with the GCCF and simply stated, "I have not received my interim claim payment after 90 days of filing."[2]

APPLICABLE LAW:

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

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

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] Handwritten letter from Claimant, undated
[2] Handwritten letter from Claimant, undated

(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 21, 2011;
- Letter from the Claimant to the NPFC describing the claim, undated;
- Copies of fifteen (15) personal checks 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. 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 relating to his previous employment.

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 his prior employment therefore the Claimant has failed to demonstrate a loss in the alleged amount of $108,000.00 as claimed.

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
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD
[redacted]

5890
5/23/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number [redacted]

[redacted]

RE: Claim Number: N10036-0803

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 N10036-0803 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 N10036-0803.

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

Encl: (1) Claim Summary/Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Date	: May 20, 2011
Claim Number	: N10036-0803
Claimant	[redacted]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: $20,000.00

FACTS:

On or about April 20, 2010, the Mobile Offshore Drilling Unit Deepwater Horizon (Deepwater Horizon) exploded and sank in the Gulf of Mexico. As a result of the explosion and sinking, oil was discharged. 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 13, 2011, [redacted] (Claimant) presented a lost profits & earnings capacity claim in the amount of $20,000.00 to the National Pollution Funds Center (NPFC) for reimbursement. The Claimant is asserting that his hours were reduced as a result of the oil spill. The Claimant works fo[redacted] Offshore and provided a letter from Frank Smoorenburg, Offshore Operations Manager for [redacted]. Offshore confirming that the hourly reduction was because "trucks stopped coming because all boats where [sic] in the Gulf trying to clean up that spill."[1]

The Claimant provided a copy of the denial letter for his interim/final claim with the GCCF dated May 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).

[1] Unsigned letter from [redacted] undated.

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 12, 2011;
- Unsigned affidavit from employer, undated;
- Letter of explanation , undated;
- Seventeen (17) paystubs from [redacted]
- Copy of GCCF denial letter for interim/final claim, dated May 6, 2011;
- 2008, 2009, & 2010 W-2 Wage and Tax Statement

NPFC Determination

The claim is DENIED. Under 33 U.S.C. § 2702(b)(2)(E) and 33 C.F.R. Part 136, a claimant must prove that his loss of income was due to injury or destruction or loss of real or personal property or a natural resource as a result of a discharge or substantial threat of a discharge of oil. Under 33 C.F.R. § 136.105(a) and § 136.105(e)(6), the claimant bears the burden of providing to

the NPFC all evidence, information, and documentation deemed necessary by the Director, NPFC, to support his claim.

The NPFC reviewed all information and documentation provided by the Claimant. After reviewing the information presented, the NPFC noticed that pen and ink changes to the date were made to three (3) paystubs and the 2009 W-2. The NPFC contacted the Claimant's previous employer's payroll division to request the official paystubs to compare them to those that appeared to be altered. The payroll division sent back the official paystubs with a handwritten comment on each that stated "copy sent to me was altered to be (date)."

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 including altered documents.

This claim is therefore denied for FRAUD.

[redacted]

Claim Supervisor: ***Claim[redacted]n Division***

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
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
[redacted]
Fax: 202-493-6937

CERTIFIED MAIL-RETURN RECEIPT REQUESTED
Number [redacted]

5890/DWHZ
Claim # N10036-0804
28 June 2011

[redacted]

Re: Claim Number: N10036-0804

Dea[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 N10036-0804, 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 N10036-0804.

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

Enclosures: Claim Summary/Determination Form

09/14/11 FOIA2011-3380-00003157

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-0804
Claimant	[redacted]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	$28,409.00

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 $28,409.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

Claimant is a retail bedroom furniture store located in Gautier, MS.[1] Owner asserted that "the oil spill directly affected the profits of [redacted] due to its affect on tourism on the Gulf Coast as well as job loss."[2] Owner indicated that the Claimant experienced losses specifically during the summer season because of job losses in the fishing industry and a lack of tourists during that season.

Owner calculated the Claimant's loss by analyzing the Claimant's gross earnings for the summer months of June through August.[3] Claimant's gross earnings increased 5% from 2009 to 2010 for June-August.[4] Claimant projected that his earnings for these months would increase another 5% in 2010. Claimant than subtracted his actual gross earnings in 2010 from his projected earnings to obtain the sum certain.

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

[1] http://www.mattresscityinc.com.
[2] Letter of claim explanation from Claimant to "Whom It May Concern," dated 2 May 2011.
[3] Id.
[4] GCCF Full Review Final Payment Claim Form.

09/14/11 FOIA2011-3380-00003158

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, Claimant presented the following documentation to the NPFC:

- Optional Oil Spill Liability Trust Fund Claim Form, dated 2 May 2011;
- Letter of claim explanation from Claimant to "Whom It May Concern," dated 2 May 2011;
- GCCF Full Review Final Payment Claim Form;
- Monthly Mississippi sales tax returns from February of 2008 through December of 2010;
- GCCF Denial Letter for Interim Payment/Final Payment claim, dated 22 April 2011.

Claimant seeks a total of $28,409.00 in loss of earnings allegedly resulting from the Deepwater Horizon oil spill.

On 20 November 2010, Claimant filed a six-month Emergency Advance Payment (EAP) claim for $15,760.00 with the GCCF for lost profits and earnings.[5] Claimant was assigned GCCF Claimant ID [redacted] and Claim [redacted] This claim was denied by the GCCF on 6 December 2010[6]. Claimant additionally filed a Full Review Final claim with the GCCF on 4 January 2011 in the amount of $28,409.00.[7] This claim was also denied by the GCCF on 22 April 2011.[8]

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 the Claimant.

This claim is denied because the Claimant has not provided sufficient evidence to establish a financial loss due to the Deepwater Horizon oil spill. Claimant's monthly sales tax returns indicated that the Claimant experienced a reduction in earnings in July through August of 2010, compared to the earnings of 2009. However, the Claimant provided no further documentation linking this financial loss to the Deepwater Horizon oil spill. On 20 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: Claimant's business orders from 2008-2010, Claimant's order cancellations from 2008-2010, and information regarding the Claimant's business model. To date, no response has been received by the NPFC.

Because the Claimant has failed to 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 or that he has an alleged loss in the amount requested, this claim is denied.

[redacted]

Claim Supervisor: ***NPFC Claims Adjudication Division***

Date of Review: ***6/28/11***

Supervisor's Actions: ***Denial approved***

Supervisor's Comments:

[5] Report from the GCCF, dated 13 June 2011
[6] Denial letter from the GCCF, dated 6 December 2010
[7] Report from the GCCF, dated 13 June 2011
[8] GCCF Denial Letter or Interim Payment/Final Payment claim, dated 22 April 2011

FOIA2011-3380-00003160

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]
Fax: [redacted]

CERTIFIED MAIL-RETURN RECEIPT REQUESTED
Number [redacted]

5890/DWHZ
Claim # N10036-0805
29 June 2011

[redacted]

Re: Claim Number: N10036-0805

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 N10036-0805 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 N10036-0805.

Mail reconsideration requests to:

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

[redacted] on Division
National Pollution Funds Center
U.S. Coast Guard

Enclosures: Claim Summary/Determination Form

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-0805
Claimant	[redacted]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	$20,000.00

FACTS

On or about 20 April 2010, the Mobile Offshore Drilling Unit Deepwater Horizon (Deepwater Horizon) exploded and sank in the Gulf of Mexico. As a result of the explosion and sinking, oil was discharged. 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 13 May 2011, [redacted] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for $20,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

Claimant is a home remodeling and repair business located in Marrero, LA.[1] [redacted] (Owner) asserted that, because of the Deepwater Horizon oil spill, customers have not called to schedule work and he ultimately closed the business in July of 2010.[2] Owner also provided paystubs from [redacted] indicating employment there that began in the beginning of May 2010.[3] Owner indicated that prior to the Deepwater Horizon oil spill he was making $4,000.00 per month and now he has earnings of $1,200.00 per month,[4] but he didn't specify exactly how he calculated the claimed amount of damages.

APPLICABLE LAW

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

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[1] Letter from Owner to "whom it may concern," undated.
[2] Id.
[3] Paystubs from [redacted] for pay periods ending: 15 May 2010, 12 June 2010, 10 July 2010, 7 August 2010, 21 August 2010, 18 September 2010, 2 October 2010, 16 October 2010, 30 October 2010, and 16 October 2010.
[4] Letter from Owner to "whom it may concern," undated.

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(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, Claimant presented the following documentation to the NPFC:

- Optional OSLTF Claim Form, 13 May 2011
- Joint Federal Income Tax Return transcripts from 2007 and 2008
- Joint Federal Income Tax Return from 2009, including a Schedule C-EZ
- 2010 W-2 Form from [redacted] Company
- Joint Federal Income Tax Return from 2010, including one typed Schedule C and one hand-written Schedule C
- Yearly profit and loss statements from 2007, 2008, and 2009
- Paystubs from [redacted] or pay periods ending: 15 May 2010, 12 June 2010, 10 July 2010, 7 August 2010, 21 August 2010, 18 September 2010, 2 October 2010, 16 October 2010, 30 October 2010, and 16 October 2010
- Letter from Owner to "whom it may concern," undated
- Letter from the GCCF indicating submission of an Interim or Final Payment, dated 31 January 2011
- Letter from the GCCF indicating receipt of a Final Payment Claim Form, dated 24 January 2011
- Denial letter from the GCCF for Emergency Advance Payment claim, dated 13 December 2010
- Chain of emails between Claimant and the GCCF, initial email is dated 6 May 2011 and the final email is dated 9 May 2011

Claimant seeks a total of $20,000.00 in loss of earnings allegedly resulting from the Deepwater Horizon oil spill.

On 20 November 2010, Claimant filed a six-month Emergency Advance Payment (EAP) claim for $20,000.00 with the GCCF for lost profits and earnings.[5] Claimant was assigned GCCF Claimant ID #

[5] Report from the GCCF, dated 13 June 2011.

3424158 and Clai[redacted] This claim was denied by the GCCF on 13 December 2010.[6] Claimant additionally filed a Full Review Final claim with the GCCF on 3 January 2011 in the amount of $20,000.00.[7] This claim was also denied by the GCCF on 27 May 2011.[8]

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 has not provided sufficient evidence to establish a financial loss due to the Deepwater Horizon oil spill. Although the Owner asserted earnings of $4,000 per month prior to the Deepwater Horizon oil spill, the Claimant's 2009 Schedule C indicated earnings of only $3,250.00 for the entire year. Additionally, the Claimant provided two different Schedule C's from the business for 2010, one indicating earnings of $0 and one indicating earnings of $700.

Furthermore, the Claimant provided no documentation linking the alleged financial loss to the Deepwater Horizon oil spill. On 19 May 2011, the NPFC requested additional information from 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: monthly profit and loss statements, sales ledger of the Claimant's completed and prospective projects, and information regarding the Claimant's business model. To date, no response has been received by the NPFC.

The claim is denied because the Claimant has failed to (1) demonstrate the alleged loss and (2) 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.

[redacted]

Claim Supervisor: ***NPFC Claims Adjudication Division***

Date of Review: ***6/29/11***

Supervisor's Actions: ***Denial approved***

Supervisor's Comments:

[6] Denial letter from the GCCF, dated 13 December 2010.
[7] Report from the GCCF, dated 13 June 2011.
[8] GCCF Denial Letter on Interim Payment/Final Payment claim, dated 27 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
[redacted]

Fax: 202-493-6937
5890
5/17/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number [redacted]

[redacted]

RE: Claim Number: N10036-0806

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 N10036-0806 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 N10036-0806.

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

Encl: (1) Claim Summary/Determination Form

09/14/11 FOIA2011-3380-00003165

CLAIM SUMMARY / DETERMINATION FORM

Date	: May 18, 2011
Claim Number	: N10036-0806
Claimant	: [redacted]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [redacted]
Amount Requested	: $27,600.00

FACTS:

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

CLAIM AND CLAIMANT

On May 13, 2011, [redacted] (Claimant) presented a lost profits & earnings claim in the amount of $27,600.00 to the National Pollution Funds Center (NPFC) for reimbursement. The Claimant asserted that she was laid off from her job at [redacted] as a result of the oil spill. The Claimant asserted on the Optional OSLTF Claim Form that the oil spill affected her "company's ability to gain work; thus a big loss in revenue. As a result, I was laid off."[1]

The Claimant provided a denial letter from the GCCF 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 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 2, 2011

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

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

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

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

DETERMINATION OF LOSS

Claimant's Submission

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

- NPFC OSLTF Form, May 2, 2011;
- Copy of GCCF denial letter;

NPFC Determination

Under 33 CFR 136.105(a) and 136.105(e)(6), the claimant bears the burden of providing to the NPFC all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim. Under 33 CFR § 136.233, a claimant must establish loss of profits or impairment of earning capacity. The NPFC considered all the documentation submitted by the Claimant.

Upon receipt of the claim, the NPFC spoke with the Human Resource Department (HR) at Ultimate Solutions, Inc. to confirm that the Claimant was terminated as a direct result of the oil spill. The HR Manager stated that the termination occurred because [redacted] lost a major contract. At that point, [redacted] could not justify the Claimant's salary and she was terminated.

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, she was terminated due to Ultimate Solutions, Inc. losing a major contract.

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 she derived at the alleged loss amount. Therefore, the claim is denied.

Claim Supervisor: [redacted]

Date of Supervisor's review: *5/17/11*

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
4200 Wilson Blvd., Suite 1000
[redacted]
Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: [redacted]

5890/DWHZ
Claim # N10036-0807
22 June 2011

[redacted]

Re: Claim Number: N10036-0807

Dea[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 N10036-0807 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 N10036-0807.

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

09/14/11 FOIA2011-3380-00003169

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-0807
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 claims for certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On 13 May 2011, [redacted] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for $3,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

The Claimant worked as a legal assistant with [redacted] n Navarre, Florida. The firm's work involved clients going through foreclosures.[1] On 07 March 2011, the firm was dissolved and the Claimant was terminated.[2] The Claimant alleged that she was terminated 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.

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[1]OSLTF Claim Form signed by the Claim 05 May 2011.

[2]Articles of Dissolution for [redacted] effective 31 December 2010.

09/14/11 FOIA2011-3380-00003170

(c) The amount of the claimant's profits or earnings in comparable periods and during the period when the claimed loss or impairment was suffered, as established by income tax returns, financial statements, and similar documents. In addition, comparative figures for profits or earnings for the same or similar activities outside of the area affected by the incident also must be established.

(d) Whether alternative employment or business was available and undertaken and, if so, the amount of income received. All income that a claimant received as a result of the incident must be clearly indicated and any saved overhead and other normal expenses not incurred as a result of the incident must be established.

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

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

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

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support this claim, Claimant submitted the following documentation:

- OSLTF Claim Form signed by the Claim 05 May 2011
- Pay stub from [redacted] dated 04 March 2011
- Articles of Dissolution fo[redacted] effective 31 December 2010
- Firm registration with Florida Department of State, Division of Corporations for Gulf Coast Law Center
- Letter to NPFC dated 04 May 2011 explaining claim
- Form 1040A US Individual Income Tax Return for 2010
- GCCF Denial Letter for Final Claim dated 22 April 2011

On 19 May 2011, the NPFC sent the Claimant a letter requesting additional information in order to evaluate the claim. The Claimant did not respond to the request. The letter was sent Certified First Class Mail Return Receipt Requested. The USPS Tracking site shows that the letter was delivered on 23 May 2011 to Navarre, Florida.[3]

Claimant presented an Emergency Advance Payment Claim to the GCCF and was issued GCCF Claimant ID # [redacted] and Claim [redacted] On 07 December 2010 the GCCF denied the claim.

[3]US Postal Service Certified Letter Tracking Numbe[redacted]

09/14/11 FOIA2011-3380-00003171

The Claimant then presented a Final Payment Claim to the RP/GCCF and on 22 April 2011, the GCCF issued a Denial Letter for the Final Payment Claim.[4]

Claimant seeks $3,000.00 in lost earnings from the OSLTF for the termination of her employment reportedly as a result of 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.

On 20 May 2011, the NPFC sent the Claimant a letter requesting additional information in order to further evaluate her claim. The letter requested, among other things, an explanation as to how her termination resulted from the Deepwater Horizon oil spill. The NPFC notes that the Articles of Dissolution for the [redacted] Claimant's former employer, indicated that "[a] decision was made to dissolve [redacted] as a law firm to be effective March 7, 2011." The Articles make no mention of the Deepwater Horizon oil spill, and the Claimant provided no other documentation or evidence demonstrating that her termination from GCLC resulted from the Deepwater Horizon oil spill.

To date, the Claimant has not responded to the NPFC's request for additional information. The NPFC therefore proceeded to evaluate her claim with the evidence she originally submitted. This evidence does not demonstrate that the alleged loss in the amount of $3,000.00 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 therefo[redacted]

Claim Supervisor: ***Claims Adjudication Division***

Date of Supervisor's Review: ***22 June 2011***

Supervisor's Action: ***Denial approved***

Supervisor's Comments:

[4]GCCF Denial Letter for Final Claim dated 22 April 2011.

09/14/11 FOIA2011-3380-00003172

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: [redacted]

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: [redacted]

DWHZ/5890
19 May 2011

[redacted]

RE: Claim Number: N10036-0808

Dea[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 N10036-0808 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 N10036-0808.

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

Enclosure: Claim Summary/Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Date	: 5/18/2011
Claim Number	: N10036-0808
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 13 May 2011, [redacted] (Claimant) presented a loss of profits and impairment of earnings capacity claim to the National Pollution Funds Center (NPFC) in the amount of $15,000.00.[1]

Claimant indicated that he worked in retail and that his loss was due to a lack of sales in 2010. Claimant is an employee of [redacted]. It is unclear how the Claimant arrived at his alleged loss of $15,000.00. Claimant's gross earnings from Comeaux, as reported on W-2 forms, was $22,662.74 more in 2010 than in 2009.[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 returns, financial statements, and similar documents. In addition, comparative figures for

[1] Optional OSLTF Claim Form, dated 3 May 2011 and received at the NPFC on 13 May 2011.
[2] Form W-2 Wage and Tax Statement, 2009; Form W-2 Wage and Tax Statement, 2010.

09/14/11 FOIA2011-3380-00003174

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

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

- Optional OSLTF Claim Form, signed 3 May 2011 and received at NPFC on 13 May 2011;
- Claimant's Louisiana Personal Driver's License and copy of Social Security Card;
- Claimant's Compensation Report from [redacted] for the period 12/31/2009 through 10/26/2010;
- Form W-2 Wage and Tax Statement, 2009, from [redacted];
- Form W-2 Wage and Tax Statement, 2010, from [redacted];
- Claimant's handwritten letter dated 14 November 2010; and
- GCCF letter dated 16 April 2010.

Prior to presentment to the NPFC, the Claimant presented an Emergency Advance Payment (EAP) claim to the GCCF for loss of profits and earnings. He was assigned GCCF Claimant ID [redacted] and Claim [redacted]. On 10 November 2010, the EAP claim was denied by the GCCF.[3] Claimant also presented a Final Payment claim [redacted], which was denied on 16 April 2011.[4]

On 13 May 2011, Claimant presented this claim for $15,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

NPFC Determination

[3] GCCF denial letter Re: Claimant's EAP claim, dated 10 November 2010.
[4] GCCF denial letter Re: Claimant's Final Payment claim, dated 16 April 2011.

Under 33 C.F.R. § 136.105(a) and § 136.105(e)(6), the claimant bears 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.

Claimant's financial documentation indicated that 2010 gross earnings exceeded 2009 income by $22,662.74. Claimant did not provide evidence to demonstrate that his income was reduced as a consequence of the injury to, destruction of, or loss of the property or natural resources pursuant to 33 C.F.R. § 136.233(b).

Additionally, the NPFC contacted the Claimant's employer, Comeaux, to ascertain if the company's employees had been adversely impacted by the oil spill.[5] The General Manager said that employee wages were affected by a number of factors, not solely the Deepwater Horizon oil spill.

This claim is denied because the Claimant has failed to demonstrate (1) his alleged loss of $15,000.00, as claimed, and (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.

[redacted]

Claim Supervisor: ***NPFC Claims Adjudication***

Date of Review: ***5/19/11***

Supervisor's Actions: ***Denial approved***

Supervisor's Comments:

[5] Phone call between the NPFC and the General Manager for Comeaux on 16 May 2011.

FOIA2011-3380-00003176

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]

5890
5/17/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number [redacted]

[redacted]

RE: Claim Number: N10036-0809

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 N10036-0809 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 N10036-0809.

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 FOIA2011-3380-00003177

CLAIM SUMMARY / DETERMINATION FORM

Date	: May 17, 2011
Claim Number	: N10036-0809
Claimant	: [redacted]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [redacted]
Amount Requested	: $14,250.00

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 May 13, 2011, [redacted] (Claimant) presented a lost profits & earnings claim in the amount of $14,250.00 to the National Pollution Funds Center (NPFC) for reimbursement. The Claimant asserted that he was terminated from his job at Advanced Auto Service as a result of the oil spill. The Claimant asserted on the Optional OSLTF Claim Form that the oil spill affected his job because it "slowed work around the shop which ended up causing me to lose my job."[1]

The Claimant provided no correspondence regarding his claim with the GCCF but stated on the Optional OSLTF Claim Form that his claim had been denied. [2]

APPLICABLE LAW:

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

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

[1] Optional OSLTF Claim Form dated April 30, 2011
[2] *Id*

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, April 30, 2011;
- Paystubs from April 15, 2010 to May 26, 2010;
- 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 contacted Advanced Auto Service to confirm that the Claimant was terminated as a direct result of the oil spill. The Manager stated that the Claimant's termination had nothing to do with 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 not terminated due to 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 Supervis [redacted]

Date of Supervisor's review: ***5/17/11***

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
[redacted]

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: [redacted]

DWHZ/ 5890
23 May 2011

[redacted]

RE: Claim Number: N10036-0810

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 N10036-0810 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 N10036-0810.

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: Claim Summary/Determination Form

09/14/11 FOIA2011-3380-00003181

CLAIM SUMMARY / DETERMINATION FORM

Date	: May 20, 2011
Claim Number	: N10036-0810
Claimant	[redacted]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: $22,500.00

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 13, 2011, [redacted] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for $22,500.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

Claimant indicated that he bought fish below market price in Biloxi, Mississippi (MS) and sold it in Hattiesburg, MS.[1] He alleged that as a result of the Deepwater Horizon oil spill, he has not been able to sell seafood because of fears of contamination.[2] Claimant also alleged that he contracted Chronic Obstructive Pulmonary Disease (COPD) as a result of the oil spill.[3]

APPLICABLE LAW:

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

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

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

---

[1] PHONECON with Claimant on 17 May 2011.
[2] OSLTF claim form.
[3] Claimant response letter to the NPFC, undated.

(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 May 13, 2011.

On May 19, 2011, the Claimant responded to the NPFC's request for additional information providing the following:

- Copy of GCCF denial letter, April 20, 2011; and
- Handwritten response letter, undated.

Prior to presentment to the NPFC, the Claimant presented an Interim/Final Payment claim to the RP/GCCF and received GCCF Claimant ID [redacted]. On 20 April 2011, the Interim/Final Payment claim was denied by the GCCF.[4]

On 13 May 2011, Claimant presented this claim to the NPFC for $22,500.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

[4] GCCF denial letter Re: Claimant's Interim/Final Payment claim, dated 20 April 2011.

09/14/11 FOIA2011-3380-00003183

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. As noted, the Claimant's supporting documentation to the NPFC included only his OSLTF claim form, an undated handwritten letter, and a GCCF denial letter. This documentation does not meet the requirements for establishing a loss of profits and impairment of earnings capacity claim under 33 C.F.R. § 136.233. Specifically, the Claimant has provided no financial documentation to demonstrate profits or earnings in comparable periods and during the period when the claimed loss or impairment was suffered, or comparative figures for profits or earnings for the same or similar activities outside of the area affected by the incident. 33 C.F.R. § 136.233(c).

The Claimant's loss of profits and impairment of earnings capacity claim in the amount of $22,400.00 is therefore denied.

Additionally, any loss claimed stemming from the Claimant's COPD is non-compensable under OPA and the associated regulations at 33 C.F.R. Part 136.[5]

For the foregoing reasons, this claim is denied.

Claim Supervisor: [redacted] ***Division***

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

Supervisor Action: ***Denial approved***

Supervisor's Comments:

[5] Personal injury claims are not covered claims under OPA and the associated regulations at 33 C.F.R. Part 136.

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]
Fax: 202-493-6937

CERTIFIED MAIL - RETURN RECEIPT REQUESTED
Number: [redacted]

5890/DWHZ
Claim# N10036-0811
08 June 2011

[redacted]

RE: Claim Number: N10036-0811

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 N10036-0811 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 N10036-0811.

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
Claims Manager

Enclosure: Claim Summary/Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	N10036-0811
Claimant	[redacted]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	$1,623.00

FACTS

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

CLAIM AND CLAIMANT

On 13 May 2011, [redacted] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for $17,500.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

Claimant alleged that she was laid off at [redacted] in June 2010 as a result of the Deepwater Horizon oil spill.[1] Claimant also alleged that her hours were reduced at [redacted] (her second job), which she began on 07 May 2011, as a result of the oil spill.[2] Claimant indicated that both jobs were located in Pensacola, FL.

In response to the NPFC's request for additional information, the Claimant amended her sum certain to the difference in her 2009 and 2010 earnings, which equaled $1,623.00.[3] The Claimant indicated that she has since moved to Tallahassee, FL to pursue higher education.[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:

---

[1] Claimant's hardship letter dated 04 May 2011.
[2] Id.
[3] Handwritten response to NPFC's additional information request submitted 31 May 2011. The actual difference is $1,623.35, but Claimant rounds down for purposes of declaring a sum certain.
[4] Claimant's hardship letter dated 04 May 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

To support her claim, Claimant submitted the following documentation:

1) Optional OSLTF claim form dated 22 April 2011
2) Letter from Claimant explaining her claim
3) GCCF status, denial letter, and claim submission
4) Paystub from [redacted] for period ending 31 May 2010
5) Paystub from [redacted] for period ending 10 August 2010
6) 2009 W-2 from [redacted]
7) 2009 W-2 from [redacted]
8) 2010 W-2 from [redacted]
9) 2010 W-2 from [redacted]
10) Worksheet on revised amount of claim
11) Paystubs from [redacted] for 07 May 2010 to 25 July 2010
12) Paystubs from [redacted] for 15 April 2010 to 31 May 2010
13) Handwritten response to NPFC's request for additional information on 16 May 2011

Prior to presentment to the NPFC, Claimant presented multiple claims to the RP/GCCF, including a Final Payment claim for $17,500.00 in lost profits and earnings.[5]

On 13 May 2011, Claimant presented the subject claim for $1,623.00 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.

On 18 May 2011, the NPFC sent the Claimant a letter requesting, among other things, documentation from the Claimant's employers which verifies the impact of the Deepwater Horizon oil spill on the employer's operations and the Claimant's employment. Claimant responded with that "neither [redacted] or the [redacted] wish to be involved with claims nor [have] their information be shared." The Claimant provided no alterative evidence that demonstrated that her alleged loss in the amount of $1,623.00 is due to the the Deepwater Horizon oil spill.

Because the Claimant failed to demonstrate that her alleged loss in the amount of $1,623.00 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: ***6/8/11***

Supervisor's Actions: ***Denial approved***

Supervisor's Comments:

[5] Claimant indicates that her GCCF Claimant ID # is [redacted] Claimant's Final Payment claim is under review at the GCCF.

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
5/19/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: [redacted]

[redacted]

RE: Claim Number: N10036-0812

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 N10036-0812 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 N10036-0812.

Mail reconsideration requests to:

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

[redacted] ls Center

Encl: (1) Claim Summary/Determination Form

09/14/11 FOIA2011-3380-00003189

CLAIM SUMMARY / DETERMINATION FORM

Date	: May 18, 2011
Claim Number	: N10036-0812
Claimant	[redacted]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: $13,132.47

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 16, 2011, [redacted] (Claimant) presented a lost profits & earnings capacity claim in the amount of $13,132.47 to the National Pollution Funds Center (NPFC) for reimbursement. The Claimant is a nail technician at [redacted]n Ocean Springs, Mississippi. The Claimant stated on the Optional OSLTF claim form that due to the oil spill "tourists and local didn't come in to get services. Usually during the summer they would get their nails and feet done before going on vacation to Gulf Shores, Horn Island, and Beach Ship Island."[1]

The Claimant provided copies of the denial letters for the emergency advance payment (EAP) and final claims 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.

[1] Optional OSLTF Claim Form dated April 13, 2011

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

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

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

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

DETERMINATION OF LOSS

Claimant's Submission

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

- NPFC OSLTF Form, received May 13, 2011;
- Hardship letter from employer, dated December 10, 2010;
- Letter of explanation , undated;
- Copy of GCCF denial letter for EAP and final claims;
- Copy of Driver's License and Social Security Card;
- Copy of manicurist license;
- Bank statements showing account activity;
- Paystubs from [redacted]
- Chart detailing loss of profits and earnings

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 $13,132.47, as claimed, or (2) the correlation, if any, between this alleged loss and the Deepwater Horizon oil spill. The Claimant simply used his highest income month in April and subtracted actual income for each month to determine his loss.

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 $13,132.47, 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: ***5/19/11***

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
[redacted]

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number [redacted]

5890/DWHZ
Claim # N10036-0813
26 May 2011

[redacted]

Re: Claim Number: N10036-0813

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 N10036-0813 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 N10036-0813.

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 FOIA2011-3380-00003193

CLAIM SUMMARY/DETERMINATION FORM

Date	20 May 2011
Claim Number	N10036-0813
Claimant	[redacted]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	$120,343.16

FACTS

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

CLAIM AND CLAIMANT

On 13 May 2011, [redacted] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for $120,343.16 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

Claimant manufactures thru-tubing tools for the oil and gas industry.[1] Claimant alleged that it lost business with [redacted], a major customer, as a result of the Deepwater Horizon oil spill. The Claimant indicated that because [redacted] support diverted its resources in order to assist with Deepwater Horizon response and mitigation efforts, the Claimant experienced a "major slow down" in work.[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.

[redacted]

[2] Optional OSLTF Claim Form dated 13 May 2011; Undated Letter from Claimant re: Basis of Claim.

(c) The amount of the claimant's profits or earnings in comparable periods and during the period when the claimed loss or impairment was suffered, as established by income tax returns, financial statements, and similar documents. In addition, comparative figures for profits or earnings for the same or similar activities outside of the area affected by the incident also must be established.

(d) Whether alternative employment or business was available and undertaken and, if so, the amount of income received. All income that a claimant received as a result of the incident must be clearly indicated and any saved overhead and other normal expenses not incurred as a result of the incident must be established.

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

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

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

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support this claim, Claimant submitted the following documentation:

- OSLTF optional claim form;
- Undated Letter from Claimant re: Basis of Claim;
- Company Information;
- Authorization to transact business in Louisiana;
- Written Consent of the members of [redacted] approving the Operating Agreement of [redacted]
- Lost revenue statement entitled "2010 South Louisiana Blowout Effect";
- Spreadsheet entitled "[redacted] 2009 and Number of Jobs";
- Spreadsheet entitled "[redacted] 2009";
- Spreadsheet entitled "[redacted] and Number of Jobs";
- Spreadsheet entitled "[redacted] 2010";
- Income statement for the year ending 31 December 2008;
- Balance Sheet 2008:
- Income statement for the year ending 31 December 2009;
- Income statement for the year ending 31 December 2008;
- Income statement for October 2010;
- 2008 Form 1065 Tax Return;
- 2009 Form 1065 Tax Return; and
- Fax cover letter.

Prior to presentment to the NPFC, the Claimant presented an Interim Payment/Final payment Claim to the RP/GCCF on 3 February 2011. Per the Claimant, no action has been taken by the RP/GCCF since the presentment of its claim.[3]

On 13 May 2011, Claimant presented this claim for $120,343.16 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 its business loss resulted from [redacted] support (customer) assisting in the Deepwater Horizon oil spill response and mitigation efforts vice doing the normal work that resulted in the Claimant's ability to make money from [redacted] business activities.[4] As the Claimant described it, [redacted] action reduced [redacted] ability to service its own assets and, in turn, impacted the Claimant's business with [redacted][5]

Based on the foregoing, this claim is denied because the alleged loss in the amount of $120,343.16 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 but rather due to [redacted] decision to engage in other business endeavors than the normal work performed in the oil and gas industry which brought the Claimant revenues.

[redacted]

Claim Supervisor: ***NPFC Claims Adjudication Division***

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

Supervisor's Action: ***Denial approved***

Supervisor's Comments:

[3] Optional OSLTF Claim Form dated 13 May 2011.
[4] Undated Letter from Claimant re: Basis of Claim; Optional OSLTF Claim Form dated 13 May 2011.
[5] Undated Letter from Claimant re: Basis of Claim.

U.S. Department of
Homeland Security

**United States
Coast Guard**

Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
[redacted]
Fax: 202-493-6937

5890
6/27/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: [redacted]

[redacted]

RE: Claim Number: N10036-0814

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 N10036-0814 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

Claim Number	: N10036-0814
Claimant	[redacted]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: $20,000.00

FACTS:

On or about 20 April 2010, the Mobile Offshore Drilling Unit Deepwater Horizon (Deepwater Horizon) exploded and sank in the Gulf of Mexico. As a result of the explosion and sinking, oil was discharged. 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 13, 2011, [redacted] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for $20,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

Claimant asserted that "this [Deepwater Horizon] oil spill cause me to not be able to fish in the water, I fish for myself and to pay my bills, … this is a part of my living."[1] Claimant provided no supporting documentation or explanation for his claim.

Claimant indicated that he presented a claim to the RP on April 2010 and that the claim was denied. Claimant provided no evidence to support RP presentment.

REQUEST FOR RECONSIDERATION:

On June 16, 2011, the Claimant sent a letter to the NPFC that stated that "these are the people that buy fish from me. This is how much they bought." No other information was available; therefore, on June 17, 2011, the NPFC called the Claimant and asked if the letter was intended to be his request for reconsideration. Claimant confirmed it was.

The NPFC denied the claim originally on May 26, 2011 because the Claimant failed to provide evidence demonstrating (1) proper presentment to the RP pursuant to 33 C.F.R. § 136.103(a), (2) that he has an alleged loss of profits and earnings in the amount of $20,000.00, as claimed; and (3) that the alleged loss is due 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.

On reconsideration, the Claimant only provided a one page letter. The Claimant provided no new documentation in support of his request for reconsideration. Nor did he provide evidence that he had presented the claim to the RP.

[1] Optional OSLTF Claim Form dated May 13, 2011.

RECONSIDERATION CLAIM ANALYSIS:

The claimant requested reconsideration which was received by the NPFC on June 16, 2011. To support the request for reconsideration the Claimant submitted a letter that gave the names of four people, phone numbers, and an alleged amount each person bought from him each.

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 reconsideration letter only provided the names of four people along with phone numbers for each of the individuals and an alleged amount of fish he sold to each person on a weekly basis.

The Claimant provided no details with respect to each person such as when the dates for which he sold to them, copies of checks or deposits into a bank account that would confirm his assertions. Additionally, the Claimant has provided no comparable financial information pursuant to 33 CFR 136.233 which states… 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.

Additionally, the NPFC denied the original claim because the Claimant failed to demonstrate that he made proper presentment of all costs to the RP/GCCF pursuant to 33 CFR 136.103(a) which the Claimant has failed to address 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 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, and (3) the failed to demonstrate that he made proper presentment of costs to the RP/GCCF pursuant to 33 CFR 136.103(a).

This claim is denied upon reconsideration.

Claim Supervisor [redacted]

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
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD
[redacted]
Fax: 202-493-6937

CERTIFIED MAIL-RETURN RECEIPT REQUESTED
Number: [redacted]

5890/DWHZ
Claim # N10036-0815
7 July 2011

[redacted]

Re: Claim Number: N10036-0815

Dea[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 N10036-0815 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 N10036-0815.

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

Enclosures: (1) Claim Summary/Determination Form

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-0815
Claimant	[redacted]
Type of Claimant	Business
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	$35,000.00

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 13 May 2011, [redacted] (Owner) on behalf of [redacted] (Claimant) presented a claim to the National Pollution Funds Center ('NPFC') seeking $35,000.00 in loss of profits and impairment of earnings capacity that allegedly resulted from the Deepwater Horizon oil spill.

Claimant is a business operating on the beach in Pensacola, Florida.[1] Claimant sells drapes, upholstered furniture, and provides furniture repair.[2] The Owner asserted that his business has dropped 60% due to the Deepwater Horizon oil spill.

The Owner did not provide a calculation regarding the Claimant's sum certain of $35,000.00.

Prior to presenting this Claim to the NPFC, Claimant filed an Emergency Advance Payment ('EAP') Claim with the GCCF on 8 October 2010 in the amount of $8,000.00 and assigned Claimant ID # [redacted] and Claim [redacted].[3] This Claim was denied on 13 December 2010.[4] Additionally, on 31 December 2010, Claimant filed a Full Review Final Claim with the GCCF in the amount of $25,000.00 and assigned Claim [redacted].[5] This claim was denied on 21 April 2011.[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).

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[1] OSLTF Claim Form.
[2] Id.
[3] Report from the GCCF dated 23 June 2011.
[4] GCCF Denial Letter dated 13 December 2010.
[5] Report from the GCCF dated 23 June 2011.
[6] GCCF Denial Letter dated 21 April 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 the claim, Claimant presented the following documentation to the NPFC:

- OSLTF Claim Form, dated 2 May 2011;
- State of Florida Department of Revenue Certificate of Registration;
- Photocopy of Owner's Driver License;
- Hand-written profit and loss spreadsheet for the periods: January 2008-December 2009, January 2009-December 2009, January 2010-December 2010;
- Hand-written document titled 'Miscellaneous Income';
- 2010 1099-MISC Federal tax form;
- 2010 1040 Federal tax return form;

- 2008 1040 Federal tax return form;
- 2009 1040 Federal tax return form.

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 Claim in the amount of $25,000.00 for loss of profits and impairment of earnings capacity to the GCCF. Claimant then presented a claim for loss of profits and impairment of earnings capacity in the amount of $35,000.00 to the NPFC. Any claimed amount of damages exceeding $25,000.00 was not properly presented to the RP/GCCF pursuant to 33 C.F.R. § 136.103(a) and is therefore denied.

The remainder of the claim is denied because the Claimant has not provided sufficient evidence to establish a financial loss due to the Deepwater Horizon oil spill. The Owner submitted tax returns from 2008 through 2010 and handwritten monthly profit statements from 2008 through 2010 that indicated the Claimant's earnings may have decreased in 2010 compared to 2009. To further evaluate the claim, the NPFC requested additional information from the Claimant on 23 May 2011. The NPFC requested, among other things, sales ledgers or listings of projects, project types and amounts billed from 2008-2010, and documentation of any projects or orders that were cancelled due to the Deepwater Horizon oil spill. To date, no response has been received by the NPFC.

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) properly establish his alleged loss 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 or substantial threat of a discharge of oil, this claim is denied.

Claim Supervisor: [redacted] ***ion***

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

Supervisor's Actions: ***Denial approved***

Supervisor's Comments:

U.S. Department of Homeland Security

United States Coast Guard

Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD
[redacted]

CERTIFIED MAIL - RETURN RECEIPT REQUESTED
Number: [redacted]

5890/DWHZ
Claim# N10036-0816
~~19 May 2011~~ RF
15 JUNE 2011

[redacted]

RE: Claim Number: N10036-0816

Dea[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 N10036-0816 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 N10036-0816.

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

CLAIM SUMMARY / DETERMINATION FORM

Date	18 May 2011
Claim Number	[redacted]
Claimant	[redacted]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
Amount Requested	$11,550.00

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 11 May 2011, [redacted] (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Funds Center (NPFC) for $11,550.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

Claimant produced two handwritten letters allegedly written by [redacted] The letters indicated that the Claimant was employed at [redacted] and her earnings there stopped in mid-May 2010 as a result of the Deepwater Horizon oil spill.[1] Claimant alleged that she was laid off as a result of the Deepwater Horizon 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 returns, financial statements, and similar documents. In addition, comparative figures for profits or

[1] Letter from [redacted] dtd 13 May 2011; Letter from [redacted] indicating Claimant's yearly gross.
[2] OSLTF claim form, dtd. 11 May 2011.

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

In support of her claim, Claimant submitted the following documentation:

- OSLTF claim form, signed by Claimant and dated 11 May 2011; and
- (3) Letters purportedly from [redacted] dtd 13 May 2011

Prior to presentment to the NPFC, Claimant reportedly presented a claim to the GCCF on 16 September 2010.[3] The Claimant has provided no evidence of RP presentment.

NPFC Determination

In investigating this claim, the NPFC attempted to contact [redacted] to verify the letters submitted by the Claimant and allegedly written by [redacted] In a phone call with the NPFC, the Claimant verbally confirmed that the letters were written by [redacted] The Claimant also indicated that she did not know how to contact [redacted][4]

The NPFC was able to locate [redacted] located at 218 Bridge Rd., Des Allemands, LA 70030.[5] This is the same address provided for [redacted] in the letters submitted by the Claimant. The NPFC contacted [redacted] and spoke with [redacted] Owner, who denied the authenticity of the letters and declared that "[t]he letter[s] w[ere] not written by her or anyone of her staff."[6] [redacted] stated her business has been closed for over a year and that she had one male employee and that no one worked for her by the name of [redacted]

This claim is DENIED because the Claimant has made false statements and presented falsified documents in connection with her claim submission to the NPFC in order to obtain funds for an

[3] OSLTF claim form.
[4] PHONECON between the NPFC and Claimant, dated 18 May 2010.
[redacted] (last visited 17 May 2011).
[6] PHONECON between the NPFC and [redacted] on 17 May 2011.

09/14/11 FOIA2011-3380-00003207

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.

Claim Supervisor [redacted]

Date of Supervisor's Review: ***5/19/11***

Supervisor's Actions: ***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
[redacted]

CERTIFIED MAIL - RETURN RECEIPT REQUESTED
Number: [redacted]

5890/DWHZ
Claim# N10036-0817
23 June 2011

[redacted]

RE: Claim Number: N10036-0817

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 N10036-0817 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 N10036-0817.

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

Claim Number	N10036-0817
Claimant	[redacted]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
Amount Requested	$30,000.00

FACTS

On or about 20 April 2010, the Mobile Offshore Drilling Unit Deepwater Horizon (Deepwater Horizon) exploded and sank in the Gulf of Mexico. As a result of the explosion and sinking, oil was discharged. 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 13 May 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 resulting from the Deepwater Horizon oil spill.

Claimant produced a letter allegedly written by [redacted] at 2753 [redacted] The letter indicated that the Claimant was employed at [redacted] and her earnings stopped June 20, 2010 as a result of the Deepwater Horizon 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 returns, financial statements, and similar documents. In addition, comparative figures for

[1] Letter from [redacted] dtd 17 June 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 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

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

- OSLTF claim form, signed by Claimant and dated 13 May 2011;
- Letter purportedly from [redacted] June 2011;
- Deficiency Letter on Interim Payment/Final Payment Claim;
- Yahoo Map of [redacted]
- 2010 W-2 [redacted]
- 2010 W-2 U.S. Department of Commerce
- Department of Commerce Pay statements
  - 05/1/2010
  - 5/15/2010
  - 5/29/2010
- SOS Staffing Pay statements
  - 7/8/2010
  - 7/14/2010
  - 7/22/2010

Prior to presentment to the NPFC, Claimant presented multiple claims to the RP/GCCF, including an Emergency Advance Payment and Interim Payment Claim for lost profits and earnings.[3] The EAP claim was denied by the GCCF.[4]

On 13 may 2011, Claimant presented the subject claim to the OSLTF for $30,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

[3] GCCF Filing Report to the NPFC, dated 17 June 2011.
[4] Id.

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.

In reviewing this claim, the NPFC contacted [redacted] twice—on 3 June 2011, to confirm the Claimant's employment and again on 20 June 2011, to verify the letter submitted by the Claimant and purportedly from [redacted], which detailed the impact of the Deepwater Horizon oil spill that resulted in her layoff. [5] [redacted] owner of [redacted] denied the authenticity of the letter and declared that "[t]he letter was not written by [him] and that she did not work 35-40 hours a week."[6] [redacted] further stated his business has picked up and that he had in fact hired more employees.

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.

Because Claimant has submitted documentation, which demonstrates a material misrepresentation of fact, this claim is denied.

[redacted]

Claim Supervisor: ***NPFC Claims Adjudication Division***

Date of Supervisor's Review: ***6/23/11***

Supervisor's Actions: ***Denial approved***

[5] PHONECON with [redacted] 3 June 2011
[6] PHONECON with [redacted] 22 June 2011.

FOIA2011-3380-00003212

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

CERTIFIED MAIL - RETURN RECEIPT REQUESTED
Number: [redacted]

5890/DWHZ
Claim# N10036-0818
19 May 2011

[redacted]

RE: Claim Number: N10036-0818

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, #N10036-0818, 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 N10036-0818.

Mail reconsideration requests to:

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

[redacted]

NPFC Claims Adjudication
U. S. Coast Guard

Enclosure: Claim Summary/Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Date	17 May 2011
Claim Number	N10036-0818
Claimant	[redacted]
Type of Claimant	Private (US)
Type of Claim	Loss of 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 16 May 2011, [redacted] (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Funds Center (NPFC) for $5,000.00 in loss of subsistence use of natural resources and $5,000.00 for natural resource damages resulting from the Deepwater Horizon oil-spill for a total combined loss of $10,000.00.

Claimant asserts that he "[p]urchased boat [sic] and relied on my catch of fish and crabs to my family and friends to compensate [sic] on sale of these to make my boat payment."[1] Although Claimant has asserted claims for subsistence use and natural resource damages, based upon this assertion, the NPFC interprets the Claimant's alleged loss as a claim for loss of profits and impairment of earnings capacity in the amount of $10,000.00.

APPLICABLE LAW

Under the Oil Pollution Act of 1990 (OPA), at 33 U.S.C. § 2702(a), responsible parties are liable for removal costs and damages resulting from the discharge of oil into or upon the navigable waters or adjoining shorelines or the exclusive economic zone, as described in 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] Claimant's Optional OSLTF Claim Form Section 9 dated 04 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 undertake, but reasonably available;
(d) Any saved overhead or normal expenses not incurred as a result of the incident; and
(e) State, local, and Federal taxes.

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support his claim, Claimant submitted the following documentation:

— Optional OSLTF Claim Form dated 04 May 2011;
— [redacted] Financial Services Loan Agreement and Disclosure Form dated 29 August 2007; and
— [redacted] Financial Services payment receipt.

Prior to presentment to the NPFC, Claimant presented a Final Payment Claim with the GCCF. He was assigned GCCF Claimant II[redacted] and Claim [redacted]. On 20 April 2010, the Final Payment claim was denied by the GCCF.[2]

On 16 May 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 C.F.R. § 136.105(a) and § 136.105(e)(6), the claimant bears the burden of providing to the NPFC, all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim. The NPFC considered all of the documentation submitted by the Claimant.

This claim is DENIED for lack of proper supporting documentation. Claimant has advised the NPFC that he does not have a valid Louisiana (LA) commercial fishing license that would entitle

[2] GCCF denial letter Re: Claimant's Final Payment claim, dated 20 April 2011.

him to catch fish for sale in LA.[3] A commercial fishing license is required to take fish for sale in LA.[4] The NPFC is not aware of any exemption for the sale of fish caught in LA to family and friends within the state.

[redacted]

Claim Supervisor: ***NPFC Claims Adjudication Division***

Date of Supervisor's Review: ***5/19/11***

Supervisor's Actions: ***Denial approved***

Supervisor's Comments:

[3] PHONECON between the NPFC and Claimant on 16 May 2011.

[4] Pursuant to LA. REV. STAT. § 56.302(C), a person who takes fish for sale using any legal gear is required to purchase applicable commercial licenses, including commercial fishing, gear and/or vessel licenses. The NPFC confirmed this statutory mandate with the LA Dept. of Fish and Wildlife on 15 December 2010.

U.S. Department of Homeland Security

United States Coast Guard

Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD
[redacted]
Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: [redacted]

5890/DWHZ
Claim # N10036-0819
02 June 2011

[redacted]

Re: Claim Number: N10036-0819

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 N10036-0819 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 N10036-0819.

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

Enclosure: Claim Summary/Determination Form

09/14/11 FOIA2011-3380-00003217

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-0819
Claimant	[redacted]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	$161,000.00

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 16 May 2011, [redacted] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for $161,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

The Claimant owned and operated a beach front restaurant called the [redacted] in Carillon Beach near Panama City Beach, FL. The restaurant also provided catering services. It opened for business in March 2010.[1] After the oil spill, the Claimant stated business declined and he decided to close the restaurant in June 2010.[2] The restaurant has yet to re-open.

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] PHONECON with Claimant on 31 May 2011.
[2] Memo to GCCF by Claimant explaining business closure in June 2010.

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(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

To support this claim, Claimant submitted the following documentation:

- OSLTF Claim Form signed by the Claimant 21 April 2011;
- Minerals Management Service Accident Investigation Report for Deepwater Horizon occurred 26 May 2008;
- Authorization from Claimant to send funds to [redacted] of Pensacola, Florida;
- Hand-written letter to the NPFC explaining the claim;
- GCCF Notice of Determination One-Month Emergency Advance Payment for $18,900.00 dated 14 April 2011;
- GCCF Claim Form 1002-BUS Calculation of Interim and Final Payment Offer;

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- Memo to GCCF by Claimant explaining business closed in June 2010;
- Florida Sales and Use Tax Return for March, April, May 2010;
- Profit and Loss Statement for March, April, May 2010;
- Form 1040 US Individual Income Tax Return for 2010;
- Schedule C Profit or Loss from Business for 2010;
- Statement from [redacted] for [redacted] for April 2010;
- Various website articles concerning the Deepwater Horizon oil spill;
- [redacted] Lease and Agreement;
- Menu for [redacted] Catering;
- Copy of Florida Certificate of Registration;
- Copy of Florida Hotels and Restaurants License;
- Copy of Florida Alcoholic Beverages & Tobacco License;
- Letter from State of Florida concerning satisfied delinquent accounts;
- Copy of invoice from [redacted] for $201.30;
- Copy of invoice from [redacted]
- Copy of invoice from [redacted] for $311.18; and
- Copy of invoice from [redacted] for $426.18.

On 20 May 2011, the NPFC sent the Claimant a letter requesting additional information in order to evaluate the claim. On 31 May 2011, the Claimant responded to the request.

Claimant presented Emergency Advance Payment and Interim Payment claims to the RP/GCCF. He was issued GCCF Claimant ID [redacted] Claimant received $18,900.00 from the GCCF as compensation on his EAP claim.[3] Additionally, the Claimant received $1,176.26 on his Interim Payment claim.[4] Lastly, the Claimant was offered a Final Payment of $25,000.

Claimant takes issue with the $1,176.26 payment from the GCCF on his Interim Payment claim.[5] He has not accepted his Final Payment Offer from the GCCF.

On 16 May 2011, the Claimant presented the subject claim to the NPFC for $161,000.00 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

[3] GCCF Notice of Determination One-Month Emergency Advance Payment for $18,900.00 dated 14 April 2011.
[4] GCCF Claim Form [redacted] Calculation of Interim and Final Payment Offer.
[5] PHONECON with Claimant on 31 May 2011.

09/14/11 FOIA2011-3380-00003220

providing to the NPFC all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim.

[redacted] opened for business in March 2010. After the oil spill, the Claimant stated business declined and he decided to close the restaurant down in June 2010. Even though the Claimant's Schedule C Profit or Loss from Business shows a Net Profit while the business was open, there is insufficient business history to determine the amount of lost profits after the oil spill.

Pursuant to 33 C.F.R. § 136.233 a loss of profits and impairment of earnings capacity claimant must establish, among other things, 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. Claimant has failed to meet this burden.

Additionally, Claimant failed to demonstrate that he submitted a claim for $161,000.00 in lost profits and earnings to the RP/GCCF pursuant to 33 C.F.R. § 136.103(a), which requires that all claims for removal costs and damages be presented first to the RP.

For the foregoing reasons, this claim is denied.

Claim Supervisor: ***C[redacted]n Division***

Date of Supervisor's Review: ***6/2/11***

Supervisor's Action: ***Denial approved***

Supervisor's Comments:

09/14/11 FOIA2011-3380-00003221

U.S. Department
of Homeland
Security

**United States
Coast Guard**

Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
[redacted]
Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: [redacted]

DWHZ/5890
23 May 2011

[redacted]

RE: Claim Number: N10036-0820

Dear [redacted]:

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number N10036-0820 involving Deepwater Horizon. Please see the enclosed Claim Summary/Determination Form for further explanation.

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

Reconsideration of the denial will be based upon the information provided. A claim may be reconsidered only once. Disposition of that reconsideration in writing will constitute final agency action. Failure of the NPFC to issue a written decision within 90 days after receipt of a timely request for reconsideration shall, at the option of the claimant, be deemed final agency action. All correspondence should include claim number N10036-0820.

Mail reconsideration requests to:

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

Sincerely,

[redacted]
NPFC Claims Adjudication
U.S. Coast Guard

Enclosure: Claim Summary/Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Date	: 18 May 2011
Claim Number	: N10036-0820
Claimant	: [redacted]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: $10,535.00

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 16 May 2011, [redacted] (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Funds Center (NPFC) for $10,535.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil-spill.

Claimant indicated that she was unemployed since 2009. She was reportedly offered at job at the [redacted] in Pensacola ([redacted]) on 3 June 2010. The job would have been a part-time position at $8.75 an hour, $350.00 weekly. A letter from [redacted] stated that "[d]ue to the oil spill the position was not filled."[1]

Claimant calculated her damages by multiplying her alleged monthly gross, if she had worked the position, ($1,505.00) by 7, representing the months of June through December, for a total loss of earnings of $10,535.00.

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 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] Letter from [redacted] regarding Claimant's position, dated 9 March 2011.

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(d) Whether alternative employment or business was available and undertaken and, if so, the amount of income received. All income that a claimant received as a result of the incident must be clearly indicated and any saved overhead and other normal expenses not incurred as a result of the incident must be established.

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

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

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

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support her claim, Claimant submitted the following:

- OSLTF claim form, dated 13 May 2011;
- Letter from [redacted] regarding Claimant's position, dated 9 March 2011;
- [redacted] New Hire Processing Statement;
- [redacted] Personnel Action Form;
- Google Map re: [redacted] location;
- GCCF Denial Letter re: Interim Payment/Final Payment Claim, dated 30 April 2011;
- GCCF Deficiency Letter on Interim Payment/Final Payment Claim, dated 01 March 2011;
- GCCF Interim Payment Claim form, dated 7 January 2011;
- GCCF Letter re: receipt of Interim payment Claim form, dated 24 January 2011;
- GCCF Letter re: Claimant Identification Number: [redacted] dated 29 January 2011;
- Florida Unemployment Compensation Statement for Tax Year 2010;
- Undated Letter from Claimant to the GCCF re: clarifications to 2008 and 2009 W-2 form submissions;
- 2009 W-2 Wage and Tax Statements;
- IRS Letter to Claimant dated 23 March 2009 re: change to account for year 2008
- 2009 IRS Form 1040-A Tax Return;
- 2008 IRS Form 1040-A Tax Return;
- Google search results for the [redacted], dated 14 April 2011;
- Google search results for [redacted], dated 14 April 2011; and
- 2008 W-2 Wage and Tax Statement.

Prior to presentment to the NPFC, Claimant presented an Emergency Advance Payment (EAP) and Interim Payment Claims to the GCCF. Claimant received GCCF Claimant ID [redacted] and Claim #'s [redacted] and [redacted] respectively. Both Claims were denied by the GCCF.[2]

On 16 May 2011, Claimant presented this claim for $10,535.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

[2] GCCF denial letter Re: Claimant's EAP claim, dated 24 November 2010; GCCF denial letter Re: Claimant's Interim Payment claim, dated 30 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 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.

In reviewing this claim, the NPFC contacted [redacted] to verify the Claimant's assertion that she was offered a position there, but not hired, as a result of the Deepwater Horizon oil spill. [redacted] confirmed that the Claimant was offered a part-time position. [redacted] clarified, however, that the position was part-time seasonal work with no guarantee of long-term employment.

[redacted] indicated that the hotel was slated to open in June 2010 and offers for positions, like the Claimant's, were based on projections of bookings. [redacted] further indicated that decreased bookings, which it attributed to the oil spill, compelled the decision to not hire for certain positions.

Although [redacted] attributed the non-hiring for certain positions to the effects of the oil spill, [redacted] as indicated, made a business decision to not staff up (or not hire) as a result of decreased bookings.

Additionally, the basis for the Claimant's alleged loss is continued employment at [redacted] from June through December at $1,505.00 a month. However, the Claimant was not guaranteed employment for this duration as the work was seasonal and part-time. Lastly, the Claimant does not account for $7,181.00 in unemployment compensation she received in 2010 in the calculation of her alleged loss pursuant to 33 C.F.R. § 136.235.

Because the evidence available to the NPFC does not demonstrate that the Claimant's alleged loss is due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil, or support Claimant's alleged loss calculation, this claim is DENIED.

Claim Supervisor: *C[redacted]n Division*

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

Supervisor's Actions: ***Denial approved***

Supervisor's Comments:

U.S. Department of
Homeland Security

**United States
Coast Guard**

Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD
[redacted]
Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: [redacted]

5890/DWHZ
Claim # N10036-0822
6 July 2011

[redacted]

Re: Claim Number: N10036-0822

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 N10036-0822 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 N10036-0822.

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

Claim Number	N10036-0822
Claimant	[redacted]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	$10,400.00

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

Claimant owns a rental property in Navarre, FL, and lost rental income when his tenant allegedly fell into financial hardship following the oil spill.[1] Claimant alleged that his tenant was unable to pay rent, and eventually vacated the rental property in August of 2010.[2] The home has been leased as of 1 December 2010, but was vacant from approximately August 2010 to December 2010.[3]

On 16 May 2011, Claimant presented an Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Fund Center (NPFC) seeking $10,400.00 as compensation for damage to real or personal property. However, review of the documentation provided by the Claimant indicated that the Claimant's alleged loss is for lost rental income and expenses related to leasing the Claimant's rental property after it was vacated by his tenant following the oil spill.[4] According to the Claimant, he "spent a lot of [his] savings on the mortgage, advertising, cleaning, repairs, power, water, gas and maintenance trying to get someone in."[5]

Based on this information, the NPFC has re-characterized this as a claim for lost profits and earnings in the amount of $10,400.00.[6]

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

[1] Optional OSLTF Claim Form, 16 May 2011.
[2] PHONECON: NPFC Staff and Claimant's agent, 6 June 2011
[3] Id., See also, Letter from Claimant to GCCF, dated 24 Oct. 2010.
[4] Supra note 1.
[5] Supra note 3.
[6] Confirmed in PHONECON between Claimant and NPFC Staff, 6 June 11.

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for uncompensated damages. One type of damages available pursuant to 33 C.F.R. § 136.231 is a claim for loss of profits or impairment of earning capacity due to injury to or destruction of natural resources.

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

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

(b) That the claimant's income was reduced as a consequence of injury to, destruction of, or loss of property or natural resources, and the amount of that reduction.

(c) The amount of the claimant's profits or earnings in comparable periods and during the period when the claimed loss or impairment was suffered, as established by income tax returns, financial statements, and similar documents. In addition, comparative figures for profits or earnings for the same or similar activities outside of the area affected by the incident also must be established.

(d) Whether alternative employment or business was available and undertaken and, if so, the amount of income received. All income that a claimant received as a result of the incident must be clearly indicated and any saved overhead and other normal expenses not incurred as a result of the incident must be established.

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

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

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

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support this claim, Claimant submitted the following documentation:

- Optional OSLTF Claim Form;
- Email from Claimant to NPFC, dated 16 May 2011, indicating submission of claim to NPFC;
- Undated Letter from Claimant re: claim submission documents;
- Letter from Claimant to GCCF, authorizing an agent to handle Claimant's claim with GCCF;
- Copy of GCCF Full Review Final Payment Claim Form;
- 2010 Form 1040, Individual Income Tax Return showing total wages of $78,760.00;
- 2010 Form 1040, Supplemental Income and Loss, showing total rental losses of $10,529.00 for two properties, including depreciation loss;
- 2010 Form 2441, Child and Dependent Care Expenses;

- 2010 Schedule M Form, Making Work Pay Credit;
- 2010 Form 4868, Application for Automatic Extension of Time To File U.S. Individual Income Tax Return;
- 2010 Federal Carryover Worksheet;
- 2010 Form 4562 Depreciation and Amortization Report;
- Copy of Tax Smart Worksheet for 2010;
- California Nonresident or Part-Year Resident Income Tax Return 2010 showing adjusted gross income of $69,472.00;
- 2010 Form, California Adjustments- Nonresidents or Part-Year Residents, showing gross salary of $78,760.00;
- 2010 Student Loan Interest Deduction Worksheet;
- 2010 California Schedule E Worksheet;
- 2010 Form 3885A, Depreciation and Amortization Report;
- 2010 California Electronic Filing Information Worksheet;
- 2010 Schedule CA(NR) Schedule E Income Smart Worksheet, showing losses including depreciation of $3,375.00 for property at issue; and
- Letter from Claimant to GCCF, describing his loss of rental income, dated 24 Oct. 2010.

Prior to presentment to the NPFC, Claimant presented an Emergency Advance Payment (EAP) Claim as well as an Interim/Final Payment Claim to the RP/GCCF. Claimant's EAP was denied on 4 December 2010. Claimant's Interim/Final Payment Claim was denied on 30 April 2011.[7]

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, 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 his claim.

In describing his losses, the Claimant stated that because of the oil spill, "the company or business owner my tenant worked for was affected. His business declined and he could no longer afford rent."[8] However, the Claimant has not provided documentation to show how his tenant was affected by the oil spill. In a phone conversation with NPFC Staff, the Claimant indicated that he did not have access to any information regarding the location or identity of his tenant, nor is he familiar with the work his tenant was engaged in when he fell into financial hardship and subsequently breached his lease agreement with the Claimant.[9]

Furthermore, the Claimant failed to respond to a letter from the NPFC requesting additional information as to how the oil spill may have caused the Claimant's losses.[10] Claimant's designated agent indicated that neither she nor the Claimant would be able to respond to the request.[11] Accordingly, the Claimant has failed to establish that any financial losses he suffered were due to discharge or substantial threat of discharge of oil.

[7] Optional OSLTF Claim Form dated 16 May 2011.
[8] GCCF Full Review Final Claim Form, 5 February 2011.
[9] PHONECON: Claimant and NPFC Staff, 6 June 2011 and Claimant's Agent and NPFC Staff 27 June 2011.
[10] Letter from NPFC emailed on 7 June 2011.
[11] PHONECON: NPFC Staff and Claimant's agent, 27 June 2011.

This claim is denied because the Claimant has failed to show that the alleged loss in the amount of $10,400.00 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: *NPFC [redacted] cation Division*

Date of Supervisor's Review: *7/6/11*

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
[redacted]
Fax: 202-493-6937

CERTIFIED MAIL-RETURN RECEIPT REQUESTED
Number: [redacted]

[redacted]

5890/DWHZ
Claim # N10036-0823
24 June 2011

Re: Claim Number: N10036-0823

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 N10036-0823 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 N10036-0823.

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: Claim Summary/Determination Form

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-0823
Claimant	[redacted]
Type of Claimant	Business
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	$215,815.03

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 13 May 2011, Executive Director [redacted] (Director) on behalf of the [redacted] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for $215,815.03 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

The Claimant is a charitable organization specifically advocating for and providing services for individuals with intellectual and developmental disabilities in the Mobile, Alabama region.[1] The Claimant raises revenue for its services through a combination of donations and selling products such as beach chairs, beach swings and other beach-related items in the Mobile region.[2] The Director asserted that as a result of the Deepwater Horizon oil spill, the tourism industry collapsed, creating a drop in revenue for the Claimant.[3]

The Director calculated the Claimant's sum certain by adding the following together: the loss in sales of products ($117,300.81), the loss of donations ($57,497.00), the additional cost of hiring marketing personnel ($16,017.22), and the cost of hiring accountants to calculate the loss ($25,000.00[4]).[5] This final number totaled $215,815.03.[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).

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[1] Attachment to OSLTF Claim Form detailing summary of claim.
[2] Id.
[3] Id.
[4] Although Director's explanation of Claimant's sum certain calculation includes listed accounting fees of $25,000.00, the actual invoice dated 30 December 2010 from the accounting firm [redacted] shows a total of $20,000.00. Because the claim is denied there is no need to address the $5,000.00 discrepancy in determining Claimant's sum certain.
[5] Letter from [redacted] dated 6 June 2011 responding to NPFC's Request for Additional Information.
[6] OSLTF Claim Form.

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 Director presented the following documentation to the NPFC:

- Optional Oil Spill Liability Trust Fund (OSLTF) claim form, undated;
- Cover letter to National Pollution Funds Center for claim;
- 2007 version of 990 Federal tax return form;
- 2008 version of 990 Federal tax return form;
- Attachment to OSLTF Claim Form detailing summary of claim;
- Loss summary for FYE 30 September 2008, FYE 30 September 2009 and FYE 30 September 2010;
- Monthly data for FYE 30 September 2008, FYE 30 September 2009 and FYE 30 September 2010;
- Letter from [redacted] dated 6 June 2011 responding to NPFC's Request for Additional Information;
- Invoice from [redacted] dated 30 December 2010 in the amount of $20,000.00;

- 2009 990 Federal tax return form;
- Spreadsheet containing information on monthly donation figures for FYE 30 September 2008, 30 September 2009 and 30 September 2010;
- Spreadsheet containing information on [redacted] Monthly Statement of Earnings from 1 October 2007-30 September 2010;
- Spreadsheet containing information on [redacted] Sales Summary from 1 October 2007-30 September 2010;
- Spreadsheet containing monthly information on [redacted] sales for FYE 30 September 2008;
- Spreadsheet containing monthly information on [redacted] sales for FYE 30 September 2009;
- Spreadsheet containing monthly information on [redacted] sales for FYE 30 September 2010;
- Spreadsheet containing information on MARC Contributions and Grants for 1 October 2007-30 September 2010;
- List of [redacted] donors for FYE 2008;
- List of [redacted] donors for FYE 2009;
- List of [redacted] donors for FYE 2010.

Prior to presenting this claim to the NPFC, the Claimant filed an Emergency Advance Payment (EAP) Claim on 22 November 2010 with the GCCF in the amount of $73,274.95 and was assigned Claimant ID Number [redacted] nd Claim ID Number [redacted] The EAP claim was denied on 14 December 2010.[8] Additionally, the Claimant filed an Interim Payment Claim on 28 January 2011 in the amount of $174,797.81 and was assigned Claim ID Numbe [redacted] The Interim Payment Claim was denied on 22 April 2011.[10]

On 13 May 2011, Claimant presented the subject claim for $215,815.03 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.

The claim is denied because the Claimant has not proven that its alleged loss in the amount of $215,815.03 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. The Claimant failed to demonstrate a causal connection between the Deepwater Horizon oil spill and any alleged loss to the Claimant's product sales, asserted lack of donations, the hiring of marketing personnel, or the retaining of an accounting firm.

LOSS OF SALES

Regarding the alleged drop in the Claimant's revenue due to the Deepwater Horizon oil spill, the Claimant asserted that the oil spill caused a reduction in tourism in the Mobile, Alabama region resulting in a drastic reduction in the Claimant's sales of beach-related products. The Claimant, however, provided no connection showing a decline in sales due to the Deepwater Horizon oil spill. The Claimant's submitted profit and loss statements do not reinforce the Director's assertion that a drop in sales during the summer months in 2010 occurred at all. The Claimant's information shows a net gain in sales during the relevant period from 2009 to 2010. A comparison of the summer months[11] of May 2009-September

[7] Report to the GCCF dated 13 June 2011.
[8] GCCF Denial Letter dated 14 December 2010.
[9] Report to the GCCF dated 13 June 2011.
[10] GCCF Denial Letter dated 22 April 2011.
[11] In a conversation with the NPFC, Director suggested that sales for beach-related products could have begun in the winter of 2009-2010 as residents prepared their homes for the beach season. Because these assertions are outside the time period of the Deepwater Horizon oil spill they will not be addressed here.

2009[12] with May 2010-September 2010 shows no identifiable downward trend in sales. Rather, the sales total from May 2010-September 2010 of $59,195.15 is greater than the sales total from May 2009-September 2009 of $17,060.89.[13] Specifically, examining the summer months on a month to month basis in 2009 and 2010, it shows a monthly loss restricted to June 2010 with only June 2010 and July 2010 having lower sales numbers than June 2009 and July 2009.[14]

Additionally, on 20 May 2011, the NPFC requested additional information from the Claimant to further evaluate the claim and specifically to determine how active the Claimant's business of selling beach-related products was both before and after the Deepwater Horizon oil spill. The NPFC requested that the Claimant provide copies of advertisements that were run in 2009 and 2010.[15] To date, no response regarding that request has been received by the NPFC. Accordingly, the sales figures provided by the Claimant for the summer 2009 and summer 2010 fail to establish that the Deepwater Horizon oil spill resulted in a diminution for sales of beach-related products.

LOSS OF DONTATIONS

Regarding the alleged loss of donations, the Claimant failed to show that donations were reduced due to the Deepwater Horizon oil spill. The Director referenced 'point of sale' donations that residents and tourists in the Mobile region would be propositioned to make when purchasing beach-related products.[16] Thus, according to the Director, a drop in sales of beach-related products would reduce the potential for 'point of sale' donations.[17] The Claimant, however, for the reasons stated above regarding the sale of beach-related products, could not provide a connection between the Deepwater Horizon oil spill and the reduction in 'point of sale' donations. Therefore, without a connection to the reduction in beach-related product sales to the Deepwater Horizon oil spill, there can be no reduction in the 'point of sale' donations that stem from those sales. Accordingly, the Director has not provided a connection between the Deepwater Horizon oil spill and the reduction in 'point of sale' donations.

Furthermore, even if the Claimant could establish that the Deepwater Horizon oil spill caused a loss in overall donations, the Claimant's asserted losses[18] in donations do not correlate with the documentation

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[12] Throughout Director's presentation of Claimant's claim, Director utilized FYE 2008 as the benchmark to compare financial and sales figures with 2010. In a conversation with the NPFC, Director stated this year was used as a benchmark because the numbers for 2009 were an aberration from previous years. Director, however, provided no documentary evidence to show why financial data from 2009 should not be used in determining causation and/or a loss from the Deepwater Horizon oil spill. Thus, the 2008 and 2009 numbers are used in the NPFC's determination.

[13] In the documentation consisting of Claimant's response to NPFC's Request for Additional Information, Claimant asserted that the 2010 sales of Claimant's 'Lettuce' product should not be used in the calculation for sales in 2010 because it was a new product and not available for a sales comparison in 2008. Claimant's own loss calculation for sales, however, includes sales figures for 'Silk Screening' from 2008 despite this product being unavailable for sale at all in 2010. Regarding the damages recoverable for loss of profits and impairment of earnings capacity, a Claimant's loss is limited to the actual net reduction or loss of earnings or profits suffered. 33 C.F.R. § 136.235. Further, when calculating such damages, a Claimant must include all income from alternative employment or business undertaken. 33 C.F.R. § 136.235(b). Thus, the 2010 lettuce sales must be included when determining Claimant's potential loss from the Deepwater Horizon oil spill.

[14] Regarding where Claimant's products were sold, in its response to the NPFC's Request for Additional Information, Claimant stated that the beach-related products were sold both on the beach and in brick and mortar retail stores. Although Claimant provided the location of the retail stores, in a subsequent conversation between Director and NPFC, Director was unable to identify the percentage of sales that are generated from the retail stores and the percentage of sales generated from sales on the beach. Further, Claimant could not separate the overall sales of items from the residents of the Mobile region and the tourists to the region. Therefore, Claimant fails to show to where and to whom its products are sold.

[15] NPFC's Request for Additional Information dated 20 May 2011.

[16] PHONECON between NPFC and Director dated 13 June 2011.

[17] Id.

[18] Claimant's asserted loss of donations in 2010 was $57,497.00, an amount calculated by subtracting the total number of donations in 2010 from those received in 2008. The 2009 figures, lower than those in 2008, were not used because of their purported anomaly from the normal financial numbers. Director, however, provided no documentary evidence to support this assertion. Thus, the NPFC used the numbers from 2009 to calculate the loss of donations in 2010. This number totaled $52,812.00.

presented to the NPFC. The NPFC requested that the Claimant provide the names, amount pledged, and contact information for all donors in 2008, 2009 and 2010.[19] Although the Claimant provided a list of donors for those years, none of the total amounts from those lists equaled the total amount of donations listed as received by the Claimant.[20] Further, the Director stated that the lists presented for donors in 2008, 2009 and 2010 represented the complete set of donor information that the Claimant could provide.[21] Due to the Claimant's unwillingness or inability to provide complete documentation regarding donations in 2010, the Claimant fails to meet its burden to show a loss in overall donations in 2010 due to the Deepwater Horizon oil spill.

COST OF HIRING MARKETING PERSONNEL

Regarding Claimant's alleged loss for hiring additional personnel to conduct marketing initiatives, the Claimant has not in fact presented any loss at all. Rather, the Claimant's hiring decision represents a net benefit to the Claimant. The Director informed the NPFC that the Claimant hired a new employee to work on marketing the Claimant's services after the Deepwater Horizon oil spill.[22] This hire, however, has since become a permanent employee.[23] The fact that this new employee remained employed after the Deepwater Horizon oil spill suggests that the oil spill was not the lone factor in hiring this employee and that in the post-oil spill period, the employee continues to provide a benefit to the organization unrelated to the oil spill. Thus, there is no loss to be claimed from hiring a new employee to conduct ongoing marketing activities.

COST OF HIRING ACCOUNTANTS

Regarding the Claimant's alleged loss[24] for hiring an accounting firm to calculate its loss; the Claimant presents damages that are non-compensable. Although OPA may allow recovery for the cost of accessing proven damages, there is no recovery for costs where damages are not proven. As discussed above, the Claimant has not proven damages due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of discharge of oil. Thus, the Claimant cannot recover costs associated with creating an assessment of unproven damages.

Additionally, it is important to note that the Claimant only presented claims to the RP/GCCF in the amounts of $73,244.95 and $174,797.81, respectively. The Claimant presented a claim to the NPFC in the amount of $215,815.03. 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 claims for lost profits and earnings to the RP/GCCF, the claimed loss amounts presented for either claim does not amount to the $215,815.03 requested by the Claimant to the NPFC. The larger of the two claimed loss amounts presented to the RP/GCCF is $174,797.81 therefore that amount is properly before the NPFC pursuant to 33 C.F.R. § 136.103(a). The amount of the Claimant's sum certain in excess of $174,797.81 has not been presented by the Claimant to the RP/GCCF therefore that amount is denied for lack of proper presentment to the RP/GCCF.

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[19] NPFC's Request for Additional Information dated 20 May 2011.

[20] Claimant listed a total of $159,797.00 in donations for FYE 2010. Claimant, in its response to the NFPC's 20 May 2011 Request for Additional Information, provided a list of donors for FYE 2010 with amounts totaling $16,144.75. Subtracting the total amount of donations from the list provided to the NPFC leaves a total of $143,652.25 in undocumented donations.

[21] PHONECON between NPFC and Director dated 13 June 2011.

[22] Id.

[23] Id.

[24] As discussed in footnote 4, *supra* , Claimant's sum certain calculation includes listed accounting fees of $25,000.00 despite the actual invoice dated 30 December 2010 from the accounting firm [redacted] listing a total of $20,000.00. Because the claim is denied there is no need to address the $5,000.00 discrepancy in determining Claimant's sum certain.

CONCLUSION

Because the Claimant has failed to 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 and because the Claimant has not properly presented $41,017.22 of the amount requested of the NPFC, this claim is denied.

Claim Supervisor: *NPFC Clai[redacted]on Division*

Date of Review: *6/24/11*

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
[redacted]
Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: [redacted]

5890/DWHZ
Claim # N10036-00824
08 June 2011

[redacted]

Re: Claim Number: N10036-0824

Dea[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 N10036-0824 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 N10036-0824.

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

09/14/11 FOIA2011-3380-00003238

CLAIM SUMMARY/DETERMINATION FORM

Date	03 June 2011
Claim Number	N10036-0824
Claimant	[redacted]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	$62,580.64

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 17 May 2011, [redacted] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for $62,580.64 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

The Claimant and his wife are partners in a business named [redacted] located in Metaire, LA. The business retails car and marine audio components and provides screen printing for advertising products for the hospitality industry.[1] [redacted] went into business on 01 April 2010.

On the same day, the Claimant signed an Employment Contract for $60,000.00 a year payable in monthly installments of $5,000.00.[2] The Claimant stated he received a monthly payment only for the month of April 2010. The Claimant's wife signed the Employment Contract as an officer of [redacted] The employment was "at will."

The Claimant alleged that as a result of the Deepwater Horizon oil spill, business in [redacted] area declined and [redacted] lost profits and could not pay his contractual salary [redacted] went out of business in December 2010. An eviction notice was issued against [redacted] on 03 December 2010 on the premises used for the business.[3]

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[1]Claimant's Affidavit as to the Identifiable Link Between Actual Losses Sustained and the Deepwater Horizon Incident April 20, 2010 notarized on 22 April 2011.
[2]Employment Contract with [redacted] effective 01 April 2010.
[3]Eviction Notice from [redacted] dated 03 December 2010 for [redacted] and [redacted], Matairie, Louisiana.

09/14/11 FOIA2011-3380-00003239

Claimant seeks his $5,000.00 monthly contractual pay from May 2010 through April 2011 and a pro-ration of May 2011 up until his claim was filed with NPFC.[4]

The Claimant's wife, his business partner, has also filed a claim for lost earnings with the NPFC. She also has a similar Employment Contract with [redacted] signed by the Claimant as an officer.

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;

[4] PHONECON with Claimant's wife on 03 June 2011.

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

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support this claim, Claimant submitted the following documentation:

- OSLTF Claim Form signed by the Claimant on 20 May 2011
- Written Affidavit/Statement explaining the claim notarized on 22 April 2011
- Claimant's Affidavit as to the Identifiable Link Between Actual Losses Sustained and the Deepwater Horizon Incident April 20, 2010 notarized on 22 April 2011
- GCCF Denial of Final Payment Claim dated 16 April 2011
- Employment Contract with [redacted] effective 01 April 2010
- [redacted] earning statement for $5,000.00
- Forms 1099 for 2008 from [redacted], for 2009 from [redacted] and for 2010 [redacted]
- Claimant's Bank Statements from [redacted] for May 2010 through November 2010
- Claimant's Bank Statements from [redacted] from December 2008 through October 2009
- Eviction Notice from [redacted] dated 03 December 2010 for John [redacted] Matairie, Louisiana
- Sixteen pages of prospect listings
- Two maps showing the location of the [redacted]
- Seven pages of articles concerning the Deepwater Horizon oil spill
- Employment contact listing from 01 December 2010 to 22 April 2011

On 20 May 2011, the NPFC sent the Claimant a letter requesting additional information in order to evaluate the claim. On 31 May 2011, the Claimant responded to the request by e-mail.

Prior to presentment to the NPFC, the Claimant presented two Final Payment claims to the RP/GCCF for $40,000.00 and $46,707.74 in lost profits and earnings respectively.[5] Both claims were denied by the GCCF.[6]

[5] Claimant indicates that his GCCF Claimant ID # i[redacted]
[6] GCCF denial letter Re: Claimant's Final Payment claim, dated 16 April 2011.

09/14/11 FOIA2011-3380-00003241

On 17 May 2011, the Claimant presented the subject claim for $62,580.64 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). The Claimant presented Final Payment Claims for $40,000.00 and $46,707.74 in lost profits and earnings respectively. Claimant then presented this claim for $62,580.64 in loss of profits and impairment of earnings capacity to the NPFC. Any claimed amount of damages exceeding $46,707.74 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 failed to meet his burden under OPA and the associated regulations at 33 C.F.R. Part 136 to establish his alleged loss and demonstrate 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.

[redacted](Claimant's business and employer) began operations on 01 April 2010. On that same day, the Claimant signed his alleged employment agreement with[redacted] The Claimant indicated that he only received a $5,000.00 disbursement for April under the contract before[redacted]went out of business. Claimant provided 1099's from 2008 and 2009, which indicated that he received other income from third party businesses. None of these businesses were [redacted] Claimant therefore failed to provide the amount of his profits or earnings in comparable periods and during the period when the claimed loss or impairment was suffered as required by 33 C.F.R. § 136.233(c).

Claimant additionally failed to demonstrate through evidentiary proof that his income was reduced as a consequence of injury to, destruction of, or loss of the property or natural resources as a result of a discharge or substantial threat of a discharge of oil. 33 C.F.R. § 136.233(b).

This claim is denied because the Claimant failed to (1) make proper presentment to the RP of some of his claimed loss; (2) establish its alleged loss; and (3) demonstrate that this 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.

[redacted]

Claim Supervisor: ***Claims Adjudication Division***

Date of Supervisor's Review: ***08 June 2011***

Supervisor's Action: ***Denial approved***

09/14/11 FOIA2011-3380-00003242

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]

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: [redacted]

5890/DWHZ
Claim # N10036-0825
28 June 2011

[redacted]ir

Re: Claim Number: N10036-0825

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 N10036-0825 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 N10036-0825.

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

FOIA2011-3380-00003243

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-0825
Claimant	[redacted]
Type of Claimant	Corporate (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	$34,200.00

FACTS

On or about 20 April 2010, the Mobile Offshore Drilling Unit Deepwater Horizon (Deepwater Horizon) exploded and sank in the Gulf of Mexico. As a result of the explosion and sinking, oil was discharged. 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 17 May 2011, [redacted] (Owner), on behalf of [redacted] in Kenner, LA (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for $34,200.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.[1]

Owner alleged that the Claimant's business "has been adversely 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 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 dated 26 May 2011.
[2] Id.

FOIA2011-3380-00003244

(d) Whether alternative employment or business was available and undertaken and, if so, the amount of income received. All income that a claimant received as a result of the incident must be clearly indicated and any saved overhead and other normal expenses not incurred as a result of the incident must be established.

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

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

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

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support this claim, Claimant submitted the following documentation:

- Optional OSLTF Claim form, claiming $34,200 in lost profits and earning capacity;
- Copy of Emergency Advance Payment Denial letter from the GCCF, dated 28 Oct 2010;
- Copy of Denial letter on Interim Payment/Final Payment Claim from the GCCF, dated 22 April, 2011;
- Email from Claimant to the GCCF, requesting reevaluation of her claim;
- Handwritten letter from Claimant, dated 21 Dec. 10, requesting that her claim be reviewed as a business claim, rather than an individual claim; note from claimant indicating the letter has not been sent to the GCCF;
- Copy of Claimant's La. Driver's License and Social Security Card;
- Profit and Loss Statement from 2010, showing a loss of $34,200;
- Certified copies of articles of organization for [redacted] dated 13 Nov. 2009;
- Letter of approval of articles of incorporation, dated 13 Nov. 2009;
- Letter showing assignment of employer identification number, dated 10 June 2009;
- 2010 Form 1040 or 1040A, "Making Work Credit Pay;"
- 2010 Form 8812, Additional Child Tax Credit;
- 2010 Form 1040 or 1040A Earned Income Credit, Qualifying Child Information;
- 2010 Form 2441, Child and Dependant Care Expenses;
- 2010 Form 1040, Self Employment Tax;
- 2010 Form 1040, Net Profits from Business;
- 2010 Individual Tax Return.

Prior to presentment to the NPFC, Claimant presented a Final Payment Claim to the RP/GCCF for $25,000.00 in lost profits and earnings. On 22 April 2011, the GCCF denied the Final Payment Claim.[3]

On 17 May 2011, Claimant presented the subject claim for $34,200.00 in loss of profits and impairment of earnings capacity.

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, 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.

After conducting our initial review of the documentation provided by Claimant, the NPFC sent the Claimant a certified letter, requesting additional information. The NPFC asked the Claimant to explain how her business was affected by the oil spill.[4] Claimant has not responded to this request within the stipulated 14 days, and has stated that she has provided all relevant documentation to the NPFC.[5]

Based on a review of the information provided, this claim is denied. The Claimant has failed to show that her alleged loss in the amount of $34,200 is due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil. Additionally, the Claimant failed to demonstrate that she made proper presentment of her claimed loss of $34,200.00 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 (RP). The GCCF has confirmed that they have only received a claim in the amount of $25,000.00 therefore any amount in excess of that has not been properly presented and is denied accordingly.

Claim Supervisor: *NP[redacted]dication Division*

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

Supervisor's Action: ***Denial approved***

Supervisor's Comments:

[3] GCCF denial letter Re: Claimant's Final Payment Claim, dated 22 April 2011.
[4] Letter from NPFC to Claimant, requesting additional information, 2 June 2011.
[5] PHONECON: Claimant to NPFC Staff 27 June 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

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: [redacted]

5890/DWHZ
Claim # N10036-0826
03 June 11

[redacted]

Re: Claim Number: N10036-0826

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 N10036-0826 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 N10036-0826.

Mail reconsideration requests to:

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

Sincerely,

[redacted]

Cl[redacted] Division
National Pollution Funds Center
U.S. Coast Guard

Enclosure: Claim Summary/Determination Form

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-0826
Claimant	[redacted]
Type of Claimant	Corporate (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	$14,000.00

FACTS

On or about 20 April 2010, the Mobile Offshore Drilling Unit Deepwater Horizon (Deepwater Horizon) exploded and sank in the Gulf of Mexico. As a result of the explosion and sinking, oil was discharged. 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 16 May 2011, [redacted] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for $14,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.[1]

Claimant, a trucking company located in New Orleans, Louisiana, alleged that as a result of the Deepwater Horizon oil spill, it lost business because customers did not have income to pay for the Claimant's services and the Claimant did not receive new customer referrals.[2] Claimant indicated that most of its business comes from workers who work in and around the Gulf and were affected by the 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.

(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 26 May 2011.
[2] PHONECON: Claimant and NPFC Staff, 2 June 2011.
[3] Id.

FOIA2011-3380-00003248

returns, financial statements, and similar documents. In addition, comparative figures for profits or earnings for the same or similar activities outside of the area affected by the incident also must be established.

(d) Whether alternative employment or business was available and undertaken and, if so, the amount of income received. All income that a claimant received as a result of the incident must be clearly indicated and any saved overhead and other normal expenses not incurred as a result of the incident must be established.

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

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

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

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support this claim, Claimant submitted the following documentation:

1. OSLTF optional claim form;
2. Letter from Claimant to NPFC, withdrawing claim for future earnings, dated 11 May 2011;
3. Copy of letter from NPFC to Claimant, regarding initial NPFC filing requirements;
4. Copy of letter from Claimant to GCCF, requesting review of his denial by GCCF;
5. 2010 La. Corporate Income Tax Return, showing gross revenue of $54,455 and net income of $2,734;
6. Income Statement showing Jan. 2010 net income of $6,097.00 and Feb. 2010 net income of $6,069.00;
7. Income Statement from Mar. 2010 to Sept. 10 showing net income ranging from $2,190.00 to $3,859.00;
8. Income Statement from Oct. 2010 to Dec. 2010 showing net income ranging from $3,169 in Dec. and $4,899 in Oct;
9. Copy of Claimant's Louisiana driver's license;
10. Certified copy of articles of incorporation for Claimant's business, incorporated in 1986;
11. Copy of form noting Claimant's address change from Baton Rouge to New Orleans;
12. Copy of form denoting three corporate directors, including Claimant and Claimant's spouse;
13. Copy of undated news article, stating that nine months after the Deepwater Horizon spill, Louisiana's marshes are still "plagued with oil;"
14. Letter from Claimant projecting future losses of $14,000 per year for the next five years (Redacted by later communication from Claimant. See #2);

15. Form 1120 from 2009, showing total income of $54,455.00 profit of $2,724.00;
16. 2009 Louisiana Federal Income Tax Deduction Worksheet showing La. net income of $2,734.00
17. 2009 Loss Carry Forward Information Form, showing net operating loss carry forward of $14,075 from 2008;
18. Form 4136 Credit for Federal Tax Paid on Fuels, 2008;
19. 2008 Schedule M-1 Explanation Attachment showing net loss of $14,075.00
20. 2008 NOL Deduction Summary Statement showing losses of $15,051 carried forward to 2009.
21. 2008 NOL Deduction Statement $318 carryover to 2008;
22. 2008 Detail Statements showing $43,825 in deductions;
23. 2008 NOL worksheet showing taxable income for 2008 of $-14,075;
24. 2009 Detail Statements showing total deductions of $45,163.00;
25. 2008 Form 8879-C; and
26. 2008 Form 1120, Corporate Income Tax Return showing gross sales of $55,579.00 and taxable income of $-14,075.00.

Prior to presentment to the NPFC, Claimant presented Emergency Advance Payment and Final payment Claims to the RP/GCCF and was assigned GCCF Claimant ID [redacted]. Both claims were denied by the GCCF.[4]

On 16 May 2011, Claimant presented this claim for $14,000.00 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, 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 his claim.

The NPFC reviewed all information and documentation provided by the Claimant. Financial statements provided by the Claimant indicated that the Claimant's business grossed $55,579.00 in sales in 2008 and $54,455.00 in 2009.[5] Claimant's income statements for 2010 indicate gross sales totaling $53,742.00.[6] Claimant grossed $1,124.00 less in sales from 2008 to 2009, and only $713.00 less from 2009 to 2010.

Additionally, in a phone conversation between the Claimant and NPFC staff, the Claimant indicated that he did not lose any specific customers, or suffer any particular job cancellations as a result of the oil spill, but stated that his business was generally affected as most of his customers work in and around the Gulf of Mexico.[7] He also stated that he did not keep records of customers and would not be able to provide documentation of cancellation of services following the oil spill.[8]

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[4] GCCF denial letter Re; Claimant's EAP claim, dated 4 November 2010; GCCF denial letter Re: Claimant's Final Payment claim, dated 27 May 2011.
[5] See Income Tax Statements provided by Claimant.
[6] Total of monthly sales provided by Claimant on 2010 Income Statements.
[7] PHONECON: Claimant and NPFC Staff, 2 June, 2011.
[8] Id.

Based on the above information, the Claimant has not established a financial loss for which he can be compensated, nor has he been able to demonstrate that his business was harmed by the Deepwater Horizon oil spill.

Because Claimant has failed to show that he has suffered a loss in income as a result of 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] ***ision***

Date of Supervisor's Review: ***6/3/11***

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
[redacted]
Fax: 202-493-6937
5890
5/23/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: [redacted]

[redacted]

RE: Claim Number: N10036-0827

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 N10036-0827 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 N10036-0827.

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

Encl: (1) Claim Summary/Determination Form

09/14/11 FOIA2011-3380-00003252

CLAIM SUMMARY / DETERMINATION FORM

Date	: May 20, 2011
Claim Number	: N10036-0827
Claimant	[redacted]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: $50,000.00

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 04, 2011, [redacted] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking $50,000.00 in lost profits and earning capacity resulting from the Deepwater Horizon oil spill. The Claimant asserted that due to the Deepwater Horizon oil spill, he was "laid off as an AB Seamen [sic]" from his job with [redacted] on January 28, 2011.[1]

As we understand, [redacted] performs a variety of functions, all associated with deepwater drilling operations. The Form LWC 77 dated February 16, 2011, indicated a Reduction in Force (RIF) due to a Lack of Work.[2] A separate letter presented from [redacted] Human Resources Administrator revealed that "as a result of the economic conditions that face our particular industry which is Marine Transportation, due to the unfortunate occurrence of the oil spill and with the depressed utilization of our equipment it became necessary to lay off [redacted]."[3]

The Claimant presented an Interim Payment claim to the RP/GCCF and was assigned Claimant Identification Number [redacted] The claim was subsequently denied in a letter dated April 22, 2011.[4]

APPLICABLE LAW

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

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[1] NPFC Optional OSLTF Claim Form, dated 05 May 2011, Letter from [redacted], dated 25 April 2011, and LWC 77 Separation Notice Alleging Disqualification, dated 01 February 2011

[2] Form LWC 77 Separation Notice Alleging Disqualification, dated 01 February 2011

[3] Letter from [redacted], dated 16 February 2011

[4] GCCF Denial Letter dated 22 April 2011

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

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

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

(b) That the claimant's income was reduced as a consequence of injury to, destruction of, or loss of property or natural resources, and the amount of that reduction.

(c) The amount of the claimant's profits or earnings in comparable periods and during the period when the claimed loss or impairment was suffered, as established by income tax returns, financial statements, and similar documents. In addition, comparative figures for profits or earnings for the same or similar activities outside of the area affected by the incident also must be established.

(d) Whether alternative employment or business was available and undertaken and, if so, the amount of income received. All income that a claimant received as a result of the incident must be clearly indicated and any saved overhead and other normal expenses not incurred as a result of the incident must be established.

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

DETERMINATION OF LOSS

Claimant's Submission

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

- Optional OSLTF Claim Form, signed 5 May 2011 and received by the NPFC on 17 May 2011;
- GCCF Interim Payment/Final Payment Denial Letter dated 22 April 2010;
- GGCF Letter re: Claimant Identification Number: [redacted] dated 8 December 2010;
- GGCF Letter requesting additional information dated 31 January 2011;
- Letter from [redacted] dated 16 February 2011;
- Form LWC 77 dated 01 February 2011;
- Employer Authorization Letter to [redacted] from [redacted] dated 28 February 2011;
- Unaddressed correspondence from [redacted] dated 30 November 2010 re: Claimant's employment history with [redacted]
- 2011Claimant's Louisiana Personal Driver's License and copy of Social Security Card;
- GCCF Interim payment Clain Form dated 28 February 2011;
- Correspondence from [redacted] dated 7 March 2011;
- Hardship Letter to [redacted] dated 23 February 2011;
- Correspondence from [redacted] dated 3 February 2011;

- Hardship Letter to [redacted] dated 22 February 2011;
- Claimant's Payroll Stubbs for the periods ending 13 June 2010 through 28 November 2011;
- 2008 Individual Tax Return;
- 2009 Individual Tax Return;
- 2010 Individual Tax Return;
- Claimant's Letter to the NPFC dated 06 May 2010.

NPFC Determination

The claim is DENIED. Under 33 U.S.C. § 2702(b)(2)(E) and 33 C.F.R. Part 136, a claimant must prove that his loss of income was due to injury or destruction or loss of real or personal property or a natural resource as a result of a discharge or substantial threat of a discharge of oil. Under 33 C.F.R. § 136.105(a) and § 136.105(e)(6), the claimant bears the burden of providing to the NPFC all evidence, information, and documentation deemed necessary by the Director, NPFC, to support his claim.

The NPFC reviewed all information and documentation provided by the Claimant. After reviewing the information presented it is apparent that, despite a well-documented history of employment with [redacted] the causation of the Claimant's termination was a business decisions of his employer, one necessary for continued operations. A conversation with the Human Resources Administrator for [redacted] revealed that after the initial oil spill incident, BP hired every single vessel in the [redacted] fleet for the spill response[5]. The Claimant's vessel was not relieved from response duty until January 19, 2011, and the Claimant was not separated from his position until January 28, 2011.[6] Subsequent to the end of the BP spill response, there were no jobs available due to the extensive permitting delays, and [redacted] was forced to let go of a number of employees.[7]

The Claimant has failed to meet the burden of proof in establishing the claimed loss of profits and earnings 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: ***Claims [redacted] Division***

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

Supervisor Action: ***Denial approved***

Supervisor's Comments:

[5] PHONECON between [redacted] Human Resources Administrator and NPFC Staff, 19 May 2011
[6] LWC 77 Separation Notice Alleging Disqualification, dated 01 February 2011
[7] PHONECON between [redacted] Human Resources Administrator and NPFC Staff, 19 May 2011

U.S. Department of
Homeland Security

**United States
Coast Guard**

Director
United States Coast Guard
National Pollution Funds Center

[redacted]
Fax: 202-493-6937

CERTIFIED MAIL-RETURN RECEIPT REQUESTED
Number: [redacted]

5890/DWHZ
Claim # N10036-0828
25 July 2011

[redacted]

Re: Claim Number: N10036-0828

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 N10036-0828 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 N10036-0828.

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 Division
National Pollution Funds Center
U.S. Coast Guard

Enclosures: (1) Claim Summary/Determination Form

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-0828
Claimant	[redacted]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	$124,597.00

FACTS

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

CLAIM AND CLAIMANT

On 07 May 2011, [redacted] (Claimant) presented an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) seeking $124,597.00 in loss of profits and impairment of earnings capacity that allegedly resulted from the Deepwater Horizon oil spill.

Claimant is the owner of two rental properties; one located in Destin, Florida and one located in Rosemary Beach, Florida.[1] Claimant rents out the properties year-round to tourists as vacation homes.[2] Claimant asserted that as a result of the Deepwater Horizon oil spill, the tourism industries collapsed in Destin and Rosemary Beach, respectively, reducing demand for the Claimant's properties.[3] As a result of the reduced demand for the properties, Claimant asserted that he lost income in 2010 and 2011.[4]

Claimant calculated his sum certain by adding the total loss claimed for the property in Destin ($54,127.00) to the total loss claimed for the property in Rosemary Beach ($70,470.00)[5]. The final number totaled $124,597.00.

APPLICABLE LAW

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

The 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] Description of Loss of Business and Profits and Earnings.
[2] PHONECON between NPFC and Claimant dated 23 May 2011.
[3] Id.
[4] OSLTF Claim Form.
[5] Claimant added the loss for May 2010-February 2011 ($47,420.00) to the losses in March 2011 ($13,830.00) to the losses in April 2011 ($9,220.00) for a total of $70,470.00.

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 Oil Spill Liability Trust Fund ('OSLTF') Claim Form received 07 May 2011;
- Description of Loss of Business Profits and Earnings;
- GCCF Interim Payment Claim Form for $47,420.00;
- GCCF Interim Payment Claim Form for $54,127.00;
- Tax Returns for 2006-2009;
- 2010 Profit and Loss spreadsheet for [redacted]
- Letter describing effect of Deepwater Horizon oil spill;
- Maps tracking the oil discharge from the Deepwater Horizon oil spill;
- News articles describing the impact of the Deepwater Horizon oil spill;
- Copy of deed to [redacted] according to the plat thereof as recorded in Plat Book 1, Page 17, Public Record s of Okaloosa County, Florida;
- Copy of mortgage for [redacted]

- Letter dated 27 February 2011 describing the listings for the property at [redacted]
- Rental Rates for [redacted]
- 2010 Rental Season information dated 28 January 2011;
- 2010-2011 Business plan for [redacted]
- News articles describing the impact of the Deepwater Horizon oil spill;
- Florida Senate Economic Update: The BP Oil Spill and Beyond;
- Letter from [redacted] to Claimant dated 17 June 2010 with accompanying 2008 tax return forms signed 17 June 2010;
- Letter from Hafner & Associates to Claimant dated 17 June 2010 with accompanying 2007 tax return forms;
- Letter from Hafter & Associates to Claimant dated 15 February 2011 with accompanying 2006 tax return forms;
- 2009 Form 1065 U.S. Return of Partnership Income Federal tax form.

Prior to presenting this Claim to the GCCF, Claimant received payment on 23 June 2010 from BP in the amount of $15,000.00.[6] Prior to presenting this Claim to the NPFC, Claimant filed an Emergency Advance Payment One Month Claim (EAP -1) with the GCCF on 04 September 2010 in the amount of $20,000.00.[7] He was assigned Claimant Identification [redacted] and Claim [redacted] Claimant's EAP-1was paid on 27 June 2011 in the amount of $20,000.00.[8] Additionally, Claimant filed a Supplemental Payment Claim (Supp-1) with the GCCF on 08 October 2010 in the amount of $32,000.00.[9] He was assigned Claim I [redacted] Claimant's Supplemental Payment Claim was paid on 27 June 2011 in the amount of $3,900.00.[10] Claimant filed four additional Supplemental Payment Claims with the GCCF on 10 November 2010 the amount of $10,000.00, $4,000.00, $4,000.00 and $4,000.00.[11] He was assigned Claim # [redacted] These four Supplemental Payment Claims were all denied on 14 December 2010.[12] Additionally, Claimant filed an Interim Payment Claim Quarter I [redacted] with the GCCF on 01 March 2011 in the amount of $101,547.00.[13] He was assigned Claim [redacted] This claim was denied on 28 June 2011.[14] Claimant has submitted a request for Re-Review to the GCCF on this claim.[15] Additionally, Claimant filed an Interim Payment Claim Quarter II [redacted] with the GCCF on 22 April 2011 in the amount of $32,270.00.[16] He was assigned Claim [redacted] Claimant has submitted a request for Re-Review to the GCCF and a determination letter has not been issued on this claim.[17] On 28 June 2011, the GCCF offered Claimant a Final Payment Offer of $25,000.00.[18] As of the writing of this determination, Claimant has not acted upon this offer.[19] Since presenting his claim to the NPFC on 07 May 2011, Claimant has filed an Interim Payment Claim Quarter III[20] [redacted] The [redacted] fails to satisfy the presentment requirements of OPA as it was filed after his claim to the NPFC was presented. Accordingly, the NPFC will not address the [redacted]

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[6] Report from the GCCF dated 15 July 2011.
[7] Id.
[8] GCCF Payment Letter dated 27 June 2011.
[9] Report from the GCCF dated 15 July 2011.
[10] GCCF Payment Letter dated 27 June 2011.
[11] Report from the GCCF dated 15 July 2011.
[12] GCCF Denial Letter dated 14 December 2010.
[13] Report from the GCCF dated 15 July 2011.
[14] Determination letter on interim payment, 28 June 2011.
[15] GCCF Claimant Status.
[16] Report from the GCCF dated 15 July 2011.
[17] GCCF Claimant Status.
[18] GCCF Final Payment Offer Letter dated 28 June 2011.
[19] GCCF Claimant Status.
[20] Id.

Based upon the evidence provided by the Claimant, it appears that the subject matter for the Claimant's five supplemental claims, [redacted], and [redacted] are the same as the subject matter of his claim before the NPFC, i.e., that his income was reduced due a decrease in demand for the Claimant's vacation properties as a result of the Deepwater Horizon oil spill. The NPFC deems the Claimant's five supplemental claims, Interim Payment Claim Quarter I and Interim Payment Claim Quarter II to be properly presented to the RP and properly presented to the NPFC. The NPFC deems [redacted] as properly presented to the RP but not properly presented to the NPFC. To the extent that the subject matter is the same for the Claimant's five supplemental claims, [redacted] Claimant's sum certain presented to the GCCF totals $133,817.00. Accordingly, this Claim Summary Determination for NPFC Claim N10036-0828 considers and addresses the earnings claimed in seven of the claims presented to the responsible party up to the amount of $124,597.00, specifically: GCCF Claim #'s [redacted]

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 the Claimant.

The claim is denied because the Claimant has not proven he suffered a financial loss due to the Deepwater Horizon oil spill. Claimant asserted that the Deepwater Horizon oil spill caused tourism in both the Destin, Florida and the Rosemary Beach, Florida regions to plummet, reducing the demand for the Claimant's vacation properties during the summer of 2010. Claimant stated the vacancies at both vacation properties reduced his income. Claimant, however, failed to provide sufficient evidence to support these assertions.

Claimant's submission to the NPFC consisted mainly of tax returns, loss calculations, and news articles. On 23 May 2011, the NPFC requested additional information from the Claimant to document his loss, as well as provide a connection between his alleged loss and the Deepwater Horizon oil spill. The NPFC requested, among other things, rental contracts for the properties, documentation of cancelled contracts due to the Deepwater Horizon oil spill, and contact information for customers who cancelled due the Deepwater Horizon oil spill. To date no response regarding the above requests has been received by the NPFC.

This claim is denied because the Claimant failed to meet his burden to demonstrate (1) that there was an alleged loss in the amount claimed, and (2) 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.

Claim Supervisor: ***NPFC [redacted] cation Division***

Date of Supervisor's Review: ***7/24/11***

Supervisor's Actions: ***Denial approved***

Supervisor's Comments:

U.S. Department of
Homeland Security

**United States
Coast Guard**

Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
[redacted]

5890
5/18/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: [redacted]

[redacted]

RE: Claim Number: N10036-0829

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 N10036-0829 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 N10036-0829.

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 FOIA2011-3380-00003261

CLAIM SUMMARY / DETERMINATION FORM

Date	: May 18, 2011
Claim Number	: N10036-0829
Claimant	[redacted]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: $80,338.00

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 17, 2011, [redacted] presented a lost profits & earnings capacity claim on behalf of [redacted] (Claimant), in the amount of $80,338.00 to the National Pollution Funds Center (NPFC) for reimbursement. The Claimant stated on the Optional OSLTF form that "the oil spill caused tenants to lose their jobs, therefore, tenants moved out."[1]

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.

[1] Optional OSLTF Claim Form dated April 13, 2011

FOIA2011-3380-00003262

(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;
- Copy of GCCF denial letter, April 22, 2011;
- 2009 and 2010 IRS Form 1120 for [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 $80,338.00, 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 $80,338.00, 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: [redacted]

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
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD
[redacted]
Fax: 202-493-6937

CERTIFIED MAIL - RETURN RECEIPT REQUESTED
Number: [redacted]

5890/DWHZ
Claim# N10036-0830
22 June 2011

[redacted]

RE: Claim Number: N10036-0830

Dea[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 N10036-0830 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 N10036-0830.

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
Claims Manager

Enclosure: Claim Summary/Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	N10036-0830
Claimant	[redacted]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings 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 17 May 2011, [redacted] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for $10,000.00 in loss of profits and impairment of earnings resulting from the Deepwater Horizon oil spill.

Claimant works for [redacted] in Louisiana. Claimant stated that due to the Deepwater Horizon oil spill, demand for [redacted] "services declined resulting in a reduction of hours and hence a reduction in income."[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, dated 17 May 2011.

(d) Whether alternative employment or business was available and undertaken and, if so, the amount of income received. All income that a claimant received as a result of the incident must be clearly indicated and any saved overhead and other normal expenses not incurred as a result of the incident must be established.

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

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

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

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support her claim, Claimant submitted the following documentation:

1) OSLTF claim form dated 17 May 2011;
2) 2008 W-2 from [redacted]
3) 2009 W-2 from [redacted]
4) 2010 W-2 from [redacted]
5) Paystubs from [redacted] from 17 January 2010 to 18 July 2010 (some are missing).

On 24 May 2011, the NPFC sent the Claimant a letter requesting additional information in order to further evaluate the claim. The Claimant did not respond to the request. The letter was sent Certified Mail Return Receipt Requested. The USPS Tracking site showed the letter was delivered on 28 May 2011.

Prior to presentment to the NPFC, Claimant presented an Emergency Advance Payment claim to the RP/GCCF for $10,000.00 in lost profits and earnings. Claimant was issued GCCF Claimant ID [redacted] and Clai[redacted] On 07 December 2010, the GCCF denied his claim.[2]

Claimant seeks $10,000.00 from the OSLTF for lost earnings as a result of the reduction in hours, which the Claimant attributed to 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)

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

and § 136.105(e)(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.

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, financial documentation for an accurate accounting of the Claimant's losses and documentation from the Claimant's employer explaining how the Deepwater Horizon oil spill impacted the employer's business. It was sent on 24 May 2011. To date no response has been received by the NPFC.

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.

Claim Supervisor: ***NPFC [redacted] ication Division***

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

Supervisor's Actions: ***Denial approved***

Supervisor's Comments:

U.S. Department of
Homeland Security

United States
Coast Guard

Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD
[redacted]
Fax: 202-493-6937

CERTIFIED MAIL - RETURN RECEIPT REQUESTED
Number: [redacted]

5890/DWHZ
Claim# N10036-0831
7 July 2011

[redacted]

RE: Claim Number: N10036-0831

Dear [redacted]

The National Pollution Funds Center (NPFC), in accordance with 33 C.F.R. Part 136, denies payment on your claim, #N10036-0831. 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 N10036-0831.

Mail reconsideration requests to:

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

Sincerely,

[redacted]
NPFC Claims Adjudication

Enclosure: Claim Summary/Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	N10036-0831
Claimant	[redacted]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	$15,779.00

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 an Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Fund Center (NPFC) seeking $15,779.00 for loss of profits and impairment of earnings capacity damages that allegedly resulted from the Deepwater Horizon oil-spill.

The Claimant is a freelance writer who writes articles for magazines and publishes books regarding fishing and boating on the Gulf Coast. Claimant asserted that due to the spill "[m]magazines quit [sic] buying stories because they had no ad revenue to support editorial space."[1] The Claimant also advised that "sales of my saltwater fishing books…also fell dramatically."[2]

Claimant filed a claim with the GCCF in February of 2011 but the claim was denied on 22 April 2011.[3]

APPLICABLE LAW:

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

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

[1] Claimant's Optional OSLTF Claim Form Section 10 dated 14 May 2011.
[2] Letter from Claimant to NPFC Staff dated 4 May 2011.
[3] NPFC Interim Payment/Final Payment Denial Letter dated 22 April 2011.

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 dated 4 May 2011;
- Letter from Claimant to NPFC Staff dated 4 May 2011;
- NPFC Emergency Advance Payment (EAP) Denial Letter dated 23 November 2010;
- Yahoo.com search results for [redacted] dated 5 May 2011;
- 2010 IRS Form 1040 tax return;
- 2009 IRS Form 1040 tax return;
- 2009 W-2 [redacted] Inc.;
- 2008 IRS Form 1040 tax return;
- 2008 W-2 [redacted], Inc.;
- 2007 IRS Form 1040 tax return;

- 2007 W-2 [redacted]
- 2007 W-2 [redacted] and
- NPFC Interim Payment/Final Payment Denial Letter dated 22 April 2011.

Claimant seeks $15,779.00 for loss of profits and earnings capacity allegedly resulting from the Deepwater Horizon incident.

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.

The claim is denied because the Claimant's submission fails to meet the requirements of 33 C.F.R. § 136.231-235 to establish a claim for loss of profits or impairment of earnings capacity. For example, beyond the Claimant's own assertions, the Claimant has not provided any independent information which would indicate that his losses were a result of the oil spill as opposed to other possible factors such as generally deteriorating market conditions. A review of the Claimant's annual income for the years 2007 to 2010 indicated a steady and significant drop in the Claimant's income between the years 2008 and 2010, a period over which a substantial portion of the reduction in income predates the subject oil spill. Furthermore, the Claimant failed to respond to a letter from the NPFC requesting additional information as to how the oil spill may have caused the Claimant's losses.[4]

This claim is denied because the Claimant has failed to demonstrate that the 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 Supervis[redacted]*ation Division*

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

Supervisor Action: ***Denial approved***

Supervisor's Comments:

[4] Letter from NPFC to Claimant dated 23 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
[redacted]
Fax: 202-493-6937

CERTIFIED MAIL - RETURN RECEIPT REQUESTED
Number: [redacted]

5890/DWHZ
Claim# N10036-0832
1 June 2011

[redacted]

RE: Claim Number: N10036-0832

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 N10036-0832 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 N10036-0832.

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
Claims Manager

Enclosure: Claim Summary/Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	N10036-0832
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 18 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 resulting from the Deepwater Horizon oil spill.

The Claimant worked for [redacted] from July 2009 to May 2010. Prior to the Deepwater Horizon oil spill, he indicated that he worked as a [redacted] galley/utility hand for an offshore catering company and would go on 28 day tours of Venice, LA with a gross monthly income of $3,074.00. Claimant asserted he "was scheduled for a permanent position in Bayou La Batre, AL but the oil spill put a delay on departing crews."[1] He indicated that he was released from [redacted] "due to inactivity in the lack of available positions and cancelled contracts."[2] After his release, he began collecting unemployment in the amount of $95.00 a week.

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] Hardship letter to [redacted] dated 05 February 2011.
[2] Id.

FOIA2011-3380-00003274

(c) The amount of the claimant's profits or earnings in comparable periods and during the period when the claimed loss or impairment was suffered, as established by income tax returns, financial statements, and similar documents. In addition, comparative figures for profits or earnings for the same or similar activities outside of the area affected by the incident also must be established.

(d) Whether alternative employment or business was available and undertaken and, if so, the amount of income received. All income that a claimant received as a result of the incident must be clearly indicated and any saved overhead and other normal expenses not incurred as a result of the incident must be established.

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

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

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

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support his claim, Claimant submitted the following documentation:

1) Optional OSLTF claims form dated 14 May 2011
2) Hardship Letter addressed to [redacted] dated 05 February 2011
3) Letter addressing unemployment benefits
4) [redacted] Remote Sites letter signed by [redacted] (chef/supervisor)
5) Letter explaining Claimant did not file 2008 taxes
6) 2009 Federal Return Recap: 2009 W-2 from [redacted] 2009 W-2 from [redacted], Form 1040 pages one and two recap
7) [redacted] Tax Benefits Summary
8) Two Paystubs from [redacted] Sites Partnership: 21 October 2009 and 29 October 2009
9) GCCF denial letter addressing the fact that they do not pay moratorium related claims i.e. support services.

Prior to presentment to the NPFC, Claimant presented an Emergency Advance Payment (EAP), Interim Payment and Final Payment claims for lost profits and earnings to the GCCF. He was issued GCCF Claimant ID [redacted] Claimant's EAP and Interim Payment claims were denied by the GCCF.[3]

[3] GCCF denial letter Re: Claimant's EAP claim, dated 6 December 2010; GCCF denial letter Re: Claimant's Interim Payment claim dated 6 May 2011.

On 18 May 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 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 considered all the documentation submitted by the Claimant.

Claimant alleged that the Deepwater Horizon oil spill impacted the availability of work for departing crews and led to his release from [redacted] Claimant provided a letter from [redacted] Chief/Supervisor, which stated that "[a]ssignments were few and far, and since the oil spill, a downsizing in remote site workers has occurred. [Claimant] was a part of that downsizing."[4] The letter indicated that [redacted] downsized, and the Claimant lost his job at [redacted] as a result of downsizing.

Because the Claimant has not demonstrated that his alleged loss in the amount of $25,000.00 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.

[redacted]

Claim Supervisor: *[redacted]udication Division*

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

Supervisor's Actions: ***Denial approved***

Supervisor's Comments:

[4] [redacted] letter signed by [redacted] (chef/supervisor).

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

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: [redacted]

5890/DWHZ
Claim # N10036-0834
23 May 2011

[redacted]

Re: Claim Number: N10036-0834

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 N10036-0834 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 N10036-0834.

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

FOIA2011-3380-00003277

CLAIM SUMMARY/DETERMINATION FORM

Date	19 May 2011
Claim Number	N10036-0834
Claimant	[redacted]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
Amount Requested	$12,012.00

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 May 2011, [redacted] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for $12,012.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

Claimant asserted that due to the Deepwater Horizon oil spill, he "[b]ecame unemployed and was forced to relocate to another state to find work."[1] Claimant was employed as a pipe fitter at [redacted] from 8 August 2007 until 30 July 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

[1] Section IV.C.1 of GCCF Interim Claim Form
[2] Section IV.C.1 of GCCF Interim Claim Form and Letter from [redacted] dated 14 March 2011

FOIA2011-3380-00003278

profits or earnings for the same or similar activities outside of the area affected by the incident also must be established.

(d) Whether alternative employment or business was available and undertaken and, if so, the amount of income received. All income that a claimant received as a result of the incident must be clearly indicated and any saved overhead and other normal expenses not incurred as a result of the incident must be established.

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

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

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

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support this claim, Claimant submitted the following documentation:

- OSLTF claim form;
- 2008 IRS Form 1040A Tax Return;
- 2009 IRS Form 1040A Tax Return ;
- 2010 IRS Form 1040A Tax Return;
- 2009 and 20010 W-2 Wage and Tax Statements;
- 2008 W-2 Wage and Tax Statements;
- Handwritten list of jobs applied for since end of employment with [redacted];
- Copy of Claimant's Florida Driver License and Social Security Card;
- GCCF Interim Payment Claim Form;
- Letter from [redacted] dated 14 March 2011; and
- GCCF Denial Letter re: Interim Payment/Final Payment Claim, dated 16 April 2011.

Prior to presentment to the NPFC, Claimant presented an Interim Payment Claim to the RP/GCCF and was assigned Claimant Identification Number [redacted] and Claim Number [redacted]. The Interim Payment claim was denied in a letter dated 16 April 2011.[3]

On 18 May 2011, Claimant presented this claim for $12,012.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

[3] GCCF denial letter Re: Claimant's Interim Payment claim, dated 16 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 his claim.

The NPFC reviewed all information and documentation provided by the Claimant. The NPFC also contacted the Claimant's former employer, [redacted] to verify whether the Claimant lost employment there as a result of the Deepwater Horizon oil spill. The Office Administrator at [redacted] indicated that no individuals had been laid off due to the oil spill.[4]

This claim is denied because the alleged loss in the amount of $12,012.00 is not due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil.

Claim Supervisor: ***Claim[redacted] Division***

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

Supervisor's Action: ***Denial approved***

Supervisor's Comments:

[4] PHONECON between [redacted] Office Administrator and NPFC Staff, 18 May 2011

FOIA2011-3380-00003280

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]

Fax: 202-493-6937

CERTIFIED MAIL - RETURN RECEIPT REQUESTED
Number [redacted]

5890/DWHZ
Claim# N10036-0835
1 June 2011

[redacted]

RE: Claim Number: N10036-0835

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 N10036-0835 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 N10036-0835.

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
Claims Manager

Enclosure: Claim Summary/Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	N10036-0835
Claimant	[redacted]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	$33,500.00

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 18 May 2011 [redacted] Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for $33,500.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

Claimant works for [redacted] Offshore. The Claimant works on supply ships that service deepwater rigs.[1] On 25 April 2010, the Claimant was sent on a ship named the [redacted] to the site of the Deepwater Horizon oil spill to aid vessels in the clean-up effort. Claimant asserted she was never fired or let go but has not worked for "seven months" in the Gulf because "most of the rigs in the gulf waters are either closed down or moved to another country."[2] Claimant stated she worked in Africa for one month (September to October 2010) when the moratorium took effect. Then there was no more work through present.[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] Letter from Claimant addressed to the NPFC dated 13 May 2011.
[2] Id.
[3] 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 undertake, but reasonably available;
(d) Any saved overhead or normal expenses not incurred as a result of the incident; and
(e) State, local, and Federal taxes.

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support her claim, Claimant submitted the following documentation:

1) Optional OSLTF claim form undated
2) Letter from Claimant to the NPFC addressing her claim
3) Copies of Alabama drivers license [redacted], Transportation Worker Identification Credential card, U.S. Merchant Mariner's Document
4) GCCF Denial letter on interim payment /final payment dated 30 April 2011
5) Gross income statement
6) 2008 IRS Tax Return Transcript
7) 2009 W-2 from [redacted]
8) 2010 W-2 from [redacted]
9) 2010 U.S. Individual Income Tax Return form 1040
10) Paystubs from [redacted] 22 January 2010, 5 February 2010, 22 February 2010, 5 March 2010, 19 March 2010, 7 April 2010, 22 April 2010, 7 May 2010, 21 May 2010, 7 June 2010, 7 July 2010, 22 July 2010, 20 August 2010, 4 September 2010, 7 September 2010, 22 September 2010, 7 October 2010, another 7 October 2010, 22 October 2010, 5 November 2010, 15 November 2010, 22 November 2010, another 22 November 2010, 7 December 2010, 22 December 2010.

Prior to presentment of the NPFC, Claimant presented an Interim Payment claim to the GCCF and was issued GCCF Claimant ID [redacted] and Claim [redacted] On 30 April 2011, the Interim Payment claim was denied by the GCCF. [4]

On 18 May 2011, Claimant presented the subject claim to the NPFC for $33,500.00 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 their claim. The NPFC considered all the documentation submitted by the Claimant.

The claim is denied because the alleged loss in the amount of $33,500.00 is not due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil.

Claimant submitted paystubs through the date of 22 December 2010 nearly 8 months post Deepwater Horizon oil spill.[5] The Claimant cited the moratorium on deepwater drilling and the oil rigs moving out of the gulf to other countries as the reason for her loss of income. The Claimant stated that work was provided to her through her company due to the oil spill by servicing response workers aboard the [redacted] "on or about 25 April 2010."[6]

This claim is denied because the Claimant failed to demonstrate that her alleged loss in the amount of $33,500.00 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.

[redacted]

Claim Supervisor: ***NPFC C[redacted]cation Division***

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

Supervisor's Actions: ***Denial approved***

Supervisor's Comments:

[4] GCCF denial letter Re: Claimant's Interim Payment claim, dated 30 April 2011.
[5] Paystubs up until the date of 22 December 2010 submitted by Claimant.
[6] Letter from Claimant addressed to the NPFC dated 13 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
[redacted]
Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: [redacted]

5890/DWHZ
Claim # N10036-0836
6 June 2011

[redacted]

Re: Claim Number: N10036-0836

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 N10036-0836 related to 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 N10036-0836.

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	N10036-0836
Claimant	[redacted]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings
Amount Requested	$134,000.00

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 17 May 2011, [redacted] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for $134,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.[1]

Claimant alleged that due to the Deepwater Horizon oil spill, [redacted] of New Orleans ([redacted]), "lost clients" which that loss in turn caused the Claimant, who is a subcontractor of [redacted] to lose work and wages.[2] Although the Claimant did not provide a detailed explanation of its losses or the calculation thereof, the NPFC has been able to determine that the Claimant seeks damages over a period of thirteen months after the 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.

[1] Optional OSLTF Claim Form dated 10 May 2011.
[2] Letter from Claimant dated 02 June 2011.

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

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

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

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support this claim, Claimant submitted the following documentation:

- OSLTF optional claim form dated 10 May 2011;
- Letter from Claimant dated 02 June 2011;
- [redacted] check statements for the periods from 05 May 2010 to 05 May 2011;
- Statement of loss calculations; and
- 2010 IRS Form 1065 Tax Return.

Prior to presentment to the NPFC, Claimant asserted that it presented a claim to the RP/GCCF which has not been settled after 90 days from the date of submission to the RP/GCCF.[3]

On 17 May 2011, Claimant presented this claim for $134,000.00 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 its 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 its claim.

In reviewing the information provided by the Claimant, the NPFC notes that the Claimant has not provided any specific documentation to support its contention that it is entitled to compensation as a result of the oil spill. The OSLTF optional claim form submitted by the Claimant contained little more than an assertion that a loss of income was suffered in the amount of $134,000.00, and advised the NPFC that a claim was previously submitted by the Claimant to the GCCF. The Claimant did not complete the claim form questions as to the nature and extent of the alleged damages, a description as to how the oil spill caused the alleged damages, or any actions taken by the Claimant to minimize its alleged damages. The Claimant's only support provided within the original claim submission consisted of copies of [redacted] check statements for the periods from 05 May 2010 to 05 May 2011.

On 31 May 2011 the NPFC sent the Claimant a letter seeking additional information. Within the letter, the NPFC specifically requested (1) a detailed explanation as to how the Claimant arrived at its lost damages; (2) a detailed explanation of causation of the alleged damages; (3) a statement from any

[3] Optional OSLTF Claim Form dated 10 May 2011.

employer that any reduction in hours was as a result of the oil spill; and (4) proof of the Claimant's profits and earnings for comparable periods.[4]

On 2 June 2011 the NPFC received additional information from the Claimant which contained (1) a re-transmission of [redacted]check statements for the periods from 05 May 2010 to 05 May 2011; (2) a partially completed statement of damages; (3) Claimant's 2010 IRS Form 1065 tax return; and (4) a letter from the Claimant to the NPFC dated 02 June 2011.

Within its letter of 2 June 2011, the Claimant stated in response to the NPFC's inquiries as follows:

> I feel that my loss of work and wages due to the loss of clients and was directly cause [sic] by the BP oil spill. I can't get a letter from my clients because some of them closed down are [sic] no longer in business.

Turning first to the Claimant's alleged damages, the Claimant has failed to provide evidence to establish a loss in the amount claimed. The [redacted]check statements for the periods from 05 May 2010 to 05 May 2011 do not stand on their own to indicate a loss of work as a result of the oil spill, nor does the Claimant's handwritten statement of loss calculations indicate such a loss. The NPFC is unable to connect the Claimant's handwritten calculations to any of the other claim information provided. In this respect, the Claimant has failed to meet its burden of proof under OPA and the associated regulations at 33 C.F.R. Part 136.

Secondly, the Claimant has advised the NPFC, both verbally and in writing, that it will be unable to provide any statements from former clients or any other similar written evidence of cancellations of work due to the oil spill.[5] As such, the Claimant cannot establish that its income was reduced as a consequence of injury to, destruction of, or loss of property or natural resources pursuant to 33 C.F.R. § 136.233(b).

Because the Claimant has failed to demonstrate (1) its alleged loss of $134,000.00, as claimed, and (2) 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.

[redacted]

Claim Supervisor: ***NPFC Claim[redacted] Division***

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

Supervisor's Action: ***Denial approved***

Supervisor's Comments:

[4] Facsimile of AI received by the NPFC on 2 June 2011.
[5] Letter from Claimant dated 2 June 2011 and PHONECON between Claimant and NPFC staff dated 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
[redacted]

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: [redacted]

5890/DWHZ
Claim # N10036-0837
23 May 2011

[redacted]

Re: Claim Number: N10036-0837

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 N10036-0837 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 N10036-0837.

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

Enclosure: Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00003289

CLAIM SUMMARY/DETERMINATION FORM

Date	20 May 2011
Claim Number	N10036-0837
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 18 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 worked as a part-time esthetician at the [redacted] from 28 April 2010[1], eight days after the oil spill, until 22 February 2011.[2] She asserted that she had "less clients and less tips [there],"[3] as a result of the Deepwater Horizon oil spill.

APPLICABLE LAW

Under the Oil Pollution Act of 1990 (OPA), at 33 U.S.C. § 2702(a), responsible parties are liable for removal costs and damages resulting from the discharge of oil into or upon 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] Letter re: [redacted] from [redacted] dated 16 August 2010.
[2] PHONECON between the [redacted] HR manager and NPFC Staff dated 20 May 2011.
[3] Claimant's Optional OSLTF Claim Form dated 20 April 2011.

profits or earnings for the same or similar activities outside of the area affected by the incident also must be established.

(d) Whether alternative employment or business was available and undertaken and, if so, the amount of income received. All income that a claimant received as a result of the incident must be clearly indicated and any saved overhead and other normal expenses not incurred as a result of the incident must be established.

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

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

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

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support this claim, Claimant submitted the following documentation:

- OSLTF optional claim form;
- Letter re: [redacted] from [redacted] dated 16 August 2010;
- Direct Deposit Summaries for the pay periods from 20 April 2010 until 01 December 2010; and
- GCCF Denial Letter re: Interim Payment/Final Payment Claim, dated 1 April 2011.

Prior to presentment to the NPFC, Claimant presented an Interim Payment Claim to the RP/GCCF and was assigned GCCF Claimant ID Number [redacted]. The Interim Payment claim was denied in a letter dated 1 April 2011.[4]

On 18 May 2011, Claimant presented this 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 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.

[4] GCCF denial letter Re: Claimant's Interim Payment/Final Payment Claim, dated 1 April 2011.

The NPFC reviewed all information and documentation provided by the Claimant. The NPFC also contacted the Claimant's former employer, the [redacted] to verify whether the Claimant lost earnings as a result of the Deepwater Horizon oil spill. The Human Resources Director at the [redacted] indicated that the [redacted] and [redacted] did not show a loss due to the oil spill.[5]

This claim is denied because the alleged loss in the amount of $5,000.00 is not due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil.

Claim Supervisor: ***Claims [redacted]ion Division***

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

Supervisor's Action: ***Denial approved***

Supervisor's Comments:

[5] PHONECON between the [redacted] and NPFC Staff, 20 May 2011.

FOIA2011-3380-00003292

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

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: [redacted]

5890/DWHZ
Claim # N10036-0838
03 June 2011

[redacted]

Re: Claim Number: N10036-0838

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 N10036-0838 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 N10036-0838.

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
Funds Center
U.S. Coast Guard

Enclosure: Claim Summary/Determination Form

09/14/11 FOIA2011-3380-00003293

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-0838
Claimant	[redacted]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	$29,232.89

FACTS

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

CLAIM AND CLAIMANT

On 13 May 2011, [redacted] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for $29,232.89 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

Claimant asserted that she owned an unspecified number of shares of common stock in British Petroleum (BP). According to the Claimant, stock dividend payments that were announced by BP after the oil spill were never paid, causing "loss on stock, dividends, and costs."[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] Optional OSLTF Claim Form dated 17 May 2010.

FOIA2011-3380-00003294

(d) Whether alternative employment or business was available and undertaken and, if so, the amount of income received. All income that a claimant received as a result of the incident must be clearly indicated and any saved overhead and other normal expenses not incurred as a result of the incident must be established.

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

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

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

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support this claim, Claimant submitted the following documentation:

- Letter from claimant to the NPFC dated 06 May 2011;
- OSLTF Optional Claim Form dated 17 may 2010; and
- Claimant's GCCF claim package.

Prior to presentment to the NPFC, Claimant presented an Interim Payment Claim to the RP/GCCF and was assigned Claimant Identification Number [redacted]. The Interim Payment claim was denied by the GCCF.

On 18 May 2011, the NPFC received this claim for $29,232.89 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 her claim.

The Claimant asserted that she did not receive dividend payments on BP stock; thus, she has suffered a loss of profits and impairment of earnings capacity as a consequence of the Deepwater Horizon incident. However, dividend payments are not a type of compensable damages under OPA. Furthermore, the cessation of payment of stock dividends is not a loss of profits or impairment of earnings capacity because the cessation is not due to the injury, destruction, or loss of real property or personal property or natural resources, but resulted from a business determination by BP to forego payment of quarterly dividends to stock holders. The ultimate

payment of dividends, even if publically announced previously or regularly scheduled, is within the sole discretion of the BP directors.[2] Similarly, any losses suffered by the Claimant due to the diminution in value of BP stock value which may have occurred as an indirect result of the spill is not a compensable loss under OPA.

This claim is denied because the Claimant has failed to show that the alleged loss in the amount of $29,232.89 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: ***NPFC Claim*** [redacted] ***Division***

Date of Supervisor's Review: ***6/3/11***

Supervisor's Action: ***Denial approved***

Supervisor's Comments:

[2] According to BP's stated dividend policy "[t]he amount and timing of dividends may be changed at any time without notice." http://www.bp.com/extendedsectiongenericarticle.do?categoryId=9033053&contentId=7060585.

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]

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: [redacted]

5890/DWHZ
Claim # N10036-0839
23 May 2011

[redacted]

Re: Claim Number: N10036-0839

Dea[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 N10036-0839 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 N10036-0839.

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	19 May 2011
Claim Number	N10036-0839
Claimant	[redacted]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	$26,000.00

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 May 2011, [redacted] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for $26,000.00 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, she lost her employment with [redacted] in Florida.[1] Claimant indicated that she has collected $17,160.00 in unemployment benefits from the State of Georgia since losing her job.[2] Claimant calculated her sum certain as the difference between her collected unemployment and previous year's earnings, as well as the loss of her residence and the associated fees.[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 from Claimant to the NPFC dated 23 April 2011
[2] Id.
[3] Id.

(c) The amount of the claimant's profits or earnings in comparable periods and during the period when the claimed loss or impairment was suffered, as established by income tax returns, financial statements, and similar documents. In addition, comparative figures for profits or earnings for the same or similar activities outside of the area affected by the incident also must be established.

(d) Whether alternative employment or business was available and undertaken and, if so, the amount of income received. All income that a claimant received as a result of the incident must be clearly indicated and any saved overhead and other normal expenses not incurred as a result of the incident must be established.

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

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

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

DETERMINATION OF LOSS

Claimant's Submission

To support this claim, the Claimant presented her OSLTF claim form and other financial and tax documentation.

Prior to presentment to the NPFC, Claimant presented Emergency Advance Payment and Final Payment claims to the GCCF. Both claims were denied.

On 18 May 2011, Claimant presented this claim for $26,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

NPFC Determination

This claim is denied. Under 33 U.S.C. § 2702(b)(2)(E) and 33 C.F.R. Part 136, a claimant must prove that his loss of income was due to 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 reviewed all information and documentation provided by the Claimant. The NPFC also conducted an investigation to verify the Claimant's assertion that she lost her job at Cuts By Us as a result of the Deepwater Horizon oil spill. In response to the NPFC's investigation, the

Claimant's former employer, [redacted] indicated that the Claimant was released from her position as a hair stylist for reasons unrelated to the oil spill.[4]

The claim is denied because the alleged loss in the amount of $26,000.00 is not due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil.

[redacted]

Claim Supervisor: ***C[redacted]ion Division***

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

Supervisor's Action: ***Denial approved***

Supervisor's Comments:

[4] PHONECON [redacted] representative/owner and the NPFC staff, 19 May 2011.

FOIA2011-3380-00003300

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]00
Fax: 202-493-6937

CERTIFIED MAIL -RETURN RECEIPT REQUESTED
Number [redacted]

[redacted]

5890/DWHZ
Claim # N10036-0840
3 June 2011

Re: Claim Number: N10036-0840

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 N10036-0753 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 N10036-0840.

Mail reconsideration requests to:

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

[redacted]
[redacted]cation Division
National Pollution Funds Center
U.S. Coast Guard

Enclosures: Claim Summary/Determination Form

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-0840
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 certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On 18 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 was employed as a beach cleaner via a staffing agency and customer service representative at [redacted] Panama City, FL.[1] Claimant stated due to the Deepwater Horizon oil spill, she was laid-off.[2]

Claimant's sum certain was calculated by making an estimate of what she was to be paid in 2010.[3]

APPLICABLE LAW

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

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

[1] PHONECON between Claimant and NPFC Representative, dated 19 May 2011.
[2] Id.
[3] Id.

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, dated 18 May 2011;
- 2010 version of W-2 for [redacted];
- 2010 version of W-2 for [redacted]; and
- 2010 version of W-2 for [redacted]

Prior to presenting this Claim, Claimant filed an Emergency Advance Payment (EAP) claim with the RP/GCCF and was assigned GCCF Claimant ID Numbe[redacted] and Claim Number [redacted] The EAP claim was denied on 29 October 2010.[5] Additionally, Claimant filed a Final Payment Claim and was assigned Claim Number [redacted][6] The Final Payment Claim was denied on 22 April 2011.[7]

[4]GCCF Denial Letter dated 29 October 2010.
[5]Id.
[6] GCCF Denial Letter dated 22 April 2011.
[7] Id.

On 18 May 2011, 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 C.F.R. § 136.105(a) and 136.105(e)(6), the 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 has not provided evidence demonstrating a financial loss due to the Deepwater Horizon oil spill. Claimant's supporting documents, three W-2 forms[8] from 2010, fail to establish a connection to a loss from the Deepwater Horizon oil spill. Nowhere does the Claimant provide any documentation indicating that the Claimant was laid-off due the Deepwater Horizon oil spill. On the contrary, the Claimant provided information that she was gainfully employed working to clean up the beaches affected by the Deepwater Horizon oil spill.[9]

In sum, the Claimant has not proven that her alleged loss in the amount of $5,000.00 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. The claim is accordingly denied.

[redacted]

Claim Supervisor: ***NPFC Claims Adjudication Division***

Date of Review: ***6/3/11***

Supervisor's Actions: ***Denial approved***

Supervisor's Comments:

[8] One, from the [redacted] was for work completed before the oil spill. Claimant stated this job was not affected by the Deepwater Horizon oil spill.

[9] Letter from [redacted] dated 21 March 201; Letter from [redacted] dated 23 May 2011.

09/14/11 FOIA2011-3380-00003304

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]0

Fax: 202-493-6937

CERTIFIED MAIL-RETURN RECEIPT REQUESTED
Number: [redacted]

5890/DWHZ
Claim # N10036-0841
3 June 2011

[redacted]

Re: Claim Number: N10036-0841

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 N10036-0753 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 N10036-0841.

Mail reconsideration requests to:

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

[redacted]ion Division
National Pollution Funds Center
U.S. Coast Guard

Enclosures: Claim Summary/Determination Form

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-0841
Claimant	[redacted]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	$20,000.00

FACTS

On or about 20 April 2010, the Mobile Offshore Drilling Unit Deepwater Horizon (Deepwater Horizon) exploded and sank in the Gulf of Mexico. As a result of the explosion and sinking, oil was discharged. 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 18 May 2011 [redacted] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for $20,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

Claimant was employed as a member of the janitorial staff with [redacted] n Slidell, LA.[1] Claimant stated that Porter provides contracting services for [redacted] including janitorial services.[2] Claimant stated that due to the Deepwater Horizon oil spill, Porter suffered a reduction in revenue.[3] Due to this loss of revenue, Claimant stated her position was eliminated and she was laid-off.[4]

Claimant's sum certain was calculated by comparing her income from 2009 and making an estimate of what she was to be paid in 2010.[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 U.S.C. § 2713(a). If the claim is either denied or not settled by any person

[1] PHONECON between Claimant and NPFC Representative on 19 May 2011.
[2] Id.
[3] Id.
[4] Id.
[5] Id.

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, dated 18 May 2011;
- [redacted] letter, from [redacted] to Claimant;
- Pay Stubs from [redacted] 1 February 2008, 6 June 2008-27 June 2008, 17 October 2008, 9 November 2008-26 November 2008, 17 April 2009, 1 May 2009-5 June 2009, 26 June 2009, 14 August 2009, 4 September 2009-30 October 2009, 15 January 2010-7 May 2010, 2 April 2010, 28 May 2010.

Prior to presenting this Claim, Claimant filed an Emergency Advance Payment (EAP) claim with the RP/GCCF and was assigned GCCF Claimant ID Number [redacted] and Claim Number [redacted]. The EAP claim was denied on 6 December 2010.[6] Additionally, Claimant filed an

[6] GCCF Denial Letter Re: Claimant's EAP claim, dated 6 December 2010.

Interim Claim with the GCCF and was assigned Claim Number [redacted] The Interim Claim was denied on 16 April 2011.[7] Further, Claimant has filed a Final Payment Claim and was assigned Claim Number [redacted] As of this determination, this Final Payment Claim is still under review by the GCCF.

On 18 May 2011, Claimant presented the subject claim for $20,000.00 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 has not provided evidence demonstrating a financial loss due to the Deepwater Horizon oil spill. Claimant's supporting documents include a letter from the Human Relations Manager at [redacted], stating that due to a lack of funding the company would be reducing personnel.[8] Nowhere does the letter mention the Deepwater Horizon oil spill, nor does it indicate that the Claimant was laid-off due to it. Repeated efforts to contact [redacted] by the NPFC to confirm the Claimant's assertions were unsuccessful.[9]

Because the Claimant has not proven that her alleged loss in the amount of $20,000.00 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 [redacted] ion Division***

Date of Review: ***6/3/11***

Supervisor's Actions: ***Denial approved***

Supervisor's Comments:

[7] GCCF Denial Letter Re: Claimant's Interim Payment claim, dated 16 April 2011.
[8] Letter from [redacted] o Claimant dated 26 May 2010.
[9] PHONECON between NPFC and [redacted] dated 19, 20, 23, 24, 25 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
[redacted]

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: [redacted]

5890/DWHZ
Claim # N10036-0842
27 June 2011

[redacted]

Re: Claim Number: N10036-0842

Dea[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 N10036-0842 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 N10036-0842.

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
Documentation Submitted by the Claimant

09/14/11 FOIA2011-3380-00003309

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-0842
Claimant	[redacted]
Type of Claimant	Corporate (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	$143,628.00

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 May 2011, [redacted] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for $143,628.00 for loss of profits and impairment of earnings capacity.[1]

Claimant, who was starting a credit collections cooperative during the spring of 2010, alleged that his "start up business was de-railed [, which caused] a loss of income [because] . . . Clients were confused and uncertain whether to sign on board as a direct result of the Deepwater Horizon incident"[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] Optional OSLTF Claim Form dated 6 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 undertake, but reasonably available;
(d) Any saved overhead or normal expenses not incurred as a result of the incident; and
(e) State, local, and Federal taxes.

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support this claim, the Claimant submitted the documentation listed in Enclosure (2).

Prior to presentment to the NPFC, the Claimant submitted a claim to the RP and was compensated in the amount of $8,890.00. The Claimant then submitted an Emergency Advance Payment Claim, as well as an Interim/Final Payment Claim to the RP/GCCF, and received a final denial on 22 April, 2011.[3]

Claimant seeks an alleged loss of profits of $143,628.00 from the OSLTF.

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, 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 his claim.

The NPFC reviewed all information and documentation provided by the Claimant. Of approximately eight seafood companies for which the Claimant was actively recruiting to join his Cooperative, two of those seafood companies became members.[4] These two companies made initial commitments before the oil spill, as indicated by email communication between company representatives and the Claimant.[5] There was no record of such pre-oil spill

[3] GCCF Denial Letter on Interim Payment/Final Payment Claim, 22 April 2011.
[4] Response to NPFC request for additional information, 17 June 2011.
[5] E-mail correspondences between representatives of member companies, 13, 16, 20 April 2011.

commitments on the part of the remaining six seafood companies. In conversations with these six companies, the NPFC staff learned that at least two members decided not to sign on after reviewing results of the feasibility report.[6] The remaining members indicated the oil spill was a factor influencing their decisions not to join in 2010, but generally stated that they are continuing to consider joining the Claimant's Cooperative, now that their businesses are improving.[7]

Additionally, according to the Claimant, during March of 2010, potential members were moving slowly in terms of committing to join the Cooperative and attempts made by the Claimant to secure letters of intent from those companies were unsuccessful.[8] Therefore, the Claimant has not demonstrated that these potential clients would have joined the Cooperative during the months immediately following the oil spill, for which the Claimant is seeking to recover alleged lost profits.

Based on the fact that the Claimant has not demonstrated that clients made commitments that were subsequently lost as a result of the oil spill, the Claimant has not demonstrated that he has suffered an actual loss as a result of the Deepwater Horizon oil spill. Furthermore, the Claimant's start-up business had no income in 2009 or in the months of 2010 prior to the oil spill in order to evaluate his comparable financials in support of his alleged loss amount. As such, the Claimant has not shown that he has suffered a reduction in income as a result of the oil spill.

Having reviewed all information provided by the Claimant, the NPFC has determined that the Claimant has not demonstrated that he lost earnings as a result of the Deepwater Horizon oil spill.

This claim is denied because (1) the Claimant has not demonstrated a loss of profits in the amount claimed or (2) that the alleged loss is the result of the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil.

Claim Supervisor: ***NPFC [redacted] ation Division***

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

Supervisor's Action: ***Denial approved***

Supervisor's Comments:

[6] PHONECONS: Potential member companies and NPFC Staff, 21 June 2011.
[7] Id.
[8] PHONECON: Claimant and NPFC Staff 22 June 2011.

Enclosure (2): Documentation Submitted by the Claimant

1. Optional OSLTF claim form;
2. Copy of GCCF Denial Letter on Interim Payment/Final payment Claim;
3. Document labeled "Attachment A," Establishing Evidence Of A Connection To The Spill;
4. Copy of Letter from GCCF to Claimant, acknowledging receipt of full review final payment claim form, dated 24 Jan 2011;
5. Copy of Letter from GCCF to Claimant, requesting financial documentation, 31 Jan 2011;
6. Copy of Full Review Final Payment Claim Form submitted by Claimant to GCCF, indicating compensation from BP of $8,890.00;
7. Document titled, "Forensic Accounting of BP Claim," dated 31 Dec. 2010;
8. Letter from Claimant to GCCF, explaining loss of monthly income and loss associated with start up costs, dated 12 Sept 2010;
9. Copy of GCCF Supplemental Request Form For Emergency Advance Payments For Lost Earnings or Profits, dated 12 Sept. 2010;
10. Document titled, "Forensic Accounting of BP Claim," dated 25 Aug. 2010;
11. Invoices to Gulf Marine Products for services from Claimant for May, July, August, September, 2010;
12. Invoices to Louisiana Shrimp and Packing for June, July, August, September 2010;
13. Letter from GCCF to Claimant, notifying of transfer of claim from BP to GCCF, 23 Aug. 2010;
14. Letter from GCCF to Claimant, notifying of transfer of claim from BP to GCCF, 7 Sept. 2010;
15. Letter from GCCF to Claimant, notifying of transfer of claim from BP to GCCF, 13 Sept. 2010;
16. Letter from GCCF to Claimant, denying emergency advance payment 8 Dec. 2010;
17. Letter from GCCF to Claimant, denying Supplemental Emergency Advance Payment 9 Dec. 2010;
18. Letter from Claimant to BP, 12 June 2010, detailing loss and describing start-up business;
19. Document titled "Forensic Accounting Analysis" from Claimant to GCCF;
20. Document titled "Accounting Analysis," listing proposed members and indicating participation in "feasibility report," dated 3 Aug. 2010;
21. Document titled "Accounting Analysis," indicating missed payments from Gulf Marine Products and Louisiana Shrimp and Packing, dated 3 Aug. 2010;
22. Document indicating GCCF payment on claim to Claimant in the amount of $8,890.00, dated 20 April 2010;
23. Letter from BP to Claimant, including payment of $8,890.00, dated 6 Aug. 2010;
24. Letter from GCCF to Claimant, assigning claim number, dated 10 Sept. 2010;
25. Document drafted by Claimant, listing services he provided, billing at an hourly rate of $150.00.
26. Document drafted by Claimant, titled, "Individual member cost based on 12 potential members"
27. Copy of letter from Claimant to Martin Bell-Worley Company, dated 14 July 2010;
28. Letters returned by 6 of 9 contacted companies in the seafood industry, dated 2 June 2010, requesting signature from each company as "acknowledgement of you[r] intention and consideration of [the BTCC] project;"
29. Letter from BP to Claimant, dated 13 July 2010; and

30. Document titled, "BTTC, LLC Revised Seafood Co-op budget March 2010."
31. Response to request for additional information, including list of contact names and numbers for potential co-op members;
32. "Revised Seafood Co-op Budget November 2010 (estimates), based on three members;"
33. Instructions for filing 2010 Federal Tax Return;
34. TurboTax print-out, showing 2010 balance due of $10,779.00;
35. 2011 Form 1040-ES Payment Voucher 3;
36. 2011 Form 1040-ES Payment Voucher 4;
37. Individual Estimated Income Tax, 15 June 2011;
38. Instructions for filing 2010 North Carolina Tax Return;
39. 2010 Federal Tax Return Summary;
40. 2011 Form 1040-ES Payment Voucher 1;
41. 2011 Form 1040-ES Payment Voucher 2;
42. 2011 Form 1040-ES Payment Voucher 3;
43. 2011 Form 1040-ES Payment Voucher 4;
44. 2010 Form 1040-V Payment Voucher;
45. 2010 Form 1040, showing adjusted gross income of $72,522.00;
46. 2010 Schedule B, Form 1040A, Interest and Ordinary Dividends;
47. 2010 Schedule C, Form 1040, Profit or Loss from Business;
48. 2010 Schedule SE, Form 1040, Self-Employment Tax;
49. 2010 Form 8829, Expenses for Business Use of Your Home;
50. 2010 Schedule M, Form 1040A, Making Work Pay Credit;
51. Instructions for 2010 North Carolina Tax Return;
52. Individual Income Payment Voucher, 2010;
53. 2010 Form D-400, Individual Income Tax Return;
54. 2010 Form D-400TC, Individual Tax Credits 2010;
55. Copy of e-mail dated 7 March 2010 from representative of member of co-op, to Claimant, regarding estimated individual cost of participation in co-op;
56. Copy of e-mail dated 6 March 2010 from representative of member of co-op to Claimant, regarding response to feasibility report;
57. Copy of e-mail to Claimant from member of co-op, offering to make contribution to co-op, 20 April 2011;
58. Copy of e-mails between Claimant and member of co-op regarding costs of joining, 13, 16 April 2011;
59. Revised Budget, from Claimant to members and potential members of co-op, dated 26 March 2010;
60. Revised Seafood Co-op Budget March 2010 (estimates), undated;
61. Copy of Feasibility Report, written by Claimant, dated Dec. 2009;
62. Letter from Claimant to "Future Cooperative Members," dated 6 March 2010;
63. Print-out of slide presentation, "Credit Co-op Proposal Feasibility Report, Phase Three," dated March 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
[redacted]
Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: [redacted]

5890/DWHZ
Claim # N10036-0843
10 June 2011

[redacted]

Re: Claim Number: N10036-0843

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 N10036-0843 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 N10036-0843.

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

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-0843
Claimant	[redacted]
Type of Claimant	Private (US)
Type of Claim	Real or Personal Property
Amount Requested	$2,879.00

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 May 2011, [redacted] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) in the amount of $2,789.00 for damage to real or personal property.[1]

Claimant owns a property in Alligator Point, FL, which had been listed for sale since January 2006.[2] Claimant alleged that she was showing the property regularly to interested buyers, but following the oil spill, interest decreased.[3]

This claim for property damage stems from the Claimant's allegation that she would have sold the property, were it not for the oil spill, and therefore, she would not be paying property taxes. Because the claim stems from loss of a potential sale, this claim has been reclassified as a claim for loss of profits and impairment of earnings capacity in the amount of $2,789.00.

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.

[1] Optional OSLTF Claim Form dated 10 May 2011.
[2] Letter from Claimant to BP Oil Service Center, 27 July 2010.
[3] Letter from Realtor, regarding lack of interest in Claimant's property, 28 July 2010.

(c) The amount of the claimant's profits or earnings in comparable periods and during the period when the claimed loss or impairment was suffered, as established by income tax returns, financial statements, and similar documents. In addition, comparative figures for profits or earnings for the same or similar activities outside of the area affected by the incident also must be established.

(d) Whether alternative employment or business was available and undertaken and, if so, the amount of income received. All income that a claimant received as a result of the incident must be clearly indicated and any saved overhead and other normal expenses not incurred as a result of the incident must be established.

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

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

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

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support this claim, Claimant submitted the following documentation:

- OSLTF optional claim form;
- Letter from Realtor to NPFC, stating that from the time of the Deepwater Horizon oil spill to 28 July 2010, the property had not been shown to any prospective buyers;
- Property Tax form for Franklin County, showing taxes of $2,828.69 due on property at issue due 12 April 2011;
- Letter from Claimant to BP, describing loss of potential sale and request for payment of property taxes for 2010, undated;
- Denial Letter from GCCF to Claimant, regarding Interim Payment/Final Payment Claim, dated 20 April 2011; and
- Documentation provided by the GCCF to the NPFC.

Prior to presentment to the NPFC, Claimant presented an Interim Payment/Final payment Claim to the RP/GCCF, and was assigned Claimant ID [redacted] The claim was denied on 20 April 2011.

On 18 May 2011, Claimant presented this claim for $2,879.00 in damage to real or personal property, which the NPFC interprets as a claim for loss of profits and impairment of earnings capacity in light of Claimant's submission.

NPFC Determination

Under 33 U.S.C. § 2702(b)(2)(E) and 33 C.F.R. Part 136, a claimant must prove that her economic loss 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 provided by the Claimant. The basis of the claim is the "loss of any potential sale."[4] However, the Claimant has not asserted that a particular sale had been cancelled and she remains in possession of the property. She therefore has not demonstrated an actual loss.

Furthermore, the Claimant has not shown that a discharge or substantial threat of discharge of oil is the reason for the alleged economic loss or loss of profits. Claimant indicated that she "placed [the property] on the market in January 2006, and reduced [the] asking price by over half in October 2009."[5] For over three years prior to the oil spill, the Claimant was unable to sell her property, which remains on the market following the Deepwater Horizon oil spill.

This claim is denied because the Claimant has failed to show that she has suffered a loss, or that her alleged loss is the result of discharge or substantial threat of discharge oil.

Claim Supervisor: [redacted]

Date of Supervisor's Review: ***6/10/11***

Supervisor's Action: ***Denial approved***

Supervisor's Comments:

[4] Optional OSLTF Claim Form, dated 10 May 2011.
[5] Letter from Claimant to BP Oil Service Center, 27 July 2010.

FOIA2011-3380-00003318

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

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: [redacted]

5890/DWHZ
Claim # N10036-0844
27 May 2011

[redacted]

Re: Claim Number: N10036-0844

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 N10036-0844 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 N10036-0844.

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

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-0844
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 19 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, who was employed cleaning a resort near Fort Myers, Florida, asserted that due to the Deepwater Horizon oil spill, her hours were greatly reduced resulting in a loss of income.[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 dated 19 May 2011.

FOIA2011-3380-00003320

(d) Whether alternative employment or business was available and undertaken and, if so, the amount of income received. All income that a claimant received as a result of the incident must be clearly indicated and any saved overhead and other normal expenses not incurred as a result of the incident must be established.

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

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

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

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support this claim, Claimant submitted the following documentation:

- OSLTF claim form;
- Letter from Claimant dated 9 May 2011;
- Letter from [redacted] dated 17 May 2011;
- 2008, 2009, and 2010 W-2 Wage and Earnings Statements; and
- [redacted] Earnings Statements for pay periods from 5 March 2010 to 2 April 2011.

Prior to presentment to the NPFC, Claimant presented an Interim Payment Claim to the RP/GCCF and was assigned Claimant Identification Number [redacted] The Interim Payment claim was denied by the GGCF prior to presentment of the subject claim.

On 18 May 2011, the Claimant presented the subject claim 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 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.

The NPFC reviewed all information and documentation provided by Claimant. To verify whether the Claimant's hours were reduced as a result of the Deepwater Horizon oil spill, the NPFC contacted the Claimant's employer, [redacted] and [redacted] contracted [redacted] to provide cleaning and housekeeping services at resorts managed by [redacted] indicated that it did not suffer a decrease in business as a result

of the oil spill and directed the NPFC to speak further with [redacted][2] [redacted] for its part, indicated that occupancy rates at its resorts remained steady at 80% and any changes in janitorial staffing would have been the janitorial staffing company's decision.[3]

In light of the foregoing, the Claimant has failed to show that the alleged loss in the amount of $6,000.00 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. Therefore this claim is denied.

Claim Supervisor [redacted]

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

Supervisor's Action: ***Denial approved***

Supervisor's Comments:

[2] PHONECON [redacted] and NPFC Staff, 25 May 2011
[3] PHONECON [redacted] and NPFC Staff, 25 May 2011

FOIA2011-3380-00003322

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

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: [redacted]

5890/DWHZ
Claim # N10036-0845
23 May 2011

[redacted]

Re: Claim Number: N10036-0845

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 N10036-0845 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 N10036-0845.

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	20 May 2011
Claim Number	N10036-0845
Claimant	[redacted]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	$60,802.00

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 May 2011, [redacted] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for $60,802.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

Claimant alleged that he "was laid off from [redacted] on June 1st, 2010 due to the oil spill in the Gulf of Mexico."[1] Claimant worked as a sales associate "for the territory including the Panhandle of Florida, Gulf Coast of Alabama and Mississippi" where he "sold advertising, brochures, and promotion material for the hotel restaurant, and entertainment industries."[2] To support his claim, the Claimant presented the NPFC with an undated typed letter on [redacted] letterhead. This letter, allegedly typed and signed by the Vice President of Sales, asserted that the Claimant's termination from the company in question "was a direct result of the BP oil spill in the Gulf of Mexico" and reiterated the Claimant's own assertions regarding the nature of his job responsibilities and impact due to the spill.[3]

APPLICABLE LAW

Under the Oil Pollution Act of 1990 (OPA), at 33 U.S.C. § 2702(a), responsible parties are liable for removal costs and damages resulting from the discharge of oil into 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] Letter from Claimant explaining his situation and impact from the oil spill, dated 02 February 2011
[2] Id.
[3] Letter alleged to be from [redacted] undated.

09/14/11 FOIA2011-3380-00003324

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

(b) That the claimant's income was reduced as a consequence of injury to, destruction of, or loss of property or natural resources, and the amount of that reduction.

(c) The amount of the claimant's profits or earnings in comparable periods and during the period when the claimed loss or impairment was suffered, as established by income tax returns, financial statements, and similar documents. In addition, comparative figures for profits or earnings for the same or similar activities outside of the area affected by the incident also must be established.

(d) Whether alternative employment or business was available and undertaken and, if so, the amount of income received. All income that a claimant received as a result of the incident must be clearly indicated and any saved overhead and other normal expenses not incurred as a result of the incident must be established.

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

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

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

DETERMINATION OF LOSS

Claimant's Submission

To support this claim, the Claimant presented his OSLTF claim form, various other documents, including a letter from [redacted] as well as payroll and tax return documents to support his reported historical income.

Prior to presentment to the NPFC, the Claimant presented an Emergency Advance Payment (EAP), Interim and Final Payment claims to the RP/GCCF. He was assigned Claimant Identification Number [redacted] and Claim [redacted] respectively. By letter dated 3 December 2010, the GCCF denied Claimant's EAP claim.[4] By letter dated 22 April 2011, the GCCF denied Claimant's Interim Payment claim.[5]

On 18 May 2011, Claimant presented this claim to the NPFC for $60,802.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

[4] GCCF denial letter Re: Claimant's EAP claim, dated 3 December 2010.
[5] GCCF denial letter Re: Claimant's Interim Payment claim, dated 22 April 2011.

09/14/11 FOIA2011-3380-00003325

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 assertion that he lost his job at [redacted] as a result of the Deepwater Horizon oil spill. In response to the NPFC's investigation, the Claimant's former employer [redacted] disputed the authenticity of the letter that the Claimant submitted allegedly from the VP of Sales of [redacted] indicating that the Claimant was terminated as a result of the oil spill. The Senior VP of HR for [redacted] indicated that the Claimant was released from his position due to reasons unrelated to the oil spill.[6] The Senior VP of HR disputed other aspects of the letter in question and asserted it was fraudulently endorsed in the name of VP of Sales for [redacted]

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.

Because Claimant has made false statements and presented a falsified document in connection with his claim submission to the NPFC in order to obtain funds for an alleged loss resulting 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 for fraud.

[redacted]

Claim Supervisor: ***NPF[redacted]judication Division***

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

Supervisor's Action: ***Denial approved***

Supervisor's Comments:

[6] PHONECON between [redacted] Senior VP for HR and the NPFC staff, 19 May 2011.

09/14/11 FOIA2011-3380-00003326

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

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: [redacted]

5890/DWHZ
Claim # N10036-0846
21 June 2011

[redacted]

Re: Claim Number: N10036-0846

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 N10036-0846 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 N10036-0846.

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 FOIA2011-3380-00003327

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-0846
Claimant	[redacted]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of 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 18 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 resulting from the Deepwater Horizon oil spill.[1]

Claimant, who was working in Mobile, AL, alleged that following the oil spill, his two places of employment lost business, which resulted in his loss of hours at one position and the loss of his second position.[2]

Prior to presentment to the NPFC, Claimant presented an Emergency Advance Payment Claim, as well as an Interim Payment/Final Payment Claim to the RP/GCCF on 8 October 2010 and 8 January 2011. He was assigned Claimant ID [redacted] The RP/GCCF denied Claimant's EAP on 14 December 2010, and denied Claimant's Interim/Final Payment Claim on 16 April 2011.[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] Optional OSLTF Claim Form dated 18 May 2011.
[2] Id.
[3] Optional OSLTF Claim Form dated 18 May 2011.

09/14/11 FOIA2011-3380-00003328

(c) The amount of the claimant's profits or earnings in comparable periods and during the period when the claimed loss or impairment was suffered, as established by income tax returns, financial statements, and similar documents. In addition, comparative figures for profits or earnings for the same or similar activities outside of the area affected by the incident also must be established.

(d) Whether alternative employment or business was available and undertaken and, if so, the amount of income received. All income that a claimant received as a result of the incident must be clearly indicated and any saved overhead and other normal expenses not incurred as a result of the incident must be established.

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

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

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

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

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

- OSLTF optional claim form;
- Copy of social security card and AL driver's license;
- 2010 W-2 form showing wages of $2,898.54 earned at [redacted]
- 2010 W-2 form showing wages of $19,555.71 earned at [redacted]
- 2009 W-2 form showing wages of $20,850.37 earned at [redacted]
- 2008 W-2 form showing wages of $8,722.83 earned at [redacted]
- Letter from Claimant to GCCF, undated;
- Claimant payroll information for 1 June 2010 to 15 June 2010, showing $1,156.19 in total wages;
- Claimant payroll information for 1 Aug. 2010 to 15 Aug. 2010, showing $983.37 in total wages;
- Claimant payroll information for 16 July 2010 to 31 July 2010, showing $1,046.27 in total wages;
- Claimant payroll information for 16 June 2010 to 30 June 2010, showing $779.10 in total wages;
- Claimant payroll information for 16 Aug. 2010 to 31 Aug. 2010, showing $338.55 in total wages
- Pay stubs from [redacted], dated 2 July 2010, 18 June 2010 and 17 July 2010, showing earnings of $1,118.01, $742.75, and $1,471.53, and;
- Letter on [redacted] letterhead regarding Claimant's loss of hours following the oil spill;

On 18 May 2011, Claimant presented this claim for $25,000.00 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 the Claimant.

This claim is denied because the Claimant's evidence does not demonstrate (1) the alleged loss of profits in the amount of $25,000.00, as claimed, or (2) the correlation, if any, between this alleged loss and the Deepwater Horizon oil spill.

In reviewing the information provided by the Claimant, the NPFC contacted Management at the [redacted] location where the Claimant was employed. A representative of [redacted] stated that although the business as a whole may have been impacted, she could not say that the Claimant in particular was affected by the oil spill.[4]

In regards to the Claimant's second job at [redacted] pay stubs provided by the Claimant to NPFC indicate that the Claimant began this position after the oil spill, in June of 2010 although the NPFC has been unable to confirm with the employer whether the oil spill had an impact on the Claimant as alleged.[5]

Because the Claimant has failed to demonstrate (1) the alleged loss of profits in the amount of $25,000.00, 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: ***Cl[redacted]tion Division***

Date of Supervisor's review: ***6/21/11***

Supervisor Action: ***Denial approved***

Supervisor's Comments:

[4] PHONECON: Claimant and NPFC Staff, 20 May 2011.

[5] Pay stubs indicate Claimant's earliest pay check from [redacted] was dated 18 June 2010.

09/14/11 FOIA2011-3380-00003330

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]
Fax: 202-493-6937

5890
6/14/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: [redacted]

[redacted]

RE: Claim Number: N10036-0847

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 N10036-0847 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	: N10036-0847
Claimant	[redacted]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: $1,520.00

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 May 2011 [redacted] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF or Fund) for $1,520.00 in loss of subsistence use of natural resources resulting from the Deepwater Horizon oil-spill.[1]

Claimant is seeking a lost deposit that was placed on a fishing trip scheduled in the waters off the Gulf Coast near Biloxi, Mississippi. Claimant, who resides in Rosenberg, Texas, had a reservation to fish on an unspecified day during June 2010. The amount of $1,520.00 was allegedly given to an unnamed friend who was to submit the money to an unnamed entity as a deposit for the fishing trip.[2] Subsequent to the Deepwater Horizon oil spill, the Claimant decided to cancel his reservations due to "too much oil in the water."[3] The terms of any deposit and/or fishing charter agreement were not provided. The Claimant did not state when he cancelled the reservation, but indicated that he was not able to receive a refund of his deposit.

Since the Claimant is seeking the loss of a monetary deposit, as opposed to the loss of subsistence use of natural resources, which he elects, this claim is interpreted as a claim for loss of profits and impairment of earnings capacity.

REQUEST FOR RECONSIDERATION:

On May 27, 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 was making a claim related to a deposit that was allegedly forfeited as a result of his cancellation of a fishing trip. The Claimant personally decided to cancel his alleged reservation due to concerns about the Deepwater Horizon oil spill and then proceeded to cancel the alleged reservation of his own

[1] Claimant's OSLTF Claim Form submitted to NPFC on 18 May 2011.
[2] Undated correspondence from Claimant.
[3] Claimant's OSLTF Claim Form submitted to NPFC on 18 May 2011.

volition. The Claimant failed to provide evidence of any written agreement related to the alleged fishing trip or a cancellation policy related to the alleged deposit. Any forfeiture of the deposit was based on an unknown contractual agreement between the Claimant and the trip provider.

Because the Claimant failed to demonstrate how his alleged loss of a monetary deposit met the requirements of 33 C.F.R. § 136.233 for a loss of profits and impairment of earnings capacity claim, the claim was denied.

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

The Claimant filed a Final Payment claim with GCCF on September 4, 2010 via GCCF Claimant ID # [redacted] The NPFC has confirmed that the claim was denied by the GCCF and only three pages were presented in support of his claim submission.

RECONSIDERATION CLAIM ANALYSIS:

The claimant requested reconsideration which was received by the NPFC on June 9, 2011. To support the request for reconsideration the Claimant submitted a handwritten letter that asserted that he did not cancel the scheduled fishing trip but rather a party by the name of [redacted] 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.

The NPFC performed a complete review of the documentation presented by the Claimant. The Claimant's request for reconsideration letter stated that he did not cancel his scheduled fishing trip but rather that it was canceled by a [redacted] via mail. The Claimant further asserted that it was canceled five days in advance of the scheduled trip and that he was told it was canceled due to the oil spill.

The Claimant has not provided a copy of his alleged written cancellation, contact information for [redacted], or any documentation associated with the fishing trip, its associated costs, terms of the scheduled fishing trip, etc.

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 related to a canceled fishing trip and (2) the Claimant has failed to demonstrate a loss of profits in the amount claimed. Claimant also never provided documentation for proof of deposit on this alleged fishing trip.

This claim is denied upon reconsideration.

Claim Supervisor: [redacted]

Date of Supervisor's review: ***6/14/11***

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
[redacted]
Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: [redacted]

[redacted]

5890/DWHZ
Claim # N10036-0848
2 August 2011

Re: Claim Number: N10036-0848

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 N10036-0848 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 N10036-0848.

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 FOIA2011-3380-00003335

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-0848
Claimant	[redacted]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	$7,096.00

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 May 2011, [redacted] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for $7,096.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.[1]

The Claimant owns and operates a child care service from her home. She took a leave of absence from this business to take a position assisting with oil spill clean-up, which she was told would last several years.[2] Furthermore, she alleged that her child care business suffered following the oil spill because many of her clients were harmed financially, and subsequently could not pay for her services.[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.

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[1] Optional OSLTF Claim Form dated 18 May 2011.

[2] Letter from Claimant to GCCF, dated 24 Sept. 2010. "I was told that this job was to last years . . . I took off from my [redacted]."

[3] Optional OSLTF Claim Form dated 18 May 2011.

09/14/11 FOIA2011-3380-00003336

(c) The amount of the claimant's profits or earnings in comparable periods and during the period when the claimed loss or impairment was suffered, as established by income tax returns, financial statements, and similar documents. In addition, comparative figures for profits or earnings for the same or similar activities outside of the area affected by the incident also must be established.

(d) Whether alternative employment or business was available and undertaken and, if so, the amount of income received. All income that a claimant received as a result of the incident must be clearly indicated and any saved overhead and other normal expenses not incurred as a result of the incident must be established.

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

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

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

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

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

- Claimant authorized release of GCCF information.
- Optional OSLTF Claim Form;
- Letter from Claimant, authorizing release of GCCF information to NPFC;
- Letter to NPFC, adjusting claimed amount of lost profits;
- License information for "[redacted]"
- Pay stub, showing payment on 4 July 2010 for oil spill clean-up work; and
- Letter from GCCF, acknowledging receipt of interim payment claim, 24 January 2011.

Prior to presentment to the NPFC, the Claimant presented an Emergency Advance Payment (EAP) claim to the RP/GCCF for lost profits and earnings, in the amount of $25,920.00. The Claimant was assigned Claimant ID [redacted] and Claim # [redacted] The Claimant presented a First Quarter Interim Claim ([redacted]) in the amount of $28,920.00 on 14 January 2011, which was assigned claim #[redacted]. Both claims were denied, including final denial on 1 April 2011.

This claim in the amount of $7,096.00 was presented to the NPFC on 18 May 2011. Because this claim covers the same subject matter as presented to the GCCF in the Claimant's EAP and [redacted], this determination will consolidate both previously submitted claims for review and will address all claims for lost profits and earnings, in the amount of $7,096.00 as presented to the NPFC on 18 May 2011.

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, 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 the claim.

In reviewing the information provided by the Claimant, the NPFC notes that the Claimant voluntarily took time off from her business to take a position working on the oil spill response.[4] Because the Claimant secured this position as a result of the oil spill, any alleged lost profits based on the loss of this position, is not a loss that is compensable under OPA.

The Claimant further contends that she lost customers for her child care business after they were impacted by the oil spill and were no longer able to pay for her services.[5] However, the Claimant has not provided documentation to show that her child care business lost profits in 2010 or 2011 following the Deepwater Horizon oil spill, nor does she provide evidence to show that she lost customers due to the oil spill.[6] In order to prove that the Claimant's child care business was affected by the oil spill, the Claimant would have to identify lost clients and prove that her losses were a direct result of the oil spill. The Claimant has not provided such documentation, therefore this claim is denied.

This claim is denied because the Claimant failed to meet his burden to demonstrate (1) that there was an alleged loss in the amount of $7,096.00, and (2) 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: ***Claims Adjudication Division***

Date of Supervisor's Review: ***8/2/2011***

Supervisor's Action: ***Denial Approved***

Supervisor's Comments:

[4] *Supra* note 2.
[5] Optional OSLTF Claim Form.
[6] Claimant provides tax records for 2008 and 2009 only, showing gross earnings of $7,030 in 2008 and $6,540 in 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
[redacted]
Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: [redacted]

[redacted]

5890/DWHZ
Claim # N10036-0849
21 June 2011

Re: Claim Number: N10036-0849

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 N10036-0849 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 N10036-0849.

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 FOIA2011-3380-00003339

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-0849
Claimant	[redacted]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of 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 17 May 2011, [redacted] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for $10,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.[1]

Claimant works as a dishwasher in a New Orleans restaurant. He alleged that a decrease in business at the restaurant caused a reduction in his working hours, for which he seeks $10,000.00 in lost profits.[2]

Prior to presentment to the NPFC, Claimant presented an Emergency Advance Payment Claim as well as an Interim/Final Payment Claim to the RP/GCCF, and was assigned Claimant ID [redacted] Claimant received a final denial from the RP/GCCF on 1 April 2011.

APPLICABLE LAW

Under the Oil Pollution Act of 1990 (OPA), at 33 U.S.C. § 2702(a), responsible parties are liable for removal costs and damages resulting from the discharge of oil into or upon the navigable waters or adjoining shorelines or the exclusive economic zone, as described in 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] Optional OSLTF Claim Form dated 6 May 2011.
[2] Id.

(c) The amount of the claimant's profits or earnings in comparable periods and during the period when the claimed loss or impairment was suffered, as established by income tax returns, financial statements, and similar documents. In addition, comparative figures for profits or earnings for the same or similar activities outside of the area affected by the incident also must be established.

(d) Whether alternative employment or business was available and undertaken and, if so, the amount of income received. All income that a claimant received as a result of the incident must be clearly indicated and any saved overhead and other normal expenses not incurred as a result of the incident must be established.

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

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

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

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

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

- Optional OSLTF Claim Form;
- Sum Certain Letter, claiming $10,000.00 in lost profits;
- Letter from Claimant's employer, dated 6 May 2011, noting reduction in Claimant's hours;
- Employee Earnings Record, 1 January 2010 – 18 November 2010;
- 2010 W-2, showing earnings of $8,133.60;
- 2009 W-2, showing earnings of $4,218.50;
- 2008-2009 Fishing License;
- Letter from Claimant to NPFC, describing Claimant's losses;
- Employee Earnings Record, 1 January 2010 – 26 May 2011;

On 17 May 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 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, 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 his claim.

In order to establish that he suffered a compensable loss, the Claimant would have to show that the oil spill prevented him from earning income which he otherwise would have earned. This would require that the Claimant show (1) that the restaurant where he was employed suffered a reduction in income as a direct result of the oil spill, (2) that the restaurant's reduction in income forced a reduction in the Claimant's regular working hours, and (3) that Claimant was guaranteed to work a certain number of hours, which were reduced as a result of economic damage to the restaurant caused by the oil spill.

Claimant has not provided any financial documentation to indicate if and to what extent the restaurant where he was employed was economically affected by the oil spill, other than a letter from the restaurant noting a decrease in business.[3] Furthermore, the earnings statement provided by the Claimant indicated that the Claimant began working at the restaurant after the oil spill and that his pay and working hours have varied significantly from pay period to pay period, continuing into 2011.[4]

This claim is denied 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.

[redacted]

Claim Supervisor: ***Claims Adjudication Division***

Date of Supervisor's review: ***6/21/11***

Supervisor Action: ***Denial approved***

Supervisor's Comments:

[3] Letter from [redacted] dated 6 May 2011.
[4] Employee Earning Statements May 2010 – May 2011, provided by Claimant.

FOIA2011-3380-00003342

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]
Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: [redacted]

5890/DWHZ
Claim # N10036-0850
03 June 2011

[redacted]

Re: Claim Number: N10036-0850

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 N10036-0850 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 N10036-0850.

Mail reconsideration requests to:

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

Sincerely,

[redacted]
C[redacted] Division
National Pollution Funds Center
U.S. Coast Guard

Enclosure: Claim Summary/Determination Form

09/14/11 FOIA2011-3380-00003343

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-0850
Claimant	[redacted]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	$176,433.00

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 May 2011, M[redacted] presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for $176,433.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

[redacted]s employed at [redacted] in Mobile AL, and alleged that her working hours and tips have declined following the Deepwater Horizon oil Spill."[1]

Claimant alleged that because her serving career is no longer profitable, she has enrolled in a program to be trained in medical billing and coding. She alleged that in order to pursue this new profession, she needed to take out student loans, and seeks compensation for the loans and tuition, as well as lost profits.[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, 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 Claimant to BP/GCCF, dated 7 Feb. 2011.
[2] Letter from Claimant to NPFC, dated 29 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 undertake, but reasonably available;
(d) Any saved overhead or normal expenses not incurred as a result of the incident; and
(e) State, local, and Federal taxes.

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support this claim, Claimant submitted the following documentation:

- Letter from Claimant to NPFC, dated 29 April 11, claiming $176,433 in lost profits and educational training;
- Letter from Claimant to GCCF, dated 15 March 11, requesting re-view of her final payment offer;
- Copy of list of tips and hours worked for 2010;
- Signed letter from manager o[redacted], confirming tha[redacted] lost customers following the oil spill, and that Claimant is an employee of [redacted]
- Letter from Claimant to GCCF, dated 7 Feb. 2011 describing lost profits;
- 2008 W-2 forms, showing state wages of $10,746.28;
- 2009 W-2 forms, showing state wages of $10,494.88;
- 2010 W-2 forms, showing state wages of $12,795.81;
- 2010 Tuition Statement for [redacted] Mobile;
- Copy of Final Payment offer of $5,000 from the GCCF;
- Copy of check from the GCCF to Claimant for $5.16; and
- Notice of Interest Payment from GCCF to Claimant.

Prior to presentment to the NPFC, Claimant presented Emergency Advance Payment, Interim Payment and Final Payment Claim to the RP/GCCF and was assigned GCCF Claimant ID

Number [redacted] Claimant received an emergency advance payment of $11,400.00 and was offered a Final Payment Offer of $5,000.00.[4]

On 18 May 2011, Claimant presented this claim for $176,433.00 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, 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 reviewed all information and documentation provided by the Claimant. The NPFC notes that the Claimant's tax returns indicated that she earned a higher income in 2010 than in either 2008 or 2009.[5] Therefore, the Claimant has not established that she suffered a loss as a result of the Deepwater Horizon oil spill. Claimant's costs of tuition and student loans are not compensable as they are not a result of harm to property or natural resources as a result of a discharge or substantial threat of discharge of oil and cannot be recognized as a consequence stemming from the oil spill. Furthermore, the Claimant has received a total of $11,400.00 prior to presenting this claim to the OSLTF.

This claim for $176,433.00 in lost profits and earnings capacity 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.

Claim Supervisor: ***Claims A[redacted]on Division***

Date of Supervisor's Review: ***6/3/11***

Supervisor's Action: ***Denial approved***

Supervisor's Comments:

[3] Letter from Claimant to NPFC, dated 29 April 2011.
[4] GCCF Notice of Determination Emergency Advance Payment, dated 22 April 2011; GCCF Re-Review Determination Letter on Interim/Final Payment Claim, dated 18 April 2011.
[5] W-2 forms, provided by claimant indicate 2010 wages of $12,795.81, $10,494.88 in 2009 and $10,746.28 in 2008.

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]

CERTIFIED MAIL-RETURN RECEIPT REQUESTED
Number: [redacted]

5890/DWHZ
Claim # N10036-0851
15 July 2011

[redacted]

Re: Claim Number: N10036-0851

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 your claim number N10036-0851 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 N10036-0851.

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

Claim Number	N10036-0851
Claimant	[redacted]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	$77,346.00

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 19 May 2011 [redacted] (Owner), on behalf of [redacted] Claimant), presented an Optional Oil Spill Liability Trust Fund ('OSLTF') Claim Form to the National Pollution Funds Center ('NPFC') seeking $77,346.00 in lost profits and earnings allegedly resulting from the Deepwater Horizon oil spill.

The Claimant is a residential apartment building located in New Iberia, LA.[1] Owner asserted that the Deepwater Horizon oil spill caused tenants of the apartment building to lose their jobs, which resulted in tenants moving out of the building.[2]

The Claimant did not provide an explanation regarding the calculation of her sum certain of $77,346.00.

APPLICABLE LAW

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

The 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

[redacted]

[2] Optional OSLTF claim form, dated 13 May 2011

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 13 May 2011;
- Denial letter on Interim Payment/Final Payment claim, dated 22 April 2011; and
- 2009 and 2010 Schedule E's from Claimant's federal tax return.

Prior to presenting this claim to the NPFC, the Claimant filed an Emergency Advance Payment (EAP) claim with the GCCF on 11 December 2010 in the amount of $16,537.00.[3] The Claimant

[3] Report from the GCCF, dated 5 July 2011

was assigned Claimant ID # [redacted] and EAP Claim # [redacted] This claim was denied by the GCCF on 14 December 2010.[4] Claimant also filed a Full Review Final ('FRF') claim with the GCCF on 3 March 2011 in the amount of $77,346.00 and was assigned FRF Claim [redacted].[5] This claim was also denied by the GCCF on 22 April 2011.[6]

NPFC Determination

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

This claim is denied because the Claimant has not provided sufficient evidence to establish either a financial loss due to the Deepwater Horizon oil spill or a causal connection between the oil spill and the alleged financial loss. The only supporting documents submitted by the Claimant in support of the claim are two (2) IRS Form 1040 Schedule E's and a denial letter from the GCCF. On 23 May 2011, the NPFC requested additional information from the Claimant to further evaluate the claim. The NPFC requested, among other things, tenant lists, rental contracts, and monthly rental statements. 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 $77,346.00, 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: *7/15/11*

Supervisor Action: ***Denial approved***

Supervisor's Comments:

[4] Denial letter from the GCCF, dated 14 December 2010
[5] Report from the GCCF, dated 5 July 2011
[6] Denial letter on Interim Payment/Final Payment claim, dated 22 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
4200 Wilson Blvd. Suite 1000
[redacted]
Fax: 202-493-6937

5890
6/14/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: [redacted]

[redacted]

RE: Claim Number: N10036-0852

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 N10036-0852 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	: N10036-0852
Claimant	: [redacted]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: $116,917.83

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

Claimant presented a claim to the Responsible Party (BP) in the amount of $4,699.98 on August 23, 2010, and a second claim to GCCF on November 24, 2010, in the amount of $49,263.54. Claimant received compensation from BP in the amount of $1,566.66 for two months of lost wages. Claimant thereafter presented real estate claims to the Real Estate Recovery Fund and received $8,406.00 in compensation.

Claimant filed a Quick Payment final claim with the GCCF. Claimant's GCCF Claimant Identification Number is [redacted] and Payment Claim Number is [redacted]. According to the GCCF and confirmed with the Claimant[1], the Claimant received an additional $5,000.00 payment from the GCCF on April 18, 2011, and executed a Release and Covenant Not to Sue.

CLAIM AND CLAIMANT:

On 17 May 2011, [redacted] (Claimant) presented a loss of profits and impairment of earnings capacity claim the National Pollution Funds Center (NPFC) in the amount of $116,917.83 for the years 2010 - 2013.[2] Of this amount $95,754.81 was estimated lost profits and wages for future years: 2011 – 2013.[3]

Claimant has alleged that his losses are due to lost real estate commissions on the sales of condominium units at [redacted] in Destin, Florida, as well as lost wages as the J[redacted] condominium manager.[4]

On 23 May 2011, the NPFC denied [redacted] claim on the grounds that BP/GCCF paid a total of $6,566.66 to the Claimant as compensation for his claims. According to information from the GCCF, this amount includes a Quick Pay Final Payment in the amount of $5,000. Claimant executed a Release and Covenant Not to Sue in return for the Quick Pay Final Payment of $5,000. Thus, in total the Claimant has received $ 14,972.66 for his lost profits and impairment of earnings capacity.

The NPFC denied the claim because it appeared from the record that the Claimant fully settled his claims with BP/GCCF, for which the GCCF reportedly required a full and final release of all rights against any Responsible Party.

---

[1] Claimant letter to the NPFC explaining loss, dated 12 May 2011.
[2] Optional OSLTF Claim Form, dated 12 May 2011, and received at the NPFC on 17 May 2011.
[3] *Id.*
[4] *Id.*

The Claimant has not provided any information to show he had any remaining subrogable rights to his claims that the NPFC could acquire in order to recover from the responsible party. The Fund cannot pay a claim for what damages have already been compensated and any Fund payment is subject to acquiring all rights to recover from the Responsible Party.

The NPFC stated in its denial that if the Claimant disagreed with the determination to deny the claim based on being compensated and signing a release, he could request reconsideration but he then 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 disagreed about payments received from BP or GCCF, or that any payments received were for damages other than those that were subject of his claim for $116,917.83, the Claimant must explain the circumstances in detail.

Lastly, the NPFC explained that if the Claimant disagreed that he signed a release associated with his claims against the RP, including any release in return for a Quick Pay Final Payment, the Claimant must fully explain the circumstances in his request for reconsideration.

On May 31, 2011, the Claimant requested reconsideration of the NPFC's May 23, 2011 denial based on the following information:

1. Claimant asserted that he has presented a claim in accordance with 33 USC 2713(d) which states "If a claim is presented in accordance with this section, including a claim for interim, short-term damages representing less than the full amount of damages to which the claimant ultimately may be entitled, and full and adequate compensation is available, a claim for the uncompensated damages and removal costs may be presented to the Fund". Claimant further stated that …"This is exactly what I am asking for, an amount over and above what has already been paid to me from GCCF for the loss of income and loss of commissions caused by the BP Oil Spill".
2. Claimant asserted that he performed an investigation after receiving his denial from the NPFC which led him to some interesting articles and statements. He goes on to say that …"a primary purpose of the OSLTF is to compensate persons for removal costs and damages resulting from an oil spill incident who are not fully compensated by the responsible party". Then he stated that accepting a $5,000.00 coerced payment from GCCF is not a full compensation of what he had been asking GCCF for nearly a year.
3. Lastly, the Claimant asserted that he is providing additional information in support of his request for reconsideration. The Claimant has attached two letters he has received from the GCCF regarding his claims submissions to them. The Claimant finally asserted that he filed a separate claim with the Real Estate Recovery Fund for $25,000.00 which was addressed by the GCCF under claim [redacted] and he requests payment from the NPFC for all costs associated with this claim submission. The Claimant also stated that even under the NPFC's incorrect assumption that accepting a quick payment means the USCG cannot pay a claim, he stated his second $25,000.00 claim was never resolved by the GCCF therefore he wants payment for all he has requested that has gone unanswered by the GCCF.

Reconsideration Claim Analysis

The Claimant requested reconsideration via mail on May 31, 2011 which was received at the NPFC on June 9, 2011. To support the request for reconsideration, the Claimant provided his legal/factual basis via a letter along with the following enclosures: (1) 33 USC 2713, (2) partial news article that the Claimant has entitled "USCG Article", (3) partial news article entitled "Did the Federal Government Cause the BP Oil Spill?", (4) news article entitled "Frustrated Oil Spill Claimants Consider Alternative Compensation Fund", (5) news article entitled "Disenfranchised Citizen", (6) GAO Report dated November 12, 2010, (7) GCCF letter to Claimant dated April 4, 2011 for claim # [redacted] (8) GCCF letter to Claimant dated

April 4, 2011 for claim [redacted], and (9) copy of 4 page quick pay release for claim [redacted] in the amount of $25,000.

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

This claim is denied on reconsideration first and foremost on the grounds that Claimant executed a Release and Covenant Not to Sue with the GCCF. According to the Claimant and the administrative record, BP, the Florida Board of Realtors and the Gulf Coast Claims Facility (GCCF) he was compensated with $1,566.67, $8,406.00 and $5,000 respectively. The $5,000 was a Quick Pay Final Claim Payment. The Claimant did not provide a copy of his executed Release and Covenant Not to Sue to the NPFC as requested; however, the language in the Release and Covenant Not to Sue used by GCCF is as follows: "In consideration of payment in the amount of $5,000, Claimant hereby releases and forever discharges, and covenants not to sue BP and other Released Parties … for any losses, damages, costs, expenses, … or other relief that Claimant has or may have, whether known or unknown, whether present or future, whether direct or indirect, whether legal or equitable, arising from or relating in any way to the April 20, 2010, blowout of the Macondo Well, the sinking of Transocean's Deepwater Horizon drilling rig, and the subsequent oil spill in the Gulf of Mexico (the "Incident")....

OPA provides that "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 State to recover from the responsible party. 33 U.S.C. § 2712(f). As provided in the Release and Covenant Not to Sue, Claimant released all his rights, both present and future, and has no remaining subrogable rights that could be acquired by the United States Government. Thus, the Fund is not available to pay the claim or any part of the claim presented by the Claimant.

Claimant's Bases for Reconsideration and NPFC Analysis:

On reconsideration, the Claimant asserted that he has presented a claim in accordance with 33 USC § 2713(d) which states "If a claim is presented in accordance with this section, including a claim for interim, short-term damages representing less than the full amount of damages to which the claimant ultimately may be entitled, and full and adequate compensation is available, a claim for the uncompensated damages and removal costs may be presented to the Fund". Claimant further stated that …"This is exactly what I am asking for, an amount over and above what has already been paid to me from GCCF for the loss of income and loss of commissions caused by the BP Oil Spill".

Claimant is correct that he may present a claim to the Fund as he has asserted and the NPFC has in fact accepted his claim submission identified as NPFC claim # N10036-0852 in the amount of $116,917.83. Claimant misinterprets 33 U.S.C. § 2713(d), which provides that a claim may be presented to the Fund for the full amount of uncompensated (emphasis added) damages to which a claimant may be entitled. While the primary reason for denial of this claim on reconsideration is the release executed by the Claimant, there are two other deficiencies noted in this claim. Even if the Claimant had not executed the Release and Covenant Not to Sue the NPFC could not adjudicate the claim.

First, the Claimant's sum certain to the Fund is $116,917.83. The administrative record reflects that his claims presented to the responsible party were $4,699.98 on August 23, 2010, and $ 49,263.54 on November 24, 2010. OPA provides that with certain exceptions "[C]laims for removal costs or damages shall be presented first to the responsible party or guarantor of the source designated."

33 U.S.C. § 2713(a). Thus, even if this claim was payable because the Claimant had not executed a release, the NPFC could not accept the claim until the remaining $62,954.31 had been presented to GCCF and either not paid by any person within 90 days or denied by the GCCF.

Second, as noted above, more than $95,000 of the claimed amount is for potential, future lost profits for the years 2011-2013. To date, the Claimant has not suffered these damages and they are not yet uncompensated or compensable from the Fund. OPA provides that the Fund is available to pay claims in accordance with section 2713 for uncompensated removal costs or *uncompensated* damages. The $95,000 portion of this claim could not be reviewed and adjudicated until a Claimant can document actual damages for past losses.[5] However, because the Claimant executed a Release and Covenant Not to Sue for all present or future damages this deficiency cannot be cured.

The NPFC notes that the Claimant made several other assertions in his claim for reconsideration. Again arguing that the purpose of the OSLTF is to compensate persons who are not fully compensated by the responsible party, he states that accepting a $5,000.00 coerced payment from GCCF is not a full compensation of what he had been asking GCCF for nearly a year. He argues that he was coerced into accepting the $ 5,000 Quick Pay Final Claim Payment even though he voluntarily executed the Release and Covenant Not to Sue.

Lastly, the Claimant argued that he provided additional information in support of his request for reconsideration. The Claimant attached two letters he received from the GCCF regarding his claims submissions to them. The Claimant included information reflecting that he filed a separate claim for $49,263.54 which resulted in a $25,000.00 Quick Pay Final Claim Payment offer by the GCCF under his second claim [redacted]. He requests payment from the NPFC for all costs associated with that claim submission. He argues that because the $25,000.00 claim was never resolved by the GCCF, he has not been fully compensated and he seeks this amount from the Fund.

Even if the Claimant had not executed the Release and Covenant Not to Sue, the Fund would not be available to pay the $25,000 Quick Pay Final Payment. The Fund is available to pay claimants only for certain removal costs and damages[6] that have been proven by the claimant. The Quick Pay protocols established by the GCCF do not meet either the statutory or claims regulatory requirements for reimbursement from the Fund.

The NPFC has considered the Claimant's assertion and offers that while the Claimant presented a separate claim with the GCCF that the Claimant asserted was not acted upon in a timely manner, the NPFC is precluded from making any payments to the Claimant for costs subject of the oil spill incident since he signed a Release and Covenant Not Sue which resulted in the Claimant signing away all of his subrogation rights leaving him no recourse with the NPFC pursuant to 33 U.S.C. § 2712(f).

In summary the NPFC denies the reconsideration on the grounds that Claimant executed a Release and Covenant Not to Sue and has not demonstrated that he has any remaining subrogable rights to the claim that can be acquired by the United States. Additionally, the Claimant presented two claims to the RP which collectively are less than the amount the Claimant has presented to the NPFC. Under 33 U.S.C § 2712(a), all claims for removal costs or damages must be presented first to the responsible party (RP). The Claimant presented one claim to the responsible party in the amount of $4,699.98 and another claim to the responsible party in the amount of $49,263.54. Therefore any claimed amount of damages

[5] Claimant acknowledges in his claim that these future damages are estimated and based on other employees' wages and commissions. Thus they are not actual damages.

[6] Damages include damages to real or personal property, lost profits or impairment of earning capacity and certain losses of subsistence uses.

exceeding the total amount of $53,963.52 was not properly presented to the RP/GCCF pursuant to 33 U.S.C § 2712(a) and is denied.

Finally, the claim to the Fund included more than $95,000 in potential future damages that have not yet been incurred or suffered by the Claimant. Even if the Claimant had not executed the Release and Covenant Not to Sue, which includes all present or future damages, the Fund could not review and adjudicate this portion of the claim under the damages had been suffered.

This claim is denied [redacted]

Claim Supervisor: *Thomas Morrison*

Date of Supervisor's review: *6/14/11*

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
[redacted]

16480

3 June 2011

CERTIFIED MAIL Number: [redacted]

[redacted]

RE: Claim Number: N10036- 0853

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 final claim to the GCCF following the Deepwater Horizon spill for lost subsistence use of natural resources on 4 January 2011, which was denied. On 18 May 2011, the NPFC received your claim seeking $5,000 for loss of natural resources that you indicate that you would have caught and eaten. The NPFC considers this to be a claim for lost subsistence use of natural resources[1].

[1] Your optional claim form indicates that you seek natural resource damages. However , natural resource damages (NRD) under OPA are public use losses that may only be claimed by appropriate federal, state, or tribal natural resource trustees.

09/14/11 FOIA2011-3380-00003357

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 lost 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 letter describing that you fish for yourself and your family and rely on your catch for food, and three receipts for food.

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) how and where you traditionally obtained the resources you claim to have used for subsistence purposes;
2) the period of your claimed loss;
3) that you were unable to continue catching fish during the period of your claimed loss because of the spill (e.g., documentation of fishing area closures with no suitable alternative locations), nor
4) how you determined your claimed loss of $5,000 (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 (N10036-0853) 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.

[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
[redacted]

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: [redacted]

5890/DWHZ
Claim # N10036-0854
10 June 2011

[redacted]

Re: Claim Number: N10036-0854

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 N10036-0854 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 N10036-0854.

Mail reconsideration requests to:

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

Sincerely,

[redacted]

Claim[redacted]n Division
National Pollution Funds Center
U.S. Coast Guard

Enclosure: Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00003361

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-0854
Claimant	[redacted]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	$302.40

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 19 May 2011, [redacted] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for $302.04 in lost profits, to recover the cost of her cancellation fee after cancelling her family vacation to Panama City Beach from July 24 – July 31 2010.

Claimant alleged that she made the decision to cancel "due to the oil spill."[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.

(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

[1] Optional OSLTF Claim Form dated 12 May 2011.

incident must be clearly indicated and any saved overhead and other normal expenses not incurred as a result of the incident must be established.

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

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

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

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support this claim, Claimant submitted the following documentation:

1. OSLTF optional claim form;
2. Payment receipt for reservation at [redacted] Panama City Beach, 24 July 2010 – 31 July 2010, showing payment of cancellation fee;
3. Payment receipt for reservation at [redacted] Panama City Beach, 24 July 2010 – 31 July 2010;
4. Copy of unsigned form, titled, "Refusal of Travel Insurance."

Prior to presentment to the NPFC, Claimant presented multiple claims to the RP/GCCF, including an Emergency Advance Payment (EAP) and Final payment Claim. Claimant's EAP claim was denied by the GCCF.[2]

On 19 May 2011, Claimant presented this claim for $302.40.00 in loss of profits, as a result of 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 or 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 the claim.

Claimant indicated that he/she cancelled a family vacation as a result of the Deepwater Horizon oil spill and incurred a service fee of $302.40. Claimant seeks the service fee charge from the OSLTF. To the extent that the Claimant's loss resulted from a personal decision, it is not due to

[2] GCCF Report to the NPFC, dated 31 May 2011.

injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of discharge of oil. It is therefore not a compensable loss from the OSLTF.

Because the Claimant has failed to demonstrate that the alleged loss in the amount of$302.40 is due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of discharge of oil, this claim is denied.

Claim Supervisor: ***NPFC C[redacted]cation Division***

Date of Supervisor's Review: ***6/10/11***

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
[redacted]
Fax: 202-493-6937

CERTIFIED MAIL-RETURN RECEIPT REQUESTED
Number: [redacted]

[redacted]

5890/DWHZ
Claim # N10036-0855
9 June 2011

Re: Claim Number: N10036-0855

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 N10036-0855, 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 N10036-0855.

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

Enclosures: Claim Summary/Determination Form

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-0855
Claimant	[redacted]
Type of Claimant	Private (US)
Type of Claim	Real or Personal Property Loss
Amount Requested	$100,000.00

FACTS

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

CLAIM AND CLAIMANT

On 19 May 2011, [redacted] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for $100,000.00 in real or personal property damages resulting from the Deepwater Horizon oil spill.[1]

Claimant is a regional supervisor for [redacted] a chain of restaurants in Louisiana.[2] Claimant's compensation is a base salary plus bonuses based on controlling food costs, labor costs and maintaining the standards of operation of the restaurants.[3] Claimant asserted that as a result of the Deepwater Horizon oil spill, [redacted] suffered a substantial drop in sales.[4] This drop in sales resulted in a reduction in revenue for the [redacted] restaurants that the Claimant supervised.[5] The reduction in revenue prevented the Claimant from realizing any of his bonuses, creating $24,000.00 in loss of earnings.[6]

Further, the Claimant asserted that due to his reduction in income, he could no longer afford to pay the mortgage on his now-former home.[7] Unable to pay his mortgage, the Claimant entered into a short-sale of the property for $334,500.00.[8] Claimant asserted that this is an underestimate of the property's true worth and asserted real property damages of $76,000.00 as compensation.[9]

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[1] Although Claimant's OSLTF Claim Form indicates a sum certain of $100,000.00 for real or personal property loss, Claimant's response in the Incident Information section on the Claim Form stated $24,000.00 in lost profits and impairment of earnings capacity. In a conversation with the NPFC, Claimant confirmed that the $100,000.00 claimed was intended to include the $24,000.00 in loss of profits and impairment of earnings capacity, with the remainder to be real or personal property loss. Thus, for purposes of this determination, the NPFC will address Claimant's sum certain as applying $24,000.00 towards lost profits and impairment of earnings capacity and $76,000.00 in real or personal property damages.

[2] PHONECON between Claimant and NPFC dated 26 May 2011.

[3] Letter from [redacted] President & CEO of [redacted] dated 2 May 2011.

[4] PHONECON between Claimant and NPFC dated 26 May 2011.

[5] Id.

[6] OSLTF Claim Form.

[7] PHONECON between Claimant and NPFC dated 26 May 2011.

[8] Louisiana Residential Agreement to Buy or Sell dated 16 September 2010.

[9] OSLTF Claim Form see also appraisal for [redacted] LA 70518 dated 16 March 2007.

Claimant calculated his sum certain by determining the difference between his 2009 and 2010 bonuses at [redacted] to be $24,000.00.[10] The remaining $76,000.00 is related to the asserted reduction in Claimant's home value as a result of Claimant's short-sale.[11]

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.

[10] OSLTF Claim Form.
[11] Id.

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

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

- Optional Oil Spill Liability Trust Fund Claim Form;
- Appraisal for [redacted] LA 70518 dated 16 March 2007;
- Louisiana Residential Agreement to Buy or Sell dated 16 September 2010;
- 2010 version of 1099-S federal tax form;
- Comparative Market Analysis computer printout dated 5 May 2011;
- Letter from [redacted] dated 2 May 2011;
- [redacted] Monthly Sales Spreadsheet for 2010 dated 18 May 2011;
- GCCF Claim Form in the amount of $105,500.00 in real or personal property damages and $45,000.00 in lost profits and impairment of earnings capacity;
- Partial 2009 federal income tax return;
- Second GCCF Claim Form;
- Bank statements from [redacted] 5 August 2010-3 September 2010, 4 November-3 December 2010;
- 2010 version of W-2 from [redacted]
- GCCF Claim Correspondence letters;
- List of names and locations of stores supervised by Claimant.

Prior to presenting this Claim to the NPFC, Claimant filed a Final Claim on 5 October 2010 for $45,000.00 in lost profits and earnings and was assigned Claim Number [redacted] and Claimant ID Number [redacted] This claim was denied on 30 April 2011.[13] Additionally, Claimant filed an Interim Claim on 4 January 2011for $105,000.00 in real or personal property damages and was assigned Claim ID Number [redacted] This claim was denied on 30 April 2011.[15]

On 19 May 2011, Claimant presented the subject claim for $24,000.00 in loss of profits and impairment of earnings capacity and $76,000.00 in real or personal property damages 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.

LOSS OF PROFITS AND IMPAIRMENT OF EARNINGS CAPACITY

Claimant's evidence fails to establish a financial loss due to the Deepwater Horizon oil spill. Claimant cites the Deepwater Horizon oil spill as the cause of his restaurants' decline in revenue and by extension the Claimant's loss of income. However, the Claimant admitted that he could not provide documentation

[12] Report to the GCCF Dated 31 May 2011.
[13] GCCF Denial Letter Dated 30 April 2011.
[14] Report to the GCCF Dated 31 May 2011.
[15] GCCF Denial Letter Dated 30 April 2011.

regarding the reduction of customers a[redacted]after the Deepwater Horizon oil spill.[16] Additionally, he stated he could not provide unpaid contracts or cancelled contracts relating to his loss of profits and impairment of earnings capacity.[17] Further, the Claimant provided an extensive letter from his employer documenting the Claimant's financial loss; however, this letter makes no mention of the Deepwater Horizon oil spill as the cause of any financial loss.[18] Therefore, this part of the claim is denied because Claimant has not proven his alleged loss in the amount of $24,000.00 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.

REAL OR PERSONAL PROPERTY DAMAGES

Claimant also presented a loss of $76,000.00 in real or personal property damages. Claimant alleged that, due to a decrease in wages which he attributed to the oil spill, he was forced to short-sell his property to avoid foreclosure. Claimant indicated that his property ultimately sold at a value far below a 2007 appraisal, and he attributed this loss in value to the Deepwater Horizon oil spill.

Claimant, however, has not met his burden in establishing that the reduction in value of his property resulted from the injury to or destruction of the property as a result of a discharge or substantial threat of a discharge of oil. 33 C.F.R. § 136.215(b)(3). For example, the Claimant has failed to show that the allegedly depressed sale price resulted from the injury to or destruction of the property as a result of a discharge or substantial threat of a discharge of oil as opposed to other possible factors such as the Claimant's own motive in avoiding foreclosure or generally declining real estate market values unrelated to the spill.

Claim Supervisor: [redacted]

Date of Review: ***6/9/11***

Supervisor's Actions: ***Denial approved***

Supervisor's Comments:

[16] PHONECON between Claimant and NPFC dated 26 May 2011.
[17] Id.
[18] Letter from [redacted] dated 2 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
[redacted]
Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: [redacted]

5890/DWHZ
Claim # N10036-0856
08 June 2011

[redacted]

Re: Claim Number: N10036-0856

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 N10036-0856 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 N10036-0856.

Mail reconsideration requests to:

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

Sincerely,

[redacted]
Deepwater Horizon Claims Adjudication
National Pollution Funds Center
U.S. Coast Guard

Enclosure: (1) Claim Summary/Determination Form

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-0856
Claimant	[redacted]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
Amount Requested	$35,000.00

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 $35,000.00 in loss of profits and impairment of earnings capacity allegedly resulting from the Deepwater Horizon oil spill.

Claimant advised that he "was laid off for several months" from his job a[redacted] where he was employed as a boilermaker.[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] Optional OSLTF Claim Form dated 09 May 2011 and undated letter from Claimant to the GCCF

FOIA2011-3380-00003371

(d) Whether alternative employment or business was available and undertaken and, if so, the amount of income received. All income that a claimant received as a result of the incident must be clearly indicated and any saved overhead and other normal expenses not incurred as a result of the incident must be established.

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

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

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

DETERMINATION OF LOSS

Claimant's Submission

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

- Optional OSLTF Claim Form dated 09 May 2011;
- Undated letter to the NPFC authorizing [redacted] to consult with the NPFC re: the Claimant's matter;
- GCCF Interim Payment/Final Payment claim denial letter dated 16 April 2011; and
- Claimant's GCCF file.[2]

Claimant previously filed an Interim Payment/Final Payment claim with the RP/GCCF and was assigned Claimant ID# [redacted]. His Interim Payment/Final Payment claim was denied on 16 April 2011.[3]

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 as well as his entire GCCF claim file.

The NPFC contacted the Claimant's alleged prior employer, [redacted] in order to verify a letter within the Claimant's GCCF file which was purportedly provided by [redacted][4] The undated letter was allegedly written by a [redacted] in her capacity as Human Resources Director for [redacted].[5] Turner Industries was unable to verify the

[2] Claimant's GCCF file was obtained by the NPFC per the Claimant's request within the Optional OSLTF Claim Form dated 09 May 2011
[3] GCCF Interim Payment/Final payment claim denial letter dated 16 April 2011
[4] See undated letter from [redacted] as human resources director for [redacted]
[5] See undated letter from [redacted] as human resources director for [redacted]

09/14/11 FOIA2011-3380-00003372

authenticity of the letter provided by the Claimant. Furthermore, Turner Industries confirmed that no person named [redacted] has ever been employed at the company and that the letter was not written on [redacted] Accordingly, the NPFC has ample reason to believe that the letter in question was forged by the Claimant.

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

Claimant's request for [redacted] reby denied for FRAUD.

Claim Supervisor: ***Claims Adjudication Division***

Date of Supervisor's review: ***6/8/11***

Supervisor Action: ***Denial approved***

Supervisor's Comments:

[6] E-mail fro[redacted] to NPFC staff dated 7 June 2011.

FOIA2011-3380-00003373

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

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: [redacted]

5890/DWHZ
Claim # N10036-0857
27 May 2011

[redacted]

Re: Claim Number: N10036-0857

Dea[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 N10036-0857 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 N10036-0857.

Mail reconsideration requests to:

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

Sincerely,

[redacted]

Cla[redacted]ication Division
National Pollution Funds Center
U.S. Coast Guard

Enclosure: Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00003374

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-0857
Claimant	[redacted]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
Amount Requested	$2,000.00

FACTS

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

CLAIM AND CLAIMANT

On 19 May 2011, [redacted] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for $2,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

Claimant, who was employed cleaning a resort along the beach in Sanibel/Captiva Island, Florida, asserted that due to the Deepwater Horizon oil spill, her hours were greatly reduced resulting in a loss of income.[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 dated 19 May 2011.

(d) Whether alternative employment or business was available and undertaken and, if so, the amount of income received. All income that a claimant received as a result of the incident must be clearly indicated and any saved overhead and other normal expenses not incurred as a result of the incident must be established.

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

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

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

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support this claim, Claimant submitted the following documentation:

- OSLTF claim form;
- Earnings Statements for pay periods from 5 April 2010 to 5 September 2010; and
- 2010 W-2 Wage and Earnings Statement.

Prior to presentment to the NPFC, Claimant presented an Interim Payment Claim to the RP/GCCF and was assigned Claimant Identification Number [redacted]. The Interim Payment claim was denied by the GGCF prior to presentment of the subject claim.

On 19 May 2011, Claimant presented the subject claim for $2,000.00 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 her claim.

The NPFC reviewed all information and documentation provided by Claimant. To verify whether the Claimant's hours were reduced as a result of the Deepwater Horizon oil spill, the NPFC contacted the Claimant's employer, [redacted] and [redacted] contracted [redacted] to provide cleaning and housekeeping services at resorts managed by [redacted] indicated that it did not suffer a decrease in business as a result

of the oil spill and directed the NPFC to speak further with [redacted], for its part, indicated that occupancy rates at its resorts remained steady at 80% and any changes in janitorial staffing would have been the janitorial staffing company's decision. [3]

In light of the foregoing, the Claimant has failed to show that the alleged loss in the amount of $2,000.00 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. Therefore this claim is denied.

Claim Supervisor: ***NPFC Cla[redacted]dication Division***

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

Supervisor's Action: ***Denial approved***

Supervisor's Comments:

[2] PHONECON [redacted]nd NPFC Staff, 25 May 2011.
[3] PHONECON [redacted]and NPFC Staff, 25 May 2011.

FOIA2011-3380-00003377

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]
Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: [redacted]

5890/DWHZ
Claim # N10036-0858
03 June 2011

[redacted]

Re: Claim Number: N10036-0858

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 N10036-0858 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 N10036-0858.

Mail reconsideration requests to:

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

Sincerely,

[redacted]

Claim[redacted] Division
National Pollution Funds Center
U.S. Coast Guard

Enclosure: Claim Summary/Determination Form

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-0858
Claimant	[redacted]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	$23,920.00

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

CLAIM AND CLAIMANT

On 24 May 2011, [redacted] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for $23,920.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

Ms. Do alleged that she was meant to start a position at the [redacted] in Mobile, AL on 1 May 2010."[1] Because of the oil spill, her start date was postponed until June 1, 2011 and then the position was cancelled permanently.[2]

Claimant seeks $23,920.00 to recover lost profits she would have earned had she worked 20 weeks at the [redacted] at a rate of $1,196.00 per week.

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, 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] Letter from Claimant to BP/GCCF, dated 25 Oct. 2010.
[2] 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 undertake, but reasonably available;
(d) Any saved overhead or normal expenses not incurred as a result of the incident; and
(e) State, local, and Federal taxes.

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support this claim, Claimant submitted the following documentation:

1. Optional OSLTF claim form, dated 19 May 2011;
2. Denial Letter on Interim Payment/Final Payment Claim from GCCF, dated 6 May 2011;
3. 2010 Form 1099-MISC, showing non-employee compensation from [redacted] of $950.00;
4. Record of payment to Claimant from [redacted] showing $950.00 paid on 1 June 2010;
5. Letter from Claimant to GCCF, dated 25 Oct. 2010 describing loss of potential job;
6. 2009 federal individual income tax return, showing adjusted gross income of $9,094.00;
7. 2009 Profit or Loss From Business form, showing Claimant's net profit of $9,786.00 from convenience store;
8. 2009 Self-Employment Tax form;
9. 2009 Making Work Pay and Government Retiree Credits Form;
10. 2009 Alabama individual income tax return forms, showing $9,786.00 in adjusted gross income;
11. 2010 federal individual income tax return, showing $883.00 in adjusted gross income;
12. 2010 Profit or Loss From Business form, showing net profit of $950.00;
13. 2010 Self-Employment Tax form;
14. 2010 Making Work Pay Credit form; and
15. 2010 Alabama individual income tax return, showing adjusted gross income of $950.00.

Prior to presentment to the NPFC, Claimant presented Emergency Advance Payment and Final Payment Claims to the RP/GCCF and was assigned GCCF Claimant ID Number [redacted] The Claims were denied by the GCCF.[3]

On 24 May 2011, Claimant presented this claim to the NPFC for $23,920.00 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, 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.

[3]GCCF denial letter Re: Claimant's EAP claim, dated 14 December 2010; GCCF denial letter Re: Claimant's Final Payment claim, dated 6 May 11.

In reviewing this claim, the NPFC contacted the [redacted] to verify the Claimant's assertion that she was offered a position at the hotel, but not hired as a result of the Deepwater Horizon oil spill. A representative of the hotel confirmed that the hotel had decided not to hire [redacted] due to decreased census following the oil spill.[4] However, the representative also indicated that the hotel was not able to show official losses as a result of the spill.[5]

Claimant calculated her losses of $23,920.00 based on what she would have earned had she worked full-time for 20 weeks at the [redacted], earning $1,196.00 per week. This alleged loss is based on continued employment at the hotel, to which the Claimant was not guaranteed.

Although the [redacted] attributed the non-hiring to certain effects of the oil spill, the hotel made a business decision not to add [redacted] to its staff.

Because Claimant has not demonstrated (1) her alleged loss in the amount of $23,920.00, as claimed, and that (2) 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: ***Claims [redacted] Division***

Date of Supervisor's Review: ***6/3/11***

Supervisor's Action: ***Denial approved***

Supervisor's Comments:

[4] PHONECON: Representative o[redacted], Mobile, AL and NPFC Staff, 20 May 11.
[5] Id.

FOIA2011-3380-00003381

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]
Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: [redacted]

5890/DWHZ
Claim # N10036-00860
08 June 2011

[redacted]

Re: Claim Number: N10036-0860

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 N10036-0860 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 N10036-0860.

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

Claim Number	N10036-0860
Claimant	[redacted]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	$63,225.80

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 May 2011, [redacted] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for $63,225.80 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

The Claimant and her husband are partners in a business named [redacted] located in Metaire, LA. The business retails car and marine audio components and provides screen printing for advertising products for the hospitality industry.[1] [redacted] went into business on 01 April 2010.

On the same day as [redacted] went into business, the Claimant signed an Employment Contract for $60,000.00 a year payable in monthly installments of $5,000.00.[2] The Claimant stated she received a monthly payment only for the month of April 2010. The Claimant's husband signed the Employment Contract as an officer of [redacted] The employment was "at will."

The Claimant alleged that as a result of the Deepwater Horizon oil spill, business in [redacted] area declined and [redacted] lost profits and could not pay her contractual salary. [redacted] went out of business in December 2010. An eviction notice was issued against [redacted] on 03 December 2010 for the premises used for the business.[3]

Claimant seeks her $5,000.00 monthly contractual pay from May 2010 through April 2011 and a pro-ration of May 2011 up until her claim was filed with NPFC.[4]

The Claimant's husband, her partner in the business, has also filed a claim for lost earnings with the NPFC. He also has a similar Employment Contract with [redacted] signed by the Claimant as an officer.

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[1]Claimant's Affidavit as to the Identifiable Link Between Actual Losses Sustained and the Deepwater Horizon Incident April 20, 2010 notarized on 22 April 2011.
[2]Employment Contract with [redacted] effective 01 April 2010.
[3]Eviction Notice from [redacted] dated 03 December 2010 for [redacted]
[4] PHONECON with Claimant on 03 June 2011.

FOIA2011-3380-00003383

APPLICABLE LAW

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

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

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

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

(b) That the claimant's income was reduced as a consequence of injury to, destruction of, or loss of property or natural resources, and the amount of that reduction.

(c) The amount of the claimant's profits or earnings in comparable periods and during the period when the claimed loss or impairment was suffered, as established by income tax returns, financial statements, and similar documents. In addition, comparative figures for profits or earnings for the same or similar activities outside of the area affected by the incident also must be established.

(d) Whether alternative employment or business was available and undertaken and, if so, the amount of income received. All income that a claimant received as a result of the incident must be clearly indicated and any saved overhead and other normal expenses not incurred as a result of the incident must be established.

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

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

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

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support this claim, Claimant submitted the following documentation:

- OSLTF Claim Form signed by the Claimant on16 May 2011
- Written Affidavit/Statement explaining the claim notarized on 22 April 2011

- Claimant's Affidavit as to the Identifiable Link Between Actual Losses Sustained and the Deepwater Horizon Incident April 20, 2010 notarized on 22 April 2011
- GCCF Denial of Final Payment Claim dated 16 April 2011
- Employment Contract with [redacted] effective 01 April 2010
- [redacted] earning statement for $5,000.00
- Forms 1099 for 2008 from [redacted], for 2009 from [redacted] nd for 2010 [redacted]
- Claimant's Bank Statements from [redacted] May 2010 through November 2010
- Claimant's Bank Statements from [redacted] from December 2008 through October 2009
- Eviction Notice from [redacted] dated 03 December 2010 for [redacted] Properties and T[redacted]
- Sixteen pages of prospect listings
- Two maps showing the location of the [redacted]
- Seven pages of articles concerning the Deepwater Horizon oil spill
- Employment contact listing from 01 December 2010 to 22 April 2011

On 24 May 2011, the NPFC sent the Claimant a letter requesting additional information in order to evaluate the claim. On 31 May 2011, the Claimant responded to the request by e-mail.

Prior to presentment to the NPFC, the Claimant presented two Final Payment claims to the RP/GCCF for $40,000.00 and $41,935.00 in lost profits and earnings respectively.[5] Both claims were denied by the GCCF.[6]

On 20 May 2011, the Claimant presented the subject claim for $63,225.80 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). The Claimant presented Final Payment Claims for $40,000.00 and $41,935.00 in lost profits and earnings respectively. Claimant then presented this claim for $63,225.80 in loss of profits and impairment of earnings capacity to the NPFC. Any claimed amount of damages exceeding $41,935.00 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 failed to meet her burden under OPA and the associated regulations at 33 C.F.R. Part 136 to establish her alleged loss and demonstrate 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.

[redacted] Claimant's business and employer) began operations on 01 April 2010. On that same day, the Claimant signed her alleged employment agreement with [redacted] The Claimant indicated that she only received a $5,000.00 disbursement for April under the contract before [redacted] went out of business. Claimant provides 1099's from 2008 and 2099, which indicated that she received other income from third party businesses. None of these businesses were [redacted] Claimant therefore failed to provide the amount of her profits or earnings in comparable periods and during the period when the claimed loss or impairment was suffered as required by 33 C.F.R. § 136.233(c).

[5] Claimant indicates that her GCCF Claimant ID # is [redacted]
[6] GCCF denial letter Re: Claimant's Final Payment claim, dated 16 April 2011.

Claimant additionally failed to demonstrate through evidentiary proof that her income was reduced as a consequence of injury to, destruction of, or loss of the property or natural resources as a result of a discharge or substantial threat of a discharge. 33 C.F.R. § 136.233(b).

Because the Claimant failed to (1) make proper presentment to the RP of some of her claimed loss; (2) establish her alleged loss; and (3) demonstrate that this 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, this claim is denied.

Claim Supervisor: ***Clai[redacted]ion Division***

Date of Supervisor's Review: ***08 June 2011***

Supervisor's Action: ***Denial approved***

Supervisor's Comments:

U.S. Department of Homeland Security

United States Coast Guard

Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD
[redacted]
Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: [redacted]

5890/DWHZ
Claim # N10036-0861
24 June 2011

[redacted]

Re: Claim Number: N10036-0861

[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 N10036-0861 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 N10036-0861.

Mail reconsideration requests to:

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

Sincerely,

[redacted]

Claim[redacted]Division
National Pollution Funds Center
U.S. Coast Guard

Enclosure: Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00003387

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-0861
Claimant	[redacted]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	$20,750.17

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 May 2011, [redacted] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for $20,750.17 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

Claimant, which operates a lawn care service, alleged that "the oil spill caused tourists to stop coming to Baldwin County" which caused "residential and commercial client[s] to reduce services i.e. lawn care."[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] Optional OSLTF Claim Form dated 19 May 2011.

FOIA2011-3380-00003388

(d) Whether alternative employment or business was available and undertaken and, if so, the amount of income received. All income that a claimant received as a result of the incident must be clearly indicated and any saved overhead and other normal expenses not incurred as a result of the incident must be established.

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

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

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

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support this claim, Claimant submitted the following documentation:

- OSLTF Optional Claim Form;
- Twelve Month Profit and Loss Statements for the calendar years 2007, 2008, 2009, and 2010;
- 2009 IRS Form 1040 Individual Tax Return and attached schedules;
- 2008 IRS Form 1040 Individual Tax Return and attached schedules;
- 2007 IRS Form 1040 Individual Tax Return and attached schedules;
- Fax cover sheet dated 19 May 2011;
- Fax cover sheet dated 20 June 2011;
- Memo to NPFC staff dated 20 June 2011 re: Request for Additional Information;
- [redacted] Certifications of Claimant and [redacted]
- City of Fairhope Alabama Business License for [redacted] and
- IRS Form 7004 Application for Automatic Extension of Time to File Certain Business Income Tax, Information, and Other Returns.

Prior to presentment to the NPFC, Claimant presented an Interim Payment Claim for $20,750.17 in lost profits and earnings to the RP/GCCF on 1 March 2011. Although this claim has not been settled by the RP/GCCF, 90 days has elapsed since the date of presentment to the RP/GCCF.

On 20 May 2011, Claimant presented the subject claim for $20,750.17 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 the Claimant.

Claimant alleged that his lawn care business lost clientele as a result of the Deepwater Horizon oil spill and estimates his lost profits at $20,750.17. Claimant indicated that this loss estimate is based on "gross revenue from [Claimant business] for the corresponding months in the prior year."[2] The NPFC notes, however, that the Claimant declared merely $455.00 in net profit in 2009 from the lawn care business. It is unclear from this declaration how the Claimant arrived at his estimated loss figure.

Additionally, the Claimant has not provided requested documentation to demonstrate that the alleged loss, claimed herein, resulted from the Deepwater Horizon oil spill.

Because the Claimant has failed to demonstrate (1) the alleged loss in the amount of $20,750.17, and (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: ***NPFC Cla[redacted]ion Division***

Date of Supervisor's Review: ***6/24/11***

Supervisor's Action: ***Denial approved***

Supervisor's Comments:

[2] Claimant response to NPFC request for additional information, dated 20 June 2011. Claimant's estimate breaks down as follows: $3,808.00 in claim assessment costs and $16,945.00 in projected gross revenues.

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

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number [redacted]

5890/DWHZ
Claim # N10036-0862
26 May 2011

[redacted]

Re: Claim Number: N10036-0862

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 N10036-0862 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 N10036-0862.

Mail reconsideration requests to:

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

Sincerely,

[redacted]

Claim[redacted]cation Division
Natio[redacted]tion Funds Center
U.S. Coast Guard

Enclosure: Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00003391

CLAIM SUMMARY/DETERMINATION FORM

Date	24 May 2011
Claim Number	N10036-0862
Claimant	[redacted]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
Amount Requested	$7,807.65

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 May 2011, [redacted] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for $7,807.65 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

Claimant asserted that he suffered a "[l]oss of income due to [redacted] shutting down on July 16, 2010, [as a result of] the [Deepwater Horizon] oil spill…" and that he was "unable to find a new job until January 3, 2011."[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 Optional Claim Form dated 13 May 2011.

09/14/11 FOIA2011-3380-00003392

(d) Whether alternative employment or business was available and undertaken and, if so, the amount of income received. All income that a claimant received as a result of the incident must be clearly indicated and any saved overhead and other normal expenses not incurred as a result of the incident must be established.

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

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

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

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support this claim, Claimant submitted the following documentation:

- OSLTF claim form;
- Letter to the NPFC re: explanation of claim and damages calculation dated 13 May 2011;
- 2010 W-2 Wage and Tax Statements;
- 2010 Unemployment Compensation Statement;
- [redacted] Earnings statements from 15 January 2010 to 16 July 2010;
- [redacted] Severance Statement;
- E-mail from [redacted] of [redacted] dated 16 June 2010;
- Newspaper clipping '[redacted] preps for July closure, will idle 19." [redacted] The Daily Review, 24 June 2010;
- Louisiana Driver's License;
- United States Uniformed Services I.D. Card:
- Social Security Card;
- GCCF Denial Letter re: EAP Claim, dated 18 November 2010:
- GCCF Denial Letter re: Interim Payment/Final Payment Claim, dated 22 April 2011;
- 2007 IRS Form 1040 Tax Return;
- 2007 Statement of Annuity Paid;
- 2008 IRS Form 1040 Tax Return;
- 2008 W-2 Wage and Tax and Annuity Statements;
- 2009 IRS Form 1040 Tax Return;
- 2009 W-2 Wage and Tax and Annuity Statements;
- 2010 IRS Form 1040 Tax Return; and
- 2010 W-2 Wage and Tax, Unemployment Compensation, and Annuity Statements.

Prior to presentment to the NPFC, the Claimant presented Emergency Assistance Payment (EAP) and Interim Payment/Final Payment claims to the RP/GCCF and was assigned Claimant

Identification Number [redacted]. The EAP claim was denied in a letter dated 18 November 2010, and the Interim Payment/Final Payment claim was denied on 22 April 2011.[2]

On 18 May 2011, the Claimant presented the subject claim for $7,807.65 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 provided an e-mail from his former employer [redacted] describing the causes of the plant closure,[3] and a newspaper clipping which further detailed the causes of the plant closure (the Article).[4] The email from [redacted] stated that the closure of the Morgan City, LA location was necessitated by "the downturn in the economy, coupled with the effects of the oil spill . . . which [redacted] Management] believed will have serious negative effects on the maritime industry for years to come. . . ."[5] The Article indicated that [redacted] had instituted two prior rounds of force reductions at the Morgan City plant in the months before the oil spill, and that the Morgan City plant was the third plant to be closed of the eight original [redacted] plants.[6]

Because the evidentiary support provided by the Claimant does not demonstrate that the alleged loss in the amount of $7,807.65 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 opposed to other economic factors, this claim is denied.

[redacted]

Claim Supervisor: ***NP[redacted]judication Division***

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

Supervisor's Action: ***Denial approved***

Supervisor's Comments:

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[2] GCCF denial letters, dated 18 November 2010 and 22 April 2011.
[3] E-mail from [redacted] dated 16 June 2010
[4] Newspaper clipping [redacted] preps for July closure, will idle 19." [redacted] 24 June 2010
[5] E-mail from [redacted] dated 16 June 2010
[6] Newspaper clipping [redacted] preps for July closure, will idle 19." [redacted] 24 June 2010

U.S. Department of
Homeland Security

**United States
Coast Guard**

Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD
[redacted]

5890
8/01/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: [redacted]

[redacted]

RE: Claim Number: N10036-0863

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 N10036-0863 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	: N10036-0863
Claimant	: [redacted]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: $9,800.00

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 21 May 2011, [redacted] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for $9,800.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.[1]

Claimant, who works as a tutor, alleged that her clients were affected by the oil spill, and unable to pay for her services, causing her to lose income.[2]

Prior to presentment to the NPFC, Claimant presented an Interim Payment/Final payment Claim to the RP/GCCF, which was denied on 22 April 2011.[3]

REQUEST FOR RECONSIDERATION:

On July 28, 2011, the Claimant sent a request for reconsideration to the NPFC stating she would like the NPFC to reconsider her claim.

The NPFC denied the claim originally on June 13, 2011 because after reviewing the documentation presented by the Claimant, her W-2 forms indicated that the Claimant's gross earnings were $16,685.00 in 2009 and $17,872.00 in 2010.[4] Claimant therefore earned $1,187.00 more in 2010, the year of the oil spill, than 2009, the year prior to the oil spill.

Furthermore, the NPFC contacted the Claimant's employer, [redacted] who indicated that the Claimant was employed primarily during the school year, which is why

[1] Optional OSLTF Claim Form dated 20 May 2011.
[2] Id.
[3] GCCF denial letter, dated 22 April 2011.
[4] Claimant's 2009 Form 1040 and W-2 from 2010, provided to NPFC by GCCF at Claimant's request.

her hours were lower during the summer.[5] Claimant's employer also indicated that her tutoring business suffered no adverse impacts from the oil spill.[6]

The claim was denied because the Claimant failed to show that she suffered an economic loss due to injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil.

On reconsideration, the Claimant provided a one page letter asserting again that she performs tutoring in the summer and she had no one sign up at the end of the school year because they could not afford it due to lack of work or no work because of the spill. Claimant goes on to say she has nothing else to provide other than what we already were presented and she would like us to reconsider her claim.

RECONSIDERATION CLAIM ANALYSIS:

The claimant requested reconsideration which was received by the NPFC on July 28, 2011 via regular mail. The Claimant provided a one page letter providing no new information in support of her 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 Claimant provided a one page letter asserting again that she performs tutoring in the summer and she had no one sign up at the end of the school year because they could not afford it due to lack of work or no work because of the spill. Claimant goes on to say she has nothing else to provide other than what we already were presented and she would like us to reconsider her claim.

Because the Claimant provided nothing new, the Claimant's financial documentation showed she made more in 2010 than in 2009 and the NPFC contacted her employer who stated that the Claimant was employed primarily during the school year, which is why her hours were lower during the summer.[7] Claimant's employer also indicated that her tutoring business suffered no adverse impacts from the oil spill.[8]

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

[5] PHONECON: NPFC Staff and Claimant's employer, 3 June 2011.
[6] Id.
[7] Id..
[8] Id.

Claimant has failed to demonstrate a loss of profits due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil.

This claim is denied upon reconsideration.

Claim Supervisor [redacted]

Date of Supervisor's review: ***8/1/11***

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

Supervisor's Comments:

U.S. Department of
Homeland Security

**United States
Coast Guard**

Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD
[redacted]
Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: [redacted]

5890/DWHZ
Claim # N10036-0864
16 June 2011

[redacted]

Re: Claim Number: N10036-0864

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 N10036-0864 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 N10036-0864.

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 Division
National Pollution Funds Center
U.S. Coast Guard

Enclosure: Claim Summary/Determination Form

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-0864
Claimant	[redacted]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	$48,620.00

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 19 April 2011, [redacted] (Claimant) presented an Optional Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Fund Center (NPFC), seeking $48,620.00 in loss of profits and earning capacity as a result of the Deepwater Horizon oil spill.

Claimant worked for [redacted] located in Tampa, FL.[1] [redacted] is a commercial shipyard, owned by [redacted], that specializes in conversions, general repair and overhaul of a wide range of vessels.[2] The Claimant asserted that the Deepwater Horizon oil spill caused a halt in production at the shipyard, which ultimately resulted in the layoff of herself and other [redacted] employees.[3] Claimant did not indicate how she calculated her alleged loss of $48,620.00.

On 9 March 2011, the Claimant filed a Full Review Final claim of $48,620.00 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 6 May 2011.[5]

APPLICABLE LAW

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

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

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[1] Optional OSLTF form, undated
[2] http://[redacted]/
[3] Optional OSLTF form, undated
[4] Report from the GCCF, dated 31 May 2011
[5] Denial letter from GCCF for Interim/Final Payment Claim, dated 6 May 2011

09/14/11 FOIA2011-3380-00003400

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

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

b) That the claimant's income was reduced as a consequence of injury to, destruction of, or loss of property or natural resources, and the amount of that reduction.

c) The amount of the claimant's profits or earnings in comparable periods and during the period when the claimed loss or impairment was suffered, as established by income tax returns, financial statements, and similar documents. In addition, comparative figures for profits or earnings for the same or similar activities outside of the area affected by the incident also must be established.

d) Whether alternative employment or business was available and undertaken and, if so, the amount of income received. All income that a claimant received as a result of the incident must be clearly indicated and any saved overhead and other normal expenses not incurred as a result of the incident must be established.

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

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

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

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

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

- Optional OSLTF form, undated;
- Letter from Claimant to "Whom It May Concern," dated 21 May 2011;
- Federal Tax Returns from 2008, 2009, and 2010;
- Form W-2 from [redacted] for 2008, 2009, and 2010;
- 2010 Form W-2 from [redacted]
- 2009 Form 1099-MISC from [redacted] for Claimant's husband;
- 2008 Form W-2 from Tampa Bay [redacted]
- 2010 Form 1099-G from the State of Florida Agency for Workforce Innovation;
- Paystubs from [redacted] for the time periods: 14 December 2009 through 27 December 2009, 1 February 2010 through 14 February 2010, and 15 March 2010 through 4 April 2010;
- Denial letter from GCCF for Interim/Final Payment Claim, dated 6 May 2011;
- Copy of claimant's driver's license.

Claimant seeks a total of $48,620.00 in loss of earnings allegedly 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.

This claim is denied because the Claimant's evidence does not demonstrate (1) the alleged loss of profits in the amount of $48,620.00, as claimed, or (2) the correlation, if any, between this alleged loss and the Deepwater Horizon oil spill. The Claimant stated that that Deepwater Horizon oil spill caused a lull in production at [redacted] that resulted in her layoff. The NPFC contacted [redacted] to verify the cause of the Claimant's layoff. The HR Supervisor from [redacted] informed the NPFC that there were no employee reductions due to the Deepwater Horizon oil spill.[6] He indicated that there were layoffs that occurred during the same time frame as the Deepwater Horizon oil spill, however the timing was coincidental and there was no actual connection between the layoffs and the oil spill.

Because the Claimant has failed to demonstrate (1) the alleged loss of profits in the amount of $48,620.00, 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: ***6/16/11***

Supervisor Action: ***Denial approved***

Supervisor's Comments:

[6] PHONECON between NPFC Representative and [redacted] on 24 May 2011

09/14/11 FOIA2011-3380-00003402

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
[redacted]

16480

3 June 2011

CERTIFIED MAIL Number: [redacted]

[redacted]

RE: Claim Number: N10036- 0865

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 on 28 April 2011, which was denied. On 23 May 2011, the NPFC received your claim for $12,000 as damages for seafood that you claim you could not harvest and consume because of the spill.

09/14/11 FOIA2011-3380-00003403

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

Your claim received by the NPFC on 23 May 2011, included the Optional OSLTF Claim Form; two signed letters from witnesses attesting to your use of natural resources you harvested for subsistence purposes; your letter giving permission for your wife, [redacted]

[redacted], to represent you to the NPFC on your claim; a copy of what appears to be your boat registration; and your residential freshwater and saltwater fishing license valid from 6 September 2010, to 31 August 2010.

NPFC Determination

The NPFC finds that you have not met your burden of proving a subsistence use loss as defined by 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) that you use natural resources for subsistence purposes. You have not documented a regular pattern of past catch that you or your family relied upon to meet the minimum necessities of life (e.g., the amount of past subsistence catch and consumption, and a copy of your fishing license valid prior to the spill, and during the loss period, to document a legal pattern of subsistence use). Further, the supporting letter from [redacted] indicates that your claimed loss is, at least in part, attributable to the inability to supply seafood to a local supper club. Such use are not subsistence loss under OPA;
2) that you suffered a loss of subsistence use of natural resources as a result of the spill. You have not documented how and where you traditionally obtained the resources you claim to have used for subsistence purposes, the period of your claimed loss, or that you were unable to continue catching the resources during the period of your claimed loss because of the spill (e.g., documentation of fishing area closures with no suitable alternative locations)[1]; nor
3) how you determined your claimed loss of $12,000 (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.

[1] The NPFC notes that all Alabama waters in the Gulf of Mexico were reopened to commercial and recreational harvesting of finfish by 16 August 2010, and to crabs 21 August 2010. Harvesting of shrimp was opened in Mississippi Sound by 16 August 2010, and for all Alabama waters in the Gulf of Mexico by 6 September 2010.

Should you choose to request NPFC reconsideration of this determination, please mail the request and additional claim information with the appropriate claim number (N10036-0853) 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,

[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
[redacted]
Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: [redacted]

5890/DWHZ
Claim # N10036-0866
3 June 2011

[redacted]

Re: Claim Number: N10036-0866

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 N10036-0866 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 N10036-0866.

Mail reconsideration requests to:

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

Sincerely,

[redacted]
Deep[redacted]n Claims Adjudication
National Pollution Funds Center
U.S. Coast Guard

Enclosure: (1) Claim Summary/Determination Form

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-0866
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 23 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 advised that "[the oil spill] caused my hours to be reduced" as a vessel clerk with [redacted]

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 NPFC Claim Form, dated 05 May 2011.

FOIA2011-3380-00003409

(d) Whether alternative employment or business was available and undertaken and, if so, the amount of income received. All income that a claimant received as a result of the incident must be clearly indicated and any saved overhead and other normal expenses not incurred as a result of the incident must be established.

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

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

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

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support her claim, Claimant submitted the following documentation:

- OSLTF Claim Form dated 05 May 2011;
- Earnings Statement for the periods form 01 March 2010 through 31 July 2010;
- 2010 W-2 Wage and Tax Statements;
- 2009 IRS Form 1040 Individual Tax Return;
- 2008 IRS Tax Transcript;
- Undated letter from [redacted] to Claimant[2];
- Letter from Claimant to the GCCF dated 18 November 2010;
- Copy of Claimant's social security card and Alabama driver license; and
- Pay stubs for periods ending from 19 August 2010 to 30 December 2010.

Claimant presented Emergency Advance Payment (EAP), Interim Payment, and Final Payment claims to the RP/GCCF. She was assigned Claimant ID [redacted] All her claims were denied by the GCCF.

On 23 May 2011, 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 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 as well as her entire GCCF claim file.

[2] See discussion of authenticity of letter *infra*, NPFC Determination

As part of the claim, the Claimant provided the NPFC with an undated letter from which was purportedly provided by the HR staff of the Claimant's employer, [redacted] The letter stated that a reduction of the Claimant's hours was "due to the closure of waterways in connection with BP's Deep Horizon explosion and oil spill…"[3] The NPFC attempted to verify the letter by contacting [redacted]. On 26 May 2011, the NPFC received correspondence from [redacted] which stated in pertinent part as follows:

> "Unfortunately we are not able to authenticate the letter. It was not created by any of our Human resources team members or by any of our Facility management team members."

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

This claim is denied for FRAUD.

Claim Supervisor: ***NPFC Clai[redacted]ion Division***

Date of Supervisor's Review: ***6/3/11***

Supervisor's Action: ***Denial approved***

Supervisor's Comments:

[3] Undated letter allegedly from [redacted] to Claimant.

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

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: [redacted]

5890/DWHZ
Claim # N10036-0867
26 May 2011

[redacted]

Re: Claim Number: N10036-0867

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 N10036-0867 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 N10036-0867.

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

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-0867
Claimant	[redacted]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
Amount Requested	$1,045.30

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 23 May 2011, [redacted] Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for $1,045.30 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

Claimant asserted that he owned 1244.44 shares of common stock in British Petroleum (BP). According to the Claimant, a stock dividend payment of $0.84 per share was declared on April 27, 2010 but that, he "did not receive the dividends that BP had promised."[1] Claimant asserted that the decision not to pay the dividend as scheduled on June 21, 2010, "was mutually arrived at by the President of BP and the President of the US [sic] without my knowledge."[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] Letter from Claimant to BP dated 3 August 2010.
[2] Id.

FOIA2011-3380-00003413

profits or earnings for the same or similar activities outside of the area affected by the incident also must be established.

(d) Whether alternative employment or business was available and undertaken and, if so, the amount of income received. All income that a claimant received as a result of the incident must be clearly indicated and any saved overhead and other normal expenses not incurred as a result of the incident must be established.

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

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

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

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support this claim, Claimant submitted the following documentation:

- Letter from claimant to the NPFC dated 06 May 2011;
- GCCF Denial Letter re: Interim Payment/Final Payment Claim dated 29 April 2011;
- E-mail from Claimant to the GCCF 09 March 2011;
- GCCF Deficiency Letter dated 01 March 2011;
- GCCF Letter re: Receipt of Full Review Final Payment Claim Form dated 26 January 2011;
- GCCF Letter re: request for additional information dated 31 January 2011;
- GCCF Letter re: request for clarification of claim type dated 28 September 2011;
- GCCF Letter re: Receipt of Claim dated 24 September 2011;
- GCCF Letter re: Notice of transfer of claim from BP to the GCCF and lack of supporting documentation in Claimant's file dated 23 August 2011;
- Letter from Claimant to BP dated 03 August 2010;
- Copy of Claimant's Oregon Driver License;
- Letter from [redacted] to Claimant re: sale of BP stock dated 14 September 2010; and
- GCCF Claim Form.

Prior to presentment to the NPFC, the Claimant presented an Interim Payment/Final payment Claim to the RP/GCCF and was assigned Claimant Identification Number [redacted] The Interim Payment claim was denied in a letter dated 29 April 2011.[3]

[3] GCCF denial letter Re: Claimant's Interim Payment/Final Payment claim, dated 29 April 2011.

On 23 May 2011, the NPFC received the subject claim for $1,045.30 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 Claimant asserted that he did not receive dividend payments from his BP stock; thus, he has suffered a loss of profits or impairment of earning capacity resulting from the Deepwater Horizon oil spill.[4] However, the dividend payments are not damages covered under OPA and pursuant to the governing claims regulations at 33 C.F.R. Part 136. Furthermore, the decision to withhold stock dividends is not a loss that is due to the injury, destruction, or loss of real property or personal property or natural resources; rather it is a business decision by BP to forego payment of quarterly dividends to stock holders. The ultimate payment of dividends, even if previously publically announced or regularly scheduled, is within the sole discretion of the BP directors.[5]

This claim is denied because the alleged loss in the amount of $1,045.30 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 nor is it an OPA compensable damage.

Claim Supervisor [redacted]

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

Supervisor's Action: ***Denial approved***

Supervisor's Comments:

[4] Claimant does not explicitly reference the Deepwater Horizon oil spill as the cause of his alleged losses.
[5] According to BP's stated dividend policy "[t]he amount and timing of dividends may be changed at any time without notice." http://www.bp.com/extendedsectiongenericarticle.do?categoryId=9033053&contentId=7060585.

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

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: [redacted]

5890/DWHZ
Claim # N10036-0869
08 June 2011

[redacted]

Re: Claim Number: N10036-0869

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 the claim number N10036-0869 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 N10036-0869.

Mail reconsideration requests to:

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

Sincerely,

[redacted]

C[redacted]ision
National Pollution Funds Center
U.S. Coast Guard

Enclosure: Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00003416

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-0869
Claimant	[redacted]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	$32,240.00

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 24 May 2011, [redacted] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for $32,240.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.[1]

Claimant alleged that she was not rehired by the [redacted] due to the Deepwater Horizon oil spill. According to the Claimant, she returned to work after suffering an injury on the job, and was told that the position was no longer available because of changing demands due to 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 returns, financial statements, and similar documents. In addition, comparative figures for

[1] Optional OSLTF Claim Form, dated 23 May 11.
[2] Letter from Claimant to NPFC, undated.

FOIA2011-3380-00003417

profits or earnings for the same or similar activities outside of the area affected by the incident also must be established.

(d) Whether alternative employment or business was available and undertaken and, if so, the amount of income received. All income that a claimant received as a result of the incident must be clearly indicated and any saved overhead and other normal expenses not incurred as a result of the incident must be established.

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

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

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

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support this claim, Claimant submitted the following documentation:

1. OSLTF optional claim form;
2. Fax cover letter dated 23 May 2011;
3. Letter from Claimant to NPFC, describing loss of position and calculation of losses;
4. Monetary Determination from Louisiana Workforce Commission, undated;
5. Statement for Recipients of Unemployment Compensation Payments, showing $1,145.00 in unemployment compensation benefits for 2010;
6. Letter from Claimant describing employment verification via [redacted]

Prior to presentment to the NPFC, Claimant presented an Interim Payment/Final Payment Claim to the RP/GCCF, and was assigned Claimant ID [redacted] The claim was denied on 6 May 2011.[3]

On 24 May 2011, Claimant presented this claim for $32,240.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.[4]

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, 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)

[3] GCCF denial letter Re: Claimant's Interim/Final Payment claim, dated 6 May 2011.
[4] Optional OSLTF Claim Form, dated 23 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 her claim.

The NPFC reviewed all information and documentation provided by the Claimant. Claimant indicated in a letter to the NPFC and in a subsequent phone conversation, that her position became unavailable after she returned to work following leave due to an injury on the job.[5] While she was away, the position became filled and her job was no longer available.[6] Therefore, the Claimant has failed to establish a loss as a result of the Deepwater Horizon oil spill.

This claim is denied because the Claimant has failed to show that the alleged loss in the amount of $32,240.00 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.

[redacted]

Claim Supervisor: ***NPFC Claims Adjudication Division***

Date of Supervisor's Review: ***6/8/11***

Supervisor's Action: ***Denial approved***

Supervisor's Comments:

[5] Letter from Claimant to NPFC. Claimant indicated in a phone conversation with NPFC staff that she left work in October 2011 due to a shoulder injury suffered while on the job, 6 June 2011.

[6] PHONECON: Claimant and NPFC Staff, 6 June 2011.

FOIA2011-3380-00003419

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]
Fax: 202-493-6937

5890
6/28/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: [redacted]

[redacted]

RE: Claim Number: N10036-0870

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 N10036-0870 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	: N10036-0870
Claimant	[redacted]
Type of Claimant	: Corporate (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: $30,000.00

FACTS:

On or about 20 April 2010, the Mobile Offshore Drilling Unit Deepwater Horizon (Deepwater Horizon) exploded and sank in the Gulf of Mexico. As a result of the explosion and sinking, oil was discharged. 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 24 May 2011, [redacted] owned by [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 resulting from the Deepwater Horizon oil spill.

The Claimant is the [redacted] at the city pier in Panama City, Florida. On 02 June 2010, the Claimant entered into a consulting agreement with Coast Parasail, Inc. [redacted] related to the start-up of [redacted] and [redacted] agreed to pay the Claimant a fee of $30,000 to open the restaurant by 04 July 2010.

Hook'd opened on 24 July 2010 and the Claimant asserted that he did not receive the fee of $30,000.00. The Claimant stated that construction and restaurant workers were recruited to work on the Deepwater Horizon oil spill clean-up so there were no workers available to assist with opening up [redacted] on time.[2] Claimant also attributed his loss of the $30,000.00 fee to "the uncertainty and lack of revenue that the oil spill caused."[3]

Upon receipt of the claim, the NPFC contacted the Claimant because he originally filled out his OSLTF claim form in his name as opposed to the business name. The Claimant confirmed with the NPFC that he wanted the claim to be in the name of his business, [redacted]

REQUEST FOR RECONSIDERATION:

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

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[1]Employment Agreement between Claimant and [redacted] signed 02 June 2011.
[2]Claimant's Letter to the NPFC explaining the claim, dated 24 May 2011.
[3] Claimant's Letter to the GCCF explaining the claim, dated 25 October 2011.

The NPFC denied the claim originally on June 2, 2011 because to the extent that the Claimant's loss resulted from the non-availability of personnel, who chose to assist in the oil spill cleanup, the loss was not due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil. Additionally, the Claimant provided no support for his vague references to the general uncertainty and lack of revenue in the wake of the oil spill. As such, the NPFC determined that the Claimant failed to demonstrate that his alleged loss in the amount of $30,000.00 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 the claim was denied.

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

Claimant presented an Emergency Advance Payment (EAP) and Final Payment Claim to the RP/GCCF and was assigned GCCF Claimant ID [redacted] Both claims were denied by the GCCF.[4]

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 two page letter that provided statements by the Claimant to "fill in the gaps of the original claim docs and hardship letter although the Claimant provided no new information other than clarification statements supporting his original reasoning for his alleged loss."[5]

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 an explanation regarding his rationale for taking on the endeavor for the [redacted] which he stated was because of the economic devastation of the oil spill to the real estate market. The Claimant further asserted that he did not make the July 4, 2010 deadline to open the restaurant because construction workers and qualified workers were not available due to accepting positions working on the oil spill. The Claimant further stated that due to the amount of pay people were receiving to work on the oil spill, he simply could not get the people back that had been working for him.

[4] GCCF denial letter Re: Claimant's EAP claim, dated 7 December 2010; GCCF denial letter Re: Claimant's Final Payment claim, dated 27 May 2011.
[5] See reconsideration letter dated June 21, 2011.

The Claimant stated that had conditions in the area been normal, he would have been able to close on the real estate deal he had in the works prior to accepting the endeavor working for the [redacted] and then he would not have had to take on the [redacted] and Grill endeavor but nonetheless, had circumstances been normal in the area, he would have been able to meet his contractual obligation of opening the [redacted] by the July 4, 2010 deadline in order to receive his agreed upon $30,000.00 fee that he is claiming as his loss because construction workers and qualified employees would have been available allowing him to meet his deadline.

It is important to note that the Claimant didn't sign the Consulting Agreement until June 1, 2010 at which time the well still hadn't been capped therefore the Claimant took on this endeavor with the full knowledge that the incident was still in full swing ultimately causing a breach of contract for the Claimant by not meeting the deadline in accordance with the contract terms.

Additionally, 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."

The NPFC denies the request for reconsideration because the alleged loss is not due to injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of discharge of oil. The alleged loss was caused by a breach of contract associated with the June 1, 2010 Consulting Agreement between the Claimant and [redacted] Such a loss is not a damage that may be compensated from the OSLTF.

This claim is denied upon reconsideration.

Claim Supervisor: [redacted]

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
[redacted]
Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: [redacted]

5890/DWHZ
Claim # N10036-0871
08 June 2011

[redacted]

Re: Claim Number: N10036-0871

Dea[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 N10036-0871 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 N10036-0871.

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

Date	06 June 2011
Claim Number	N10036-0871
Claimant	[redacted]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
Amount Requested	$42,042.00

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 24 May 2011, [redacted] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for $42,042.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

Claimant advised that he was employed with [redacted] as a Life Support Technician (LST) on a saturation dive vessel in the Gulf of Mexico and due to a "lack of work in GOM as a result of spill" he was released from his position on 15 November 2010.[1] Claimant's sum certain reflects lost wages and expenses incurred during his search for other employment.[2] Claimant presented a letter from his previous employer, [redacted] which indicated termination circumstances as "due to lack of work with the possibility of rehire."[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.

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[1] See, Optional OSLTF Claim Form dated 14 May 2011
[2] Id
[3] See, Letter to Claimant from [redacted] dated 25 January 2011

09/14/11 FOIA2011-3380-00003425

(c) The amount of the claimant's profits or earnings in comparable periods and during the period when the claimed loss or impairment was suffered, as established by income tax returns, financial statements, and similar documents. In addition, comparative figures for profits or earnings for the same or similar activities outside of the area affected by the incident also must be established.

(d) Whether alternative employment or business was available and undertaken and, if so, the amount of income received. All income that a claimant received as a result of the incident must be clearly indicated and any saved overhead and other normal expenses not incurred as a result of the incident must be established.

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

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

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

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

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

- Optional OSLTF Claim Form dated 14 May 2011, received 24 May 2011;
- Letter from Claimant to the NPFC explaining situation, dated 14 May 2011;
- Partial GCCF Claim Form submission;
- Letter from Claimant to the GCCF explaining situation, dated 25 January 2011;
- Letter from [redacted] addressed to Claimant explaining his termination situation, dated 25 January 2011.

Prior to presentment to the NPFC, Claimant presented an Emergency Advance Payment claim and was assigned Claimant Identification Number [redacted]. This claim was denied in a letter dated 30 November 2010. Claimant also presented an Interim Payment/Final Claimant claim to the RP/GCCF and this claim was denied in a letter dated 16 April 2011.

On 24 May 2011, Claimant presented this claim for $42,042.00 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 the Claimant. The NPFC contacted the employer, [redacted]. who confirmed that the Claimant was terminated as asserted but that he "was not laid off due to the BP spill…It was a reduction due to lack of work from other areas."[4] This correspondence refutes the assertions that the Deepwater Horizon oil spill was the direct cause for the Claimant's termination.

Claimant has failed to show that the alleged loss in the amount of $42,042.00 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. Therefore 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:

[4] See, Email correspondence between [redacted] and the NPFC, dated 06 June 2011

FOIA2011-3380-00003427

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

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: [redacted]

5890/DWHZ
Claim # N10036-0872
25 July 2011

[redacted]

Re: Claim Number: N10036-0872

Dea[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 N10036-0872 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 N10036-0872.

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 FOIA2011-3380-00003428

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-0872
Claimant	[redacted]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	$2,700.00

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 23 May 2011, [redacted] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for $2,700.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.[1]

For approximately ten years, the Claimant worked as an assistant for [redacted] a small real estate company in Gulf Shores, Alabama.[2] In May of 2010, the Claimant alleged that her income was reduced, and stayed at this reduced rate until she was let go in August of 2010.[3] In a letter to the RP/GCCF, the Claimant's employer stated that the company's "income plunged immediately following the April, 2010 oil spill and all company costs were immediately forced to be reduced. The reduction included [Claimant's] salary."[4]

Claimant seeks $2,700 in lost profits and earnings capacity due to the loss of her position with [redacted]

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] Optional OSLTF Claim Form dated 21 June 2011.
[2] Letter written by Claimant, 25 April 2011.
[3] Letter written by Claimant, 25 April 2011.
[4] Letter from Claimant's employer , dated 11 Oct. 2010.

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(b) That the claimant's income was reduced as a consequence of injury to, destruction of, or loss of property or natural resources, and the amount of that reduction.

(c) The amount of the claimant's profits or earnings in comparable periods and during the period when the claimed loss or impairment was suffered, as established by income tax returns, financial statements, and similar documents. In addition, comparative figures for profits or earnings for the same or similar activities outside of the area affected by the incident also must be established.

(d) Whether alternative employment or business was available and undertaken and, if so, the amount of income received. All income that a claimant received as a result of the incident must be clearly indicated and any saved overhead and other normal expenses not incurred as a result of the incident must be established.

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

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

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

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support this claim, Claimant submitted the following documentation:

- Letter written and signed by Claimant, explaining denial of claim by GCCF as well as post-denial dealings with GCCF, dated 25 April 2011;
- Copy of GCCF's denial letter regarding interim and final payment of claim #[redacted]
- Letter written by Claimant's employer, confirming her reduction in pay following May 1, 2010;
- Seven pay stubs from 12/14/2009 – 7/31/2010 showing a 40% reduction in pay starting in May 2010;
- Copy of Form W-2 Wage and Tax Statements from 2008, showing total state wages of $30,866.08;
- Copy of Form W-2 Wage and Tax Statement from 2009, showing total state wages of $12,390.00;
- Form 4852, substitute for Form W-2 Wage and Tax Statement from 2010, showing total wages of $5,800;
- Chart created and signed by Claimant, showing total losses of $2,700;
- Response to request for additional information, 9 June 2011; and,
- GCCF Claim Submission,[redacted]

Prior to presentment to the NPFC, Claimant presented a Full Review Final (FRF) Claim for $2,200.00 in lost profits and earnings to the RP/GCCF on 17 September 2010. Claimant was assigned Claimant ID [redacted] and Claim # [redacted] Claimant's FRF was denied on 22 April 2011.

On 23 May 2011, Claimant presented this claim for $2,700.00 in lost profits and earnings capacity to the NPFC. OPA requires that Claimant first submit a claim to the RP/GCCF before submitting the claim to the NPFC.[5] Because Claimant has previously presented a lost wages and earnings claim in the amount of $2,200.00 to the RP/GCCF, this summary determination shall address Claimant's claim for lost profits and earnings capacity in the amount of $2,200.00. The remaining $500.00 of Claimant's lost profits claim has not been properly presented to the NPFC; therefore that portion of the claim is denied.

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, 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.

As noted above, the portion of the Claimant's alleged lost profits and earning above the $2,200.00 previously presented to the RP/GCCF as required by OPA is denied.[6] The following paragraphs therefore address the Claimant's lost profits and earnings claim in the amount of $2,200.00.

The NPFC reviewed all information and documentation provided by the Claimant, including information provided by the Claimant's former employer, [redacted].[7] In order to prove that the Claimant 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, the Claimant would have to establish (1) that her employer, [redacted] suffered an economic loss, (2) that the company's loss was a result of damage caused by the oil spill, and (3) that her individual loss was sufficiently connected to the business loss, so that her loss is also a result of the oil spill.

Claimant alleged that her salary was reduced and that she eventually lost her position due to financial hardships sustained by [redacted] due to the oil spill.[8] To support the Claimant's contention, the president of [redacted] stated that the oil spill resulted in the cancellation of specific transactions, which led to the elimination of the Claimant's position and the collapse of the company.[9] Claimant indicated that these lost transactions represented "approximately $65,000.00 in done-deal (but not closed) commissions."[10]

The NPFC requested documentation of these cancelled transactions in a letter to the Claimant, dated 1 June 2011, as well as in phone conversations with the Claimant and with the Claimant's

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[5] 33 C.F.R. § 136.103(a)
[6] 33 C.F.R. § 136.103(a)
[7] The NPFC attained a certified request from [redacted] former President of [redacted] to use the GCCF Claim submission of [redacted] in support of Claimant's submission to the NPFC. 5 July 2011.
[8] Letter from Claimant to NPFC, 25 April 2011.
[9] Email in response to NPFC request for additional information, 28 June 2011. *See also*, Email from [redacted] to Claimant, 24 June 2011.
[10] Email in response to NPFC request for additional information, 28 June 2011.

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former employer.[11] The NPFC also obtained permission from the president of [redacted] to use the company's GCCF claim submission in support of this claim.[12] However, neither theClaimant nor her former employer has provided documentation that indicates that [redacted] lost any identifiable business transactions as a result of the oil spill. Therefore Claimant has not shown that her loss was a result of damage caused by the Deepwater Horizon oil spill.

Because the Claimant has failed to meet her burden to 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, her remaining claim in the amount of $2,200.00 claim is denied.

[redacted]

Claim Supervisor: ***NP[redacted]djudication Division***

Date of Supervisor's Review: ***7/24/11***

Supervisor's Action: ***Denial approved***

Supervisor's Comments:

[11] PHONECONS: Claimant and NPFC Staff, 17and 23 June 2011; and [redacted] and NPFC Staff, 14 June 2011.

[12] Certified request sent by [redacted] to NPFC, 5 July 2011.

09/14/11 FOIA2011-3380-00003432

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
[redacted]

16480

3 June 2011

CERTIFIED MAIL Number [redacted]

[redacted]

RE: Claim Number: N10036- 0874

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 24 May 2011, the NPFC received your claim for $3,000, presented as damages for fish that you were unable to catch and eat because of the spill.

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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

Your claim received by the NPFC on 24 May 2011, included the Optional OSLTF Claim Form, a copy of your claim to 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:

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 type, frequency, and amount of subsistence catch and consumption, and a copy of your fishing license valid prior to the spill, and during the loss period, to document a legal pattern of subsistence use);
2) the period of your claimed loss; nor
3) how you determined your claimed loss of $3,000 (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 (N10036-0853) 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,

[redacted]

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
[redacted]
Fax: 202-493-6937

CERTIFIED MAIL-RETURN RECEIPT REQUESTED
Number: [redacted]

5890/DWHZ
Claim # N10036-0875
6 June 2011

[redacted]

Re: Claim Number: N10036-0875

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 N10036-0875, 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 N10036-0875.

Mail reconsideration requests to:

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

Sincerely,

[redacted]
ion Division
National Pollution Funds Center
U.S. Coast Guard

Enclosures: Claim Summary/Determination Form

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-0875
Claimant	[redacted]
Type of Claimant	Business
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	$54,502.00

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 24 May 2011, [redacted] (Owner) on behalf of On Hold Promotions (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for $54,502.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

Owner runs an advertisement service business, specifically involving recordings played on the phone when businesses place customers on hold.[1] Claimant's clients are made up of businesses that rely on the Florida tourism industry, such as condominiums, resorts, hotels, vacation homes and spas.[2] Owner asserted that as a result of the Deepwater Horizon oil spill, the tourism industry collapsed, creating a drop in revenue for the Claimant's clients.[3] As a result of this drop in revenue, Owner asserted the Claimant's clients ceased using on-hold advertising services.[4]

Owner calculated the Claimant's sum certain by determining the Claimant's 2010 projected revenue, subtracting that from the actual 2010 earnings, and multiplying the difference by loss of income percentage of 50.70% and a recovery factor of two.[5] The final number totaled $54,502.00.[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

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[1] Attachment to Claimant's submission, 'Business, Customers, Products and Services'.
[2] Attachment to Claimant's submission, 'Partial List of Lost Customers Due to the BP/Deepwater Horizon Oil Spill'.
[3] Letter dated 19 May 2011 from Claimant to the NPFC.
[4] Id.
[5] Attachment to Claimant's submission, 'Business Loss of Income Calculation Using GCCF Formula'.
[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.

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's entire alleged loss results from business clients deciding not to continue purchasing the Claimant's on-hold advertising services. Correspondence between these clients and the Owner established that cancellations resulted from business decisions to forgo the cost of advertising in light of reduced tourism in the Gulf of Mexico.[9]

This claim is denied because the alleged loss in the amount of $54,502.00[10] is not due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil.

Claim Supervisor: *NP[redacted]ljudication Division*

Date of Review: *6/6/11*

Supervisor's Actions: ***Denial approved***

Supervisor's Comments:

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

[10] Regarding this sum certain, Owner's calculation included multiplying the losses of $27,251.00 by a recovery factor of two. Under the OPA, the additional $27,251.00 is not compensable because only actual net reductions or loss of earnings and profits are compensable, not prospective future losses. Owner's use of a recovery multiplier for future business is entirely prospective in nature. There is no indication that Claimant would continue to generate a base of paying clients to substantiate the multiplied amount irrespective of the Deepwater Horizon incident.

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

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

- Optional OSLTF claim form, dated 21 May 2011;
- Letter dated 19 May 2011 from Claimant to [redacted] Petty Officer;
- Florida Department of State corporation entity information for [redacted] LLC;
- Letter from [redacted] o GCCF;
- Letter from [redacted] o GCCF;
- Attachment to Claimant's submission, 'Partial List of Lost Customers Due to the BP/Deepwater Horizon Oil Spill;
- Map with hand-drawn names of Claimant's business clients;
- Invoice dated 29 May 2010 for the amount of $10,945.00;
- Invoice dated 30 April 2010 for the amount of $995.00;
- Invoice dated 30 April 2010 for the amount of $2,985.00;
- Attachment to Claimant's submission, 'Witnesses-Business Suppliers I Use';
- Attachment to Claimant's submission, 'Description of My Business, Customers, Products and Services';
- Attachment to Claimant's submission; 'Actions Taken To Create Income and Reduce Expenses';
- Attachment to Claimant's submission, 'Hardships Due to the Oil Spill';
- Attachment to Claimant's submission, 'Business Loss of Income Calculation Using GCCF Formula';
- Monthly Profit and Loss from 1 January 2008-31 December 2008;
- Monthly Profit and Loss from 1 January 2009-31 December 2009;
- Monthly Profit and Loss from 1 January 2010-31 December 2010;
- 2008 version of 1040federal tax return;
- 2009 version of 1040 federal tax return;
- 2010 version of 1040 federal tax return.

Prior to presenting this Claim, Owner on behalf of Claimant, presented multiple claims to the RP/GCCF, including an Emergency Advance Payment (EAP), Interim Payment, and Final Payment claim.[7] All claims were denied by the GCCF.[8]

On 24 May 2011, Claimant presented the subject claim for $54,502.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

[7] Owner indicates that Claimant was assigned GCCF Claimant ID [redacted]
[8] GCCF denial letters: 4 December 2010 (EAP claim); 6 May 2011 (Interim/Final Payment 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
[redacted]
Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: [redacted]

5890/DWHZ
Claim # N10036-0876
27 May 2011

[redacted]

Re: Claim Number: N10036-0876

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 N10036-0876 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 N10036-0876.

Mail reconsideration requests to:

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

Sincerely,

[redacted]

Cl[redacted]dication Division
National Pollution Funds Center
U.S. Coast Guard

Enclosure: Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00003442

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-0876
Claimant	[redacted]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
Amount Requested	$50,000.00

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 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 and $10,000.00 in real or personal property damage resulting from the Deepwater Horizon oil spill.

Claimant asserted that "after finding out about the oil spill [he] stop[ped] working for [him]self to work the oil spill [response] which [he] was told would last for two to three years [but] lasted 5 months." He alleged that "[b]y changing jobs, working the oil spill cause[d] [him] to loose wages."[1]

Although the Claimant asserted claims for lost profits and earnings and real or personal property damage, he makes no statement or allegation implicating damage to real or personal property. Based on the Claimant's statements on his OSLTF claim form, his $10,000.00 claim for real or personal property damage is interpreted as a claim for lost profits and earnings. Claimant therefore alleged a total of $50,000.00 in lost profits and earnings.

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]Claimant's Optional OSLTF Claim Form, Section 2, dated 17 May 2011

FOIA2011-3380-00003443

(b) That the claimant's income was reduced as a consequence of injury to, destruction of, or loss of property or natural resources, and the amount of that reduction.

(c) The amount of the claimant's profits or earnings in comparable periods and during the period when the claimed loss or impairment was suffered, as established by income tax returns, financial statements, and similar documents. In addition, comparative figures for profits or earnings for the same or similar activities outside of the area affected by the incident also must be established.

(d) Whether alternative employment or business was available and undertaken and, if so, the amount of income received. All income that a claimant received as a result of the incident must be clearly indicated and any saved overhead and other normal expenses not incurred as a result of the incident must be established.

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

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

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

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support this claim, Claimant submits the following documentation:

- OSLTF claim form; and
- [redacted] flyer/advertisement.

Claimant asserted that in November of 2010 he presented a claim to the RP/GCCF for his alleged losses, which claim was denied by the GGCF prior to presentment of the subject claim to the NPFC.

On 25 May 2011, the Claimant presented this claim to the OSLTF for $50,000.00 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 the Claimant. According to the Claimant's own statements, he ceased working as a self-employed contractor in order to gain employment working on oil spill response.

This claim is denied because the Claimant has failed to show that the alleged loss in the amount of $50,000.00 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 also denied because the Claimant has not demonstrated that he has presented his claim for $50,000.00 in lost profits and earnings to the RP pursuant to 33 C.F.R. § 136.103(a), which requires all claims for removal costs or damages be presented first to the RP.

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

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

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
[redacted]

5890
26 May 2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: [redacted]

[redacted]

RE: Claim Number: N10036-0877

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 N10036-0877 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 N10036-0877.

Mail reconsideration requests to:

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

Sincerely,

[redacted]

Natio[redacted]Funds Center
Claims Adjudication Division
U.S. Coast Guard

Encl: (1) Claim Summary/Determination Form

09/14/11 FOIA2011-3380-00003446

CLAIM SUMMARY / DETERMINATION FORM

Date	: May 26, 2011
Claim Number	: N10036-0877
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 claims for certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On May 23, 2011, [redacted] Claimant) presented a lost profits & earnings capacity claim in the amount of $22,000.00 to the National Pollution Funds Center (NPFC) for reimbursement.

Claimant stated on the Optional OSLTF form that the "oil spill cause me not to work because we could not go shrimping or fishing"[1] Claimant is self-employed and sold seafood to make a living. He stated he received a check from the GCCF for $3,500 but that was not enough. To support his claim, the Claimant presented the NPFC a 1099.

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).

[1] Optional OSLTF Claim Form dated May 23, 2011

09/14/11 FOIA2011-3380-00003447

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

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

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

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

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

DETERMINATION OF LOSS

Claimant's Submission

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

- NPFC OSLTF Form, dated May 23, 2011;
- 1099 for 2007

On 22 May 2011, the Claimant was contacted and additional information was requested to support the claim. The claimant explained he accepted a quick payment settlement from the responsible party in the amount of $5,000.

Prior to presentment to the NPFC, the Claimant presented an Emergency Advance Payment (EAP) claim to the RP/GCCF. He was assigned Claimant Identification Number [redacted] and Claim [redacted]. By Notice of Determination dated 3 January 2011[2], the GCCF determined the Claimant was eligible for $5,600. The Claimant subsequently received a Quick Pay Final payment in the amount of $5,000 on 3 January 2011[3].

NPFC Determination

The OSLTF is available to pay certain uncompensated damages pursuant to 33 U.S.C. § 2712(a)(4). Further, under 33 U.S.C. § 2751(a), any person, including the Fund, who pays compensation pursuant to OPA to any Claimant for removal costs or damages shall be subrogated to all rights, claims, and causes of action that the claimant has under any other laws.

The Fund will not pay what has already been compensated and any Fund payment is subject to acquiring all rights to recover from the Responsible Party.

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 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 Responsible Party, including any release in return for a Final Payment, 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: *NPFC [redacted] dication Division*

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

Supervisor Action: ***Denial approved***

Supervisor's Comments:

[2] GCCF Notice of Determination dated 3 January 2011.
[3] GCCF Quick Payment Final Claim Determination dated 3 January 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
[redacted]
Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: [redacted]

5890/DWHZ
Claim # N10036-0878
11 July 2011

[redacted]

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 N10036-0878 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 N10036-0878.

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

Enclosure: Claim Summary/Determination Form

09/14/11 FOIA2011-3380-00003450

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-0878
Claimant	[redacted]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	$30,172.00

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 May 2011, [redacted] Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for $30,172.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

The Claimant owns a condo unit in Ft. Walton Beach, Florida. The condo was acquired with the intent to rent it.[1] The rental incomes for 2008 and 2009 were $1,550.00[2] and $5,682.00,[3] respectively. The Claimant stated that since the condo was used for family medical needs for 2008 and 2009, these years are not a valid basis for comparison to the 2010 loss of rental income.

The Claimant prepared a Claims/Loss Calculation worksheet to support the loss of rental income claimed.[4] The claim amount requested of $30,172.00 represents the estimated rental loss from vacancies and for rental discounts for every week from 21 April 2010 through 31 December 2010. The worksheet shows rentals in May and June, two rentals in July and one rental in August. There are no rentals from September through December. Actual rental income received after the spill in 2010 was $7,896.60.

[1] Letter from the Claimant to NPFC dated 06 July 2011 responding to questions in the Request for Additional Information
[2] Form 1040 US Individual Income Tax Returns for 2008. Schedule E Supplemental Income
[3] Form 1040 US Individual Income Tax Returns for 2009. Schedule E Supplemental Income
[4] Claim/Loss Calculations worksheet on [redacted] condo setting forth rental income from 02 January 2009 to 31 December 2010 prepared by Claimant

09/14/11 FOIA2011-3380-00003451

The Claimant stated that there were large deposits of oil on the beach and in the water on Okaloosa Island near Ft. Walton Beach.[5] The Claimant has provided many pictures and illustrations of the 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;

[5] Letter from the Claimant to NPFC dated 06 July 2011 responding to questions in the Request for Additional Information

09/14/11 FOIA2011-3380-00003452

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

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support this claim, Claimant submitted the following documentation:

1. NPFC Claims Form signed by Claimant 17 May 2011
2. Letter to NPFC dated 17 May 2011 explaining the claim
3. Letter to GCCF dated 05 March 2011 explaining the claim
4. GCCF Letter acknowledging receipt of Interim Claim dated 31 January 2011
5. Listing of 2011 Operating Expense for Ft. Walton condo
6. Worksheet of 2011 Expenditures on Ft. Walton condo prepared by Claimant
7. Claimant's W-2 for 2010 from [redacted]
8. Claimant's W-2 for 2010 from [redacted]
9. Form 1099-MISC from GCCF for 2010 for $13,200.00
10. Form 1099-MISC from BP for 2010 for $7,526.21
11. Form 1099-G for 2010 from State of Florida for [redacted]
12. Web site print-outs on the Ft. Walton area and the Ft. Walton condo
13. Cancellations e-mails from renters in 2010 cancelling reservations due to oil spill
14. GCCF Letter acknowledging receipt of Interim Claim dated 24 January 2011
15. Letter to GCCF dated 30 December 2010 explaining the claim
16. GCCF Form 2000-I Interim Payment Claim Form dated 30 December 2010 with Attachments
17. Form 1040 US Individual Income Tax Returns for 2008 and 2009
18. Claim/Loss Calculations worksheet on Ft. Walton condo setting forth rental income from 02 January 2009 to 31 December 2010 prepared by Claimant
19. Mortgage Statement dated 16 November 2010 from [redacted] on Ft. Walton condo

In response to NPFC letter requesting additional information, Claimant submitted the following documentation:

1. E-mail dated 06 July 2011 from Claimant transmitting response to request
2. Letter from the Claimant to NPFC dated 06 July 2011 responding to questions in the request
3. Schedule E Supplemental Income and Loss for 2008
4. Worksheets of Rental Income by Day for 2009 and 2010 for Ft. Walton condo
5. Attachment A of GCCF Claim Form
6. Various pictures of oil spill damages

09/14/11 FOIA2011-3380-00003453

On 01 June 2011, NPFC sent the Claimant a letter requesting additional information in order to evaluate the claim. On 07 July 2011, the Claimant responded to the request.

Claimant presented an Emergency Advance Payment Claim to the GCCF and GCCF issued Claimant ID [redacted][6] The Claimant presented in 2010 claims of $13,128.04 for an Emergency Advance Payment, $4,900.52 for a Supplemental and $9,446.57 for an Interim 1 to GCCF. The claims presented to GCCF total $27,475.13.

On 16 May 2011 the GCCF paid the Claimant $13,200.00 for the Emergency Advance. Payments by BP to the Claimant totaled $7,526.21 in 2010. The payments by GCCF and BP to date total $20,726.61.On 17 May 2011, the GCCF sent the Claimant a Determination Letter on an Interim Payment/Final Payment Claim for the period May through December 2010. The Letter included an Interim Payment of $2,163.90 and a Final Offer of $25,000.00.[7] The Claimant stated he has not accepted the Final Offer.[8]

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 the claim.

The Claimant stated that since the Ft. Walton Beach condo was used for family medical needs and that the rental incomes for 2008 and 2009 for these years are not a valid basis for comparison to the 2010 loss of rental income. The rental income for 2008 and 2009 was $1,550.00 and $5,682.00, respectively. The worksheet prepared by the Claimant shows actual rental income of $7,896.60 received after the spill in 2010. The GCCF and BP paid the Claimant a total of $20,726.61 for 2010.

The amount requested by Claimant of $30,172.00 represents the estimated rental loss from vacancies and for rental discounts for every week from 21 April 2010 through 31 December 2010. Because rental income from condos in the area is seasonal, the NPFC has not been provided with information which would allow it to reasonably infer that the subject property would have maintained full occupancy throughout the entirety of the claim period. Furthermore, gross rentals are not compensable under OPA as any claim for lost profits and earnings is limited to the actual net reduction or loss of earnings or profits suffered by the claimant pursuant to 33 C.F.R. § 136.235. Accordingly, the NPFC

[6] GCCF Claim Status site
[7] GCCF Claim Status site
[8] Letter from the Claimant to NPFC dated 06 July 2011 responding to questions in the Request for Additional Information

09/14/11 FOIA2011-3380-00003454

is unable to determine the exact amount of the claimant's losses or how the Claimant arrived at his sum certain of $30,172.00 based upon the evidence provided.

The amount of the claims presented to GCCF to date is $27,475.13. The amount of the claim presented to NPFC by the Claimant is $30,172.00. The NPFC may only adjudicate a claim amount that that is equal to or less than the amount previously presented to the responsible party. As such, any portion of Claimant's alleged damages above the $27,475.13 previously presented to the RP is hereby denied.

This claim is denied because the Claimant failed to meet the burden to demonstrate (1) that there was an alleged loss in the amount claimed, and (2) 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.

Claim Supervisor: [redacted]

Date of Supervisor's Review: ***11 July 2011***

Supervisor's Action: ***Denial approved***

Supervisor's Comments:

09/14/11 FOIA2011-3380-00003455

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

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: [redacted]

5890/DWHZ
Claim # N10036-0879
27 June 2011

[redacted]

Re: Claim Number: N10036-0879

Dea[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 N10036-0879 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 N10036-0879.

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

Claim Number	N10036-0879
Claimant	[redacted]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	$150,000.00

FACTS

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

CLAIM AND CLAIMANT

On 25 May 2011, [redacted] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for $150,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.[1]

Claimant, a marine artist, alleged that "the Gulf Oil Spill caused a loss of tourism in the areas where [his] marine artwork was to be shown, causing cancellations at all of the venues that had been scheduled for over one year."[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 dated 2 May 2011.
[2] Id.

FOIA2011-3380-00003457

(d) Whether alternative employment or business was available and undertaken and, if so, the amount of income received. All income that a claimant received as a result of the incident must be clearly indicated and any saved overhead and other normal expenses not incurred as a result of the incident must be established.

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

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

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

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support this claim, Claimant submitted the following documentation:

- Optional OSLTF claim form;
- Letter from Claimant to NPFC, dated 18 May 2011;
- Letter from Claimant to BP, responding to request for additional information;
- GCCF Interim Payment Claim Form, stating lost profits/earnings of $150,000.00;
- Copy of GCCF Full Review Final Payment Claim Form;
- Letter from Claimant to GCCF, dated 21 Oct. 2010;
- Letter from Claimant to GCCF, dated 7 Dec. 2010;
- Letter from Claimant to GCCF, dated 20 Dec. 2010;
- Letter from Claimant to GCCF, dated 10 Jan. 2011;
- Letter from Claimant to GCCF, dated 28 Feb. 2011;
- List of direct deposit receipts from 15 Oct 2009 to 28 Jan 2009, showing sales of $22,900;
- Notarized document listing "Month by Month Income for 2010" in which Claimant calculates losses of $145,475.00;
- List of Gulf Coast art galleries; and,
- Response to request for Additional Information.

Prior to presentment to the NPFC, Claimant submitted an Emergency Advance Payment Claim (EAP) as well as an Interim/Final Payment Claim to the RP/GCCF. Claimant's EAP was denied on 15 December 2010, and Final Payment Claim was denied on 21 April 2011.

On 25 May 2011, Claimant presented the subject claim to the NPFC for $150,000.00 in loss of profits and impairment of earnings capacity.

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, 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 his claim.

In reviewing the information provided by the Claimant, the NPFC was able to contact five of the nine galleries listed as venues where the Claimant alleged his shows to have been cancelled due to economic effects of the oil spill.[3] None of the galleries confirmed that the Claimant had scheduled shows in their galleries, and all galleries stated that they had not cancelled any shows because of the oil spill.[4] A gallery in Mobile, AL noted a general increase in sales following the oil spill, due to an influx of oil spill clean-up workers from out of state.[5] Other coastal galleries did say that their revenues were down due to a generally slow economy but none had records of shows scheduled with the Claimant.

This claim is denied because the Claimant has failed to demonstrate that he suffered any actual losses as a result of the damage to property or natural resources resulting from the discharge or substantial threat of discharge of oil.

Claim Supervisor: *N* **djudication D*ivision***

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

Supervisor's Action: ***Denial approved***

Supervisor's Comments:

[3] List of Gulf Coast art galleries, provided by Claimant.
[4] PHONECON: NPFC Staff and 9 June 2011.
[5] PHONECON: NPFC Staff and 9 June 2011.

FOIA2011-3380-00003459

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

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: [redacted]

[redacted]

5890/DWHZ
Claim # N10036-0881
08 June 2011

Re: Claim Number: N10036-0881

Dea[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 N10036-0881 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 N10036-0881.

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 FOIA2011-3380-00003460

CLAIM SUMMARY/DETERMINATION FORM

Date	08 June 2011
Claim Number	N10036-0881
Claimant	[redacted]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
Amount Requested	$11,793.00

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 May 2011, [redacted] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for $11,793.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

Claimant advised that he was employed with [redacted] and asserted that "due to the government moratorium on drilling" his employer decreased his hours.[1] A letter from Claimant's employer advised that "due to a recent, rapid decline in our business activity in the GoM resulting from the continuation of the de-facto drilling moratorium, we are reducing the number of vessels that will remain active and "work ready."[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] See, Optional OSLTF Claim Form dated 18 May 2011, received 25 May 2011

[2] See, Letter from [redacted] to Claimant dated 07 January 2011

FOIA2011-3380-00003461

returns, financial statements, and similar documents. In addition, comparative figures for profits or earnings for the same or similar activities outside of the area affected by the incident also must be established.

(d) Whether alternative employment or business was available and undertaken and, if so, the amount of income received. All income that a claimant received as a result of the incident must be clearly indicated and any saved overhead and other normal expenses not incurred as a result of the incident must be established.

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

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

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

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

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

- Optional OSLTF Claim Form dated 18 May 2011, received 25 May 2011;
- Letter from [redacted] to Claimant dated 07 January 2011;
- GCCF Interim Payment/Final Payment Claim Denial Letter, dated 06 May 2011;
- 2008-2010 W-2 Forms;
- 2009-2010 Form 1040;
- Various [redacted] Earnings Statements from [redacted]

Prior to presentment to the NPFC, Claimant presented an Emergency Advance Payment Claim to the RP/GCCF assigned Claimant Identification Numbe[redacted]. This claim was denied in a letter dated 07 December 2011. An Interim Payment/Final Payment claim was also presented to the RP/GCCF and was subsequently denied in a letter dated 06 May 2011.

On 25 May 2011, Claimant presented this claim for $11,793.00 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 the Claimant and confirmed that the data presented was accurate. The Claimant corroborated that the drilling moratorium and permitting process delays were the primary reason for his reduction in work hours.

As the moratorium and permitting process delays are viewed as intervening causes for loss of earnings and wages, this loss is not compensable under OPA.

Because the Claimant has failed to 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, the claim is DENIED.

[redacted]

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
[redacted]
Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Numbe[redacted]

5890/DWHZ
Claim # N10036-0882
21 June 2011

[redacted]

Re: Claim Number: N10036-0882

Dea[redacted]

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number N10036-0882 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 N10036-0882.

Mail reconsideration requests to:

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

Sincerely,

[redacted]
tion

Enclosure(s): (1) Claim Summary/Determination Form

FOIA2011-3380-00003464

CLAIM SUMMARY/DETERMINATION FORM

Date	14 June 2011
Claim Number	N10036-0882
Claimant	[redacted]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	$33,979.00

FACTS

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

CLAIM AND CLAIMANT

On 18 May 2011, [redacted] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking $33,979.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill. The Claimant, who was previously employed as a mariner, asserted that due to the Deepwater Horizon oil spill, he has not been able to work and the spill has "caused a hiring freeze in Louisiana and all other states."[1]

The Claimant previously presented an Interim Payment/Final Payment Claim to the RP/GCCF and was assigned Claimant Identification Number [redacted], which claim was denied in a letter dated 17 May 2011.[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. 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 C.F.R. § 136.105(a) and § 136.105(e)(6), the claimant bears the burden of providing to the NPFC, all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim.

Loss of Profits or Impairment of Earnings Capacity

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

[1] Letter from Claimant to the NPFC dated 24 May 2011
[2] See, GCCF Denial letter dated 17 May 2011

for uncompensated damages. One type of damages available pursuant to 33 C.F.R. §136.231 is a claim for loss of profits or impairment of earning capacity due to injury to or destruction of natural resources.

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

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

(b) That the claimant's income was reduced as a consequence of injury to, destruction of, or loss of property or natural resources, and the amount of that reduction.

(c) The amount of the claimant's profits or earnings in comparable periods and during the period when the claimed loss or impairment was suffered, as established by income tax returns, financial statements, and similar documents. In addition, comparative figures for profits or earnings for the same or similar activities outside of the area affected by the incident also must be established.

(d) Whether alternative employment or business was available and undertaken and, if so, the amount of income received. All income that a claimant received as a result of the incident must be clearly indicated and any saved overhead and other normal expenses not incurred as a result of the incident must be established.

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

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

DETERMINATION OF LOSS

Claimant's Submission

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

- NPFC Optional OSLTF Claim Form dated 24 May 2011;
- Letter to the NPFC dated 24 May 2011;
- 2010 IRS Form 1040 Tax Return;
- 2009 IRS Form 1040X Tax Return ;
- 2010 W-2 Wage and Tax Statement from [redacted]
- Louisiana Workforce Commission Monetary Determination for the 2011 benefit year and related electronic worker's compensation claim submission form;
- [redacted] notice re: continuation of group coverage;
- Copy of Claimant's Florida Driver License, Social Security Card, and [redacted] loan advance;
- [redacted] pay stubs for various periods from 01 August 2010 to 15 March 2011;
- Bank statements for various periods from 22 February 2011 to 205 May 2011; and
- Fax cover sheet.

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 $33,979.00, as claimed, or (2) the correlation, if any, between this alleged loss and the Deepwater Horizon oil spill.

The NPFC reviewed all information and documentation provided by the Claimant. After reviewing the information presented, it is apparent that, despite a documented history of employment with [redacted] the causation for the Claimant's termination was not related to the oil spill. Correspondence from [redacted] revealed that the Claimant was not laid off from his job with [redacted] due to the oil spill.[3]

Because the Claimant has failed to demonstrate (1) the alleged loss of profits in the amount of $33,979.00, 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: ***Claim[redacted]ion Division***

Date of Supervisor's review: ***6/21/11***

Supervisor Action: ***Denial approved***

Supervisor's Comments:

[3] See, E-mail to NPFC Staff, 14 June 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
[redacted]

16480

23 June 2011

CERTIFIED MAIL Number: [redacted]

[redacted]

RE: Claim Number: N10036- 0883

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

On 25 May 2011, the NPFC received your claim seeking $7,200 for lost natural resources that you indicate you would have caught and eaten if not for the spill. The NPFC considers this to be a claim for lost subsistence use of natural resources[1]. On the Optional OSLTF Claim Form submitted to the NPFC, you assert that you submitted a claim to the GCCF in November 2010 following the Deepwater Horizon spill for lost

[1] You marked the category for natural resource damages on your optional claim form. However, natural resource damages under OPA are public use losses that may only be claimed by appropriate federal, state, or tribal natural resource trustees.

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subsistence use of natural resources. You did not, however, submit proof of this submittal.

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)).

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 lost 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.

09/14/11 FOIA2011-3380-00003469

Claim Submission and Documentation

Your claim, received by the NPFC on 25 May 2011, included the Optional OSLTF Claim Form and your letter describing that you rely on the fish you catch to feed yourself and your family, and that there were no alternative fishing areas in your vicinity to allow you to mitigate your loss. You calculate your loss as the replacement cost of seafood that you bought over the three month period from April 21, 2010 to August 2010 when you were unable to fish.

NPFC Determination

The NPFC finds that you have not met your burden of proving a subsistence use loss as defined by the 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:

1) provided proof that you presented your claim to the RP;

2) provided 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

3) explained how you determined your claimed loss of $7,200 (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 (N10036-0883) to:

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

09/14/11 FOIA2011-3380-00003470

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,

[redacted]

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

09/14/11 FOIA2011-3380-00003471

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

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: [redacted]

5890/DWHZ
Claim # N10036-0895
2 June 2011

[redacted]

Re: Claim Number: N10036-0884

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 N10036-0884 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 N10036-0895.

Mail reconsideration requests to:

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

Sincerely,

[redacted] ivision
National Pollution Funds Center
U.S. Coast Guard

Enclosure: Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00003472

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-0884
Claimant	[redacted]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	$23,632.00

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 May 2011, [redacted] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for $23,632.00 in loss of profits and impairment of earning capacity resulting from the Deepwater Horizon oil spill.[1]

Claimant had been hired by [redacted] "to be an asset to . . . offshore operations on platforms and jobs in the Gulf of Mexico includ[ing] Deep Water Operations."[2] Following the Deepwater Horizon oil spill, the Claimant was unable to begin work with [redacted] and was unemployed until 27 October 2010.[3] Claimant seeks lost earnings during that period of unemployment in the amount of $23,632.00.

Claimant alleged that [redacted] could not employ him until 27 October 2010 as a result of the Deepwater Horizon oil spill.

APPLICABLE LAW

Under the Oil Pollution Act of 1990 (OPA), at 33 U.S.C. § 2702(a), responsible parties are liable for removal costs and damages resulting from the discharge of oil into or upon 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] Optional OSLTF Claim Form dated 13 May 2011.
[2] Letter from [redacted], signed by Operations Manager, dated 17 Dec. 2010.
[3] Id.

(c) The amount of the claimant's profits or earnings in comparable periods and during the period when the claimed loss or impairment was suffered, as established by income tax returns, financial statements, and similar documents. In addition, comparative figures for profits or earnings for the same or similar activities outside of the area affected by the incident also must be established.

(d) Whether alternative employment or business was available and undertaken and, if so, the amount of income received. All income that a claimant received as a result of the incident must be clearly indicated and any saved overhead and other normal expenses not incurred as a result of the incident must be established.

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

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

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

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support this claim, Claimant submitted the following documentation:

1. OSLTF optional claim form;
2. Handwritten letter by claimant, dated 14 May 11, noting denial by GCCF;
3. Signed letter from employer, noting inability to hire Claimant following spill and subsequent rehiring on 27 Oct. 2011;
4. Pay Stub for pay period 04/20/11 – 05/04/11, showing total earnings of $1,482.48;
5. 2010 W-2, showing state wages of $8,776.70;
6. 2009 Federal Return Recap, showing total earnings of $32,370.00;
7. 2008 Federal Return Recap, showing total earnings of $23,259.00;
8. 2007 W-2, showing state wages of $18,895.48;
9. Statement for Recipients of Unemployment Compensation Payments for 2010, in which Claimant collected $7,072.00 in unemployment benefits;
10. Outline of GCCF claim form;
11. Copy of Claimant's GCCF claim form; and
12. Letter from Claimant to NPFC, dated 21 April 2011, describing loss of employment following oil spill.

Prior to presentment to the NPFC, Claimant presented an Emergency Advance Payment and Final Payment Claim to the RP/GCCF on 20 April 2010.[4] He was assigned GCCF Claimant ID [redacted] The claims were subsequently denied by the GCCF.[5]

On 25 May 2011, Claimant presented this claim for $23,632 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, 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 his claim.

Although the Claimant attributed his alleged lost earnings from a period of unemployment to the Deepwater Horizon oil spill, a letter from [redacted], the Claimant's employer, indicated that "[s]ubsequent to the oil spill and resulting closure of the Gulf of Mexico Operations by several of our clients, [Claimant] was unable to be hired/employed at our company."[6] The NPFC contacted [redacted] to seek clarification on the letter and understand the reasons for the delay in the Claimant's hiring at [redacted] informed the NPFC that its operations were impacted by several factors, including the oil spill and the moratorium on deepwater drilling, and the Claimant was temporarily unemployed as a result.[7]

Because the Claimant has failed to show that the alleged loss in the amount of $23,632.00 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.

[redacted]

Claim Supervisor: ***NPFC Claims Adjudication Division***

Date of Supervisor's Review: ***6/2/11***

Supervisor's Action: ***Denial approved***

Supervisor's Comments:

[4] Claimant's GCCF claim form, included in his original submission, indicates that he filed a six-month Emergency Advance Payment (EAP) claim for $29,700.00 in lost profits and earnings.
[5] GCCF denial letters Re: Claimant's EAP claim, dated 8 December 2010; Claimant's Interim/Final Payment claim, dated 1 April 2011.
[6] Signed letter from employer, noting inability to hire Claimant following spill and subsequent rehiring on 27 Oct. 2011.
[7] PHONECON with [redacted] on 01 June 2011.

FOIA2011-3380-00003475

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]
Fax: 202-493-6937

5890
7/26/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number [redacted]

[redacted]

RE: Claim Number: N10036-0886

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 N10036-0886 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	: N10036-0886
Claimant	: [redacted]
Type of Claimant	: Corporate (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 21 May 2011, [redacted] (Owner) on behalf of [redacted] (Claimant) presented a claim to the Oil Spill Liability Trust Fund for $25,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

Claimant is a multi-faceted business based in Mobile, Alabama that is involved in real estate, tax preparation and bookkeeping, and real estate appraisals.[1] Owner asserted that the Deepwater Horizon oil spill has caused a trickledown effect with everyone suffering some type of loss.[2] Specifically regarding her loss, Owner asserted that as a result of the Deepwater Horizon oil spill, the Claimant's potential clients are unable to purchase property, have no need for real estate appraisals and cannot afford to hire a tax specialist to complete their tax return work and bookkeeping.[3]

Owner indicated that she claimed $25,000.00 in damages because it was her understanding that it was the maximum amount that could be claimed after November 2010, although, her losses were a lot more than this.[4]

Prior to presenting this claim, on 1 March 2011, the Claimant filed a Full Review Final Claim (FRF) with the GCCF for $25,000.00 and assigned Claimant ID Number [redacted] and Claim ID Number [redacted] This Full Review Final Claim (FRF) was denied on 22 April 2011.[6]

[1] Letter from Claimant to NPFC dated 10 June 2011.
[2] Id.
[3] Id.
[4] Id.
[5] Report from the GCCF dated 17 June 2011.
[6] GCCF Denial Letter dated 22 April 2011.

REQUEST FOR RECONSIDERATION:

On July 9, 2011, the Claimant sent a request for reconsideration to the NPFC stating she would like the NPFC to reconsider her claim as she disagreed with the NPFC's denial.

The NPFC denied the claim originally on June 29, 2011 because the Claimant's evidence failed to establish a financial loss due to the Deepwater Horizon oil spill. First, the Claimant's 2010 Schedule C indicated gross earnings of $5,982.00, while the Claimant's 2010 profit and loss statement showed earnings of $26,855.40. Secondly, regarding the real estate part of the Claimant's business, the profit and loss statements showed that the Claimant had not had any income from commissions since 16 June 2008. Lastly, regarding the appraisal part of the Claimant's business, the profit and loss statements showed that the Claimant had not earned income from an appraisal since September of 2009, and these earnings had already been in steep decline, going from $3,515.00 in 2008 to $785.00 in 2009.

Further, the Claimant failed to provide any documentation to connect her alleged loss to the Deepwater Horizon oil spill. On 31 May 2011, the NPFC requested additional information from the Claimant to further evaluate the claim. The NPFC requested, among other things, a sales ledger indicating names of clients from 2008 through 2010 and documentation of any cancelled contracts experienced by the Claimant due to the Deepwater Horizon oil spill. In its response to the NPFC received on 22 June 2011, the Owner failed to provide any of this requested documentation.

Therefore, the claim was denied because the Claimant has failed to (1) demonstrate the alleged loss and (2) 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

On reconsideration, the Claimant provided a one page letter only asserting the same arguments originally presented although she still failed to provide any new information or any of the information the NPFC had previously requested that she failed to provide during the original process.

RECONSIDERATION CLAIM ANALYSIS:

The claimant requested reconsideration which was received by the NPFC on July 20, 2011 via regular mail. The Claimant provided no new documentation in support of her 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 Claimant provided nothing new for the NPFC to consider on reconsideration other than her assertions regarding her alleged loss. The NPFC requested additional information during the original adjudication process which the Claimant failed to provide. The Claimant's failure to provide the following requested information (a sales ledger indicating names of clients from 2008 through 2010 and documentation of any cancelled contracts experienced by the Claimant due to the Deepwater Horizon oil spill), leaves the NPFC no choice but to uphold its original denial determination because the Claimant has not provided enough information to demonstrate a loss in the amount alleged or demonstrate that the 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.

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 due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil.

This claim is denied upon reconsideration.

Claim Supervisor: [redacted]

Date of Supervisor's review: *7/26/11*

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

Supervisor's Comments:

U.S. Department of Homeland Security

United States Coast Guard

Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD
[redacted]
Fax: 202-493-6937

CERTIFIED MAIL-RETURN RECEIPT REQUESTED
Number: [redacted]

5890/DWHZ
Claim # N10036-0887
6 June 2011

[redacted]

Re: Claim Number: N10036-0887

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 N10036-0887 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 N10036-0887.

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: Claim Summary/Determination Form

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-0887
Claimant	[redacted]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	$18,000.00

FACTS

On or about 20 April 2010, the Mobile Offshore Drilling Unit Deepwater Horizon (Deepwater Horizon) exploded and sank in the Gulf of Mexico. As a result of the explosion and sinking, oil was discharged. 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 May 2011, [redacted] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for $18,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

Claimant is employed at the [redacted][1] Claimant stated that due to the Deepwater Horizon oil spill, his income was reduced.[2]

APPLICABLE LAW

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

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

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.

[1] Attachment to Claim Submission describing employment.
[2] PHONECON between NPFC and Claimant 27 May 2011.

FOIA2011-3380-00003481

(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;
- Attachment to claim submission with list of compensated received;
- Attachment to claim submission with description of where Claimant worked;
- Pay stub from [redacted] company dated 12 June 2009 in the amount of $444.21;
- 2010 version of 1099 tax form; and
- GCCF Claimant Status sheet.

Prior to presenting this Claim, Claimant presented multiple claims to the RP/GCCF. These claims have all been denied.[3]

On 26 May 2011, Claimant presented the subject claim for $18,000.00 in loss of profits or 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.

[3] GCCF denial letter Re: Claimant's Emergency Advance Payment claim, dated 3 & 6 December 2010; GCCF denial letter Re: Claimant's Interim Payment claim, dated 12 May 2011.

Claimant has not provided evidence demonstrating a financial loss due to the Deepwater Horizon oil spill. Claimant failed to provide any information to support his claim that he suffered reduced income because of the Deepwater Horizon oil spill.

Because the Claimant has not proven his alleged loss in the amount of $18,000.00 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: *NPF[redacted]judication Division*

Date of Review: *6/6/11*

Supervisor's Actions: ***Denial approved***

Supervisor's Comments:

U.S. Department of Homeland Security

United States Coast Guard

Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD
[redacted]
Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Numbe[redacted]

DWHZ/ 5890
8 June 2011

[redacted]

RE: Claim Number: N10036-0888

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 N10036-0888 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 N10036-0888.

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

Encl: Claim Summary/Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-0888
Claimant	: [redacted]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Impairment of Earnings Capacity
Amount Requested	: $50,000.00

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 25, 2011, [redacted] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for $50,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

The Claimant alleged that his company's emergency response services were terminated on 31 October 2010 although work was promised through April 2011.[1]

APPLICABLE LAW:

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

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

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

(a) That real or personal property or natural resources have been injured, destroyed, or lost.
(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 May 25, 2011.

09/14/11 FOIA2011-3380-00003485

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 25, 2011; and
- Handwritten notice dated May 25, 2011.

On June 6, 2011, the NPFC contacted the Claimant by email and requested additional information. On June 6, 2011, the claimant responded by providing the following additional information:

- NPFC OSLTF Form, dated May 25, 2011 (previously submitted May 25,2011);
- Handwritten notes dated May 25, 2011 (previously submitted May 25, 2011);
- 2010 1040 Schedule C Profit or Lost from Business; and
- Federal Income Tax Summary 2009 – 2010.

The Claimant asserted that he presented a claim to the RP/GCCF and was denied prior to presentment to the NPFC.[2]

The Claimant seeks $50,000.00 in loss of profits and impairment of earnings capacity, resulting from the termination of his company's service agreement.

[2] OLSTF claim 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 of the documentation submitted by the Claimant.

The claim is denied because the alleged loss in the amount of $50,000.00 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 indicated that his alleged loss results from the termination of his company's emergency response services by a third party. To the extent that Claimant has suffered a loss from the termination of his company's services; the Claimant has not provided a copy of a contract for his business. Additionally, the Claimant has not provided adequate comparable financials in order for the NPFC to determine the Claimant's business profits/losses from 2008 – 2009.

While the Claimant provided only a copy of his Schedule C for 2010, only page 2 of his 2010 Form 1040, and a federal tax summary for 2009 and 2010, the information is not complete therefore the NPFC cannot perform a forensic analysis based on the minimal information provided. It is important to note that the Claimant's Schedule C line # 29 shows a profit for 2010 of $76,400.00 and line #1 shows gross receipts for the business in 2010 as being $82,800.00 although the federal tax summary for 2010 shows a total business income for 2010 as being $66,130.00. The NPFC has determined that the documentation presented appears to be contradictory therefore should the Claimant decide to request reconsideration, the Claimant needs to provided complete tax records for 2008, 2009 and 2010 along with all Profit & Loss statements by month for the periods in question.

This claim is denied because (1) the Claimant has failed to demonstrate that it had a guaranteed contractual agreement for services as claimed which was breached causing an alleged loss of profits, (2) the Claimant has failed to substantiate a loss of profits in the amount claimed, and (3) the Claimant has failed to demonstrate how its loss is a direct result of the injury to the natural resource.

Based on the foregoing, this claim is denied.

Claim Supervisor [redacted] ***ation 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
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD
[redacted]
Fax: 202-493-6937

5890
8/01/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: [redacted]

[redacted]

RE: Claim Number: N10036-0889

Dea[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 N10036-0889 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	: N10036-0889
Claimant	: [redacted]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: $6,500.00

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 25 May 2011, [redacted] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for $6,500.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

Claimant works as a buffet server at the [redacted] in Bay St. Louis, Mississippi (MS). Claimant stated that due to the Deepwater Horizon oil spill, business at the casino slowed down and the casino sent her home early.[1] As a result, she lost hours and tips. Claimant's tax returns show wages of $13,955.00 for 2009 and $14,220.00 for 2010 from the [redacted].[2]

Prior to presentment to the NPFC, Claimant presented an Interim Payment Claim for $6,500.00 in lost profits and earnings to the RP/GCCF. She was assigned GCCF Claimant ID # [redacted] and Claim # [redacted]. On 3 May 2011, the GCCF denied the Interim Payment Claim.[3]

REQUEST FOR RECONSIDERATION:

On July 28, 2011, the Claimant sent a request for reconsideration to the NPFC stating she would like the NPFC to reconsider her claim.

The NPFC denied the claim originally on June 23, 2011 because after reviewing the documentation presented by the Claimant, she stated that due to the Deepwater Horizon oil spill, business at the casino slowed down and the casino sent her home early. As a result, she lost hours of work and tips. The NPFC contacted the [redacted] to corroborate the

[1] Letter to NPFC form Claimant dated 11 May 2011 explaining the claim.
[2] Forms 1040 US Individual Income Tax Returns for 2008, 2009 and 2010 with W-2's from the [redacted].

[3] GCCF denial letter dated 3 May 2011.

Claimant's statements and was told by Human Resources that the casino will not answer any questions regarding the Deepwater Horizon oil spill.[4]

Additionally, the Claimant's tax returns show wages of $13,955.00 for 2009 and $14,220.00 for 2010 from the [redacted] The difference between the wages for 2009 and 2010 does not support the Claimant's alleged loss of $6,500.00 in income due to the oil spill.

This claim was 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.

On reconsideration, the Claimant provided a one page letter asserting again that all the documentation that she previously provided is the only factual information she has.

RECONSIDERATION CLAIM ANALYSIS:

The claimant requested reconsideration which was received by the NPFC on July 28, 2011 via regular mail. The Claimant provided a one page letter providing no new information in support of her 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 Claimant provided a one page letter stating she has nothing factual to provide in support of her request for reconsideration.

Because the Claimant provided nothing new, 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 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.

[4] PHONECON with Human Resources of [redacted] on 14 June 2011.

This claim is denied upon reconsideration.

Claim Supervisor [redacted]

Date of Supervisor's review: *8/1/11*

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

Supervisor's Comments:

U.S. Department of
Homeland Security

**United States
Coast Guard**

Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD
[redacted]
Fax: 202-493-6937
5890
7/7/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number [redacted]

[redacted]

RE: Claim Number: N10036-0890

Dear [redacted]

The National Pollution Funds Center (NPFC), in accordance with 33 C.F.R. Part 136, denies payment on your claim, #N10036-0890. 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 N10036-0890.

Mail reconsideration requests to:

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

[redacted]
[redacted] Funds Center
U.S. Coast Guard

Encl: (1) Claim Summary/Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-0890
Claimant	: [redacted]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Impairment of Earnings Capacity
Amount Requested	: $125,000.00

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 May 2011, [redacted](Owner) (Claimant) presented an Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Fund Center (NPFC) on behalf of [redacted](Claimant) seeking $125,000.00 for real or personal property damages that allegedly resulted from the Deepwater Horizon oil-spill. The Claimant has alleged that it suffered a diminution in value to 25 residential lots in the City of Mobile, Alabama (the "Lots"). However, the Claimant has not alleged that the subject lots suffered physical injury due to the oil spill, and thus a claim for real property damage under 33 U.S.C. § 2702(b)(2)(B) is inappropriate. Accordingly, the NPFC has re-characterized the claim as one for lost profits and earnings under 33 U.S.C. §2702(b)(2)(E).

With respect to its alleged losses, the Claimant asserted that "due to the oil spill, the price of 25 lots were re-negotiated."[1]

Claimant filed a claim with the GCCF on 29 December 2010 but that the claim was denied.[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. 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 C.F.R. § 136.105(a) and § 136.105(e)(6), the 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] Optional OSLTF Claim Form dated 18 May 2011

[2] GCCF Denial of Interim Payment/Final Payment Claim dated 22 April 2011.

FOIA2011-3380-00003493

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:

- Optional OSLTF Claim Form dated 18 May 2011;
- Contract of Sale dated 08 September 2006;
- Second Amendment to Contract of Sale dated 12 July 2010;
- GCCF Full review of Final Payment Claim Form; and
- GCCF Denial of Interim Payment/Final Payment Claim dated 22 April 2011.

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 $125,000.00, as claimed, or (2) the correlation, if any, between this alleged loss and the Deepwater Horizon oil spill.

The Claimant's submission fails to meet the requirements of 33 C.F.R. § 136.231-235 to establish a claim for loss of profits or impairment of earnings capacity. Claimant entered into a contract to sell 48 single family lots to [redacted] (Buyer) on 08 September 2006, at a price of $35,000.00 per lot. As part of its submission, the Claimant provided a copy of a Second Amendment to Contract of Sale dated 12 July 2010, whereby the Claimant and Buyer agreed to a reduced sales price of $30,000.00 per lot. The NPFC requested additional information from the Claimant via a letter dated 31 May 2011.[3] The Claimant has not responded to the NPFC's request for additional information as of the date of this determination.

The Claimant has failed to establish compensable damages as required under OPA. For example, the Claimant has not provided any information as to the number of lots sold out of the 25 lots remaining as of the date of the Second Amendment to Contract of Sale. As such, any losses as to any unsold lots are both prospective and speculative, and thus not compensable under OPA. ,The Claimant has also failed to establish that its alleged loss, specifically the reduction in the price of each lot, 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, as opposed to other factors, such as generally declining market conditions that may predate the spill.

Furthermore, the Claimant failed to provide requested information within the prescribed time period nor did the Claimant request an extension of time to provide.

This claim is denied because the Claimant has failed to demonstrate (1) the alleged loss of profits in the amount of $125,000.00, 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: ***Cla[redacted]n Division***

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

Supervisor Action: ***Denial approved***

[3] Letter from the NPFC to claimant dated 31 May 2011. Among the information requested in the 31 May 2011 letter was a copy of the First Amendment to Contract of Sale dated 11 August 2008, which amendment was referenced within the Second Amendment to Contract of Sale dated 12 July 2010.

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
[redacted]

16480

22 June 2011

CERTIFIED MAIL Number: [redacted]

[redacted]

RE: Claim Number: N10036- 0891

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 30 March 2011. On 26 May 2011, the NPFC received your claim for $5,000 for lost subsistence use of natural resources that you indicate you would have caught and eaten if not for the spill.

09/14/11 FOIA2011-3380-00003496

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 26 May 2011, included the Optional OSLTF Claim Form, proof of your social security benefit, and 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 a loss due to the spill. That is, you have not provided any evidence (1) to support a regular pattern of catch (e.g., type and amount) that you or your family relied upon (e.g., statements or affidavits that address the frequency and amount of subsistence catch and consumption), (2) that you were unable to continue fishing for subsistence food following the spill (e.g., information on fishing area closures in your area), or (3) of how you determined your claimed loss of $5,000 (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 (N10036-0891) 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.

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

09/14/11 FOIA2011-3380-00003498

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

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: [redacted]

5890/DWHZ
Claim # N10036-0892
01 June 2011

[redacted]

Re: Claim Number: N10036-0892

Dea[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 N10036-0892 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 N10036-0892.

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 FOIA2011-3380-00003499

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-0892
Claimant	[redacted]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning 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 claims for certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On 19 May 2011, [redacted] Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for $4,000.00 in loss of subsistence use of natural resources resulting from the Deepwater Horizon oil spill.

The Claimant, who works in stewarding at the [redacted] in New Orleans, Louisiana, asserted that due to the Deepwater Horizon oil spill, his hours were reduced resulting in a loss of income.[1] Although the Claimant has elected a claim type for loss of subsistence use on his OSLTF claim form, the Claimant's description of his loss indicates a claim for loss of profits and impairment of earnings capacity. His claim will be addressed as such in this determination.

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] Undated OSLTF Claim form dated and letter from Claimant dated 18 May 2011.

FOIA2011-3380-00003500

profits or earnings for the same or similar activities outside of the area affected by the incident also must be established.

(d) Whether alternative employment or business was available and undertaken and, if so, the amount of income received. All income that a claimant received as a result of the incident must be clearly indicated and any saved overhead and other normal expenses not incurred as a result of the incident must be established.

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

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

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

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support this claim, Claimant submitted the following documentation:

- Undated OSLTF claim form;
- Written correspondence dated 18 May 2011.

Prior to presentment to the NPFC, the Claimant presented an Emergency Advance Payment (EAP) and an Interim Payment Claim to the RP/GCCF. The Claimant was assigned Claimant Identification Number [redacted] Both claims were denied by the GGCF prior to presentment of the subject claim to the NPFC.

On 26 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 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 contacted the [redacted] According to the [redacted] the hotel saw increased summer occupancy after the oil spill due to an influx of government travelers and government

meetings held at the hotel. Further, per the [redacted] no employee hours were reduced as a result of the oil spill.[2]

This claim is denied because the Claimant has failed to demonstrate an alleged loss in the amount of 4,000.00 and 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.

Claim Supervisor: ***NPF[redacted]dication Division***

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

Supervisor's Action: ***Denial approved***

Supervisor's Comments:

[2] PHONECON between the [redacted] and NPFC staff dated 31 May 2011.

FOIA2011-3380-00003502

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

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: [redacted]

5890/DWHZ
Claim # N10036-0893
7 July 2011

[redacted]

Re: Claim Number: N10036-0893

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 N10036-0893 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 N10036-0893.

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 FOIA2011-3380-00003503

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-0893
Claimant	[redacted]
Type of Claimant	Corporate (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	$60,272.30

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 26 May 2011, [redacted] on behalf of [redacted] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for $60,272.30 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.[1]

Claimant, a fuel delivery service in Marco Island, Florida, alleged that "[r]esidents and tourists were afraid to eat seafood caught in the Gulf, causing our commercial boats to stop fishing and not requesting fuel. Also, tourists did not come to the Gulf Coast fearing oil on the beaches and in the waters."[2] Furthermore, the Claimant specifically stated that the loss of business profits are a result of "cancellation of commercial fishing accounts."[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 dated 23 May 2011.
[2] Letter from Claimant to NPFC, 26 June 2011.
[3] Supra note 1.

returns, financial statements, and similar documents. In addition, comparative figures for profits or earnings for the same or similar activities outside of the area affected by the incident also must be established.

(d) Whether alternative employment or business was available and undertaken and, if so, the amount of income received. All income that a claimant received as a result of the incident must be clearly indicated and any saved overhead and other normal expenses not incurred as a result of the incident must be established.

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

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

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

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support this claim, Claimant submitted the following documentation:

- Optional OSLTF Claim Form;
- Letter from Claimant to NPFC, describing losses, dated 22 May 2011;
- List of sales May – December 2009 and 2010;
- State of Florida Department of Revenue Forms, May 2009 – December 2010, and;
- Documents responding to NPFC request for additional information.

Prior to presentment to the NPFC, Claimant presented an Interim Payment/Final payment Claim to the RP/GCCF on 17 January 2011. The claim was denied on 22 April 2011.[4]

On 26 May 2011, Claimant presented this claim for $60,272.30 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, 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 his claim.

[4] Optional OSLTF Claim Form dated 13 May 2011

In the Claimant's submission, he stated that "profit losses were due to the cancellation of fuel deliveries for fishing charters, sightseeing boats and commercial shrimp and crab fisherman."[5] In a phone conversation with NPFC staff, the Claimant stated that his business is conducted by phone, and that he does not have evidence of these cancelled transactions.[6] However, he stated that he would be able to provide contact information for regular customers who did not buy gas because of the oil spill, and for customers who cancelled fuel deliveries due to the oil spill.[7]

The NPFC then mailed the Claimant a letter on 10 June 2010, requesting such documentation or other evidence to demonstrate that the Claimant lost business due to cancellation of fuel deliveries.[8] Claimant responded to the NPFC request on 5 July 2010, but did not include documentation or other evidence of cancellation of deliveries, contact information of customers who cancelled orders, nor did he otherwise provide evidence to indicate that his losses were a result of the oil spill.[9]

Having reviewed all the information and documentation provided by the Claimant, this claim is denied as Claimant has failed to show that the alleged loss in the amount of $60,272.30 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: ***7/7/11***

Supervisor's Action: ***Denial approved***

Supervisor's Comments:

[5] Letter from Claimant to NPFC, 22 May 2011.
[6] PHONECON: Claimant and NPFC Staff
[7] PHONECON: Claimant and NPFC Staff, 8 June 2011.
[8] Letter from NPFC to Claimant, requesting additional information, 10 June 2011.
[9] Letter from NPFC to Claimant, 10 June 2011, requesting evidence of cancelled deliveries, records of communication between Claimant and clients regarding Deepwater Horizon oil spill, schedule or calendar to show past diesel/gas deliveries and transactions.

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]
Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: [redacted]

[redacted]

5890/DWHZ
Claim # N10036-0894
03 June 2011

Re: Claim Number: N10036-0894

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 N10036-0894 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 N10036-0894.

Mail reconsideration requests to:

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

Sincere[redacted]

Claims [redacted]tion Division
National Pollution Funds Center
U.S. Coast Guard

Enclosure: Claim Summary/Determination Form

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-0894
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 26 May 2011, [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.

The Claimant worked for [redacted] in Summerdale, Alabama from 2007 until May 2010.[1] The Claimant voluntarily left [redacted] effective 21 May 2010[2] because her baby-sitter went to work on the Deepwater Horizon oil spill clean-up. She stated she could not find another baby-sitter. Claimant looked for work but was unable to find any. The Claimant alleged that her loss of earnings was due to the 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

[1] Hand-written letter by Claimant explaining the claim dated 22 November 2010.
[redacted] Exit Interview dated 21 May 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 undertake, but reasonably available;
(d) Any saved overhead or normal expenses not incurred as a result of the incident; and
(e) State, local, and Federal taxes.

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support this claim, Claimant submitted the following documentation:

- OSLTF Claim Form signed by Claimant and dated 21 April 2011
- Hand-written letter by Claimant explaining the claim dated 22 November 2010
- [redacted] Interview dated 21 May 2010
- W-2 Wage and Tax Statement for 2008, 2009 and 2010 from [redacted]
- Form 1099-Div for 2008 from [redacted]
- Form 1099-R for 2010 from [redacted] Profit Sharing
- W-2 Wage and Tax Statement for 2010 from [redacted]
- Combined Form 1099-DIV and 1099-B from Wal-Mart Stores for 2010
- [redacted] Associate Stock Purchase Plan for 2010
- Pay Period Summary from [redacted] for 2010
- Pay check stubs from [redacted] from Pay Period 01 January 2010 through 21 May 2010
- Explanation of Benefits from [redacted] or Disability for weeks ended 14 March and 17 March 2010
- GCCF Denial Letter on Interim Payment dated 01 April 2011

Claimant presented an Interim Payment Claim to the GCCF and was issued GCCF Claimant ID [redacted] and Claim [redacted] On 01 April 2011 the GCCF denied the claim.[3]

[3]GCCF Denial Letter on Interim Payment dated 01 April 2011.

On 26 May 2011, Claimant presented the subject claim to the NPFC for $15,000.00 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 Claimant indicated that she quit her employment at [redacted] o watch her children because her baby-sitter went to work on the Deepwater Horizon oil spill clean-up. The Claimant stated she left [redacted] because she could not find another baby-sitter. As a result of voluntarily leaving [redacted] the Claimant lost income.

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.

Claim Supervisor: ***Claims A[redacted]ivision***

Date of Supervisor's Review: ***6/03/11***

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
[redacted]
Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: [redacted]

5890/DWHZ
Claim # N10036-0895
01 June 2011

[redacted]

Re: Claim Number: N10036-0895

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 N10036-0895 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 N10036-0895.

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 FOIA2011-3380-00003511

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-0895
Claimant	[redacted]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	$64,585.00

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 26 May 2011, [redacted] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for $64,585.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

The Claimant, which is a private day school for children,[1] alleged that "families disenrolled from our program because their personal incomes were decreased as a result of no tourism."[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] Claimant "is a fully licensed, one-of-a-kind child care program designed to promote both cognitive and developmental skills." [redacted] Claimant has two school locations—Jonesboro, GA and Destin, FL. This claim involves the Destin, FL school.

[2] Optional OSLTF Claim Form dated 26 May 2011.

profits or earnings for the same or similar activities outside of the area affected by the incident also must be established.

(d) Whether alternative employment or business was available and undertaken and, if so, the amount of income received. All income that a claimant received as a result of the incident must be clearly indicated and any saved overhead and other normal expenses not incurred as a result of the incident must be established.

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

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

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

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support this claim, Claimant submitted the following documentation:

- OSLTF optional claim form;
- Fax cover letter dated 26 May 2011;
- Undated Letter from Claimant re: claim submission documents;
- Letter from the GCCF re: Re-Review Determination on Final Payment Claim dated 23 May 2011;
- Letter from Claimant to the GCCF dated 17 March 2011 contesting loss calculation;
- Document titled "Proper Calculation of BP Claim";
- Document titled "Attachment C Financial Test";
- Document titled "Attachment B: Explanation of Documented Lost Profits"
- Document titled "Election Form for Reevaluated Determination Letter on Lost Profits";
- [redacted] Income Statement for the Five Months Ending 31 May 2008;
- [redacted] Income Statement for the Six Months Ending 30 June 2008;
- [redacted] Income Statement for the Seven Months Ending 31 July 2008;
- [redacted] Income Statement for the Eight Months Ending 31 August 2008;
- [redacted] Income Statement for the Nine Months Ending 30 September 2008;
- [redacted] Income Statement for the Ten Months Ending 31 October 2008;
- [redacted] Income Statement for the Eleven Months Ending 30 November 2008;
- [redacted] Income Statement for the Twelve Months Ending 31 December 2008; and
- 2008 IRS Form 1065.

Prior to presentment to the NPFC, the Claimant presented an Emergency Advance Payment (EAP) Claim to the RP/GCCF and received $60,000.00 in compensation. The Claimant then presented a Final Payment Claim to the RP/GCCF. Claimant has been offered a $25,000.00 Final Payment Offer.[3]

On 13 May 2011, the Claimant presented this claim for $64,585.00 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.

In reviewing the information provided by the Claimant, the NPFC notes that the Claimant has not provided specific documentation to support the contention that families disenrolled their children from the subject school as a result of the oil spill. The Claimant has also failed to establish what portion of its 2010 losses may be attributable to generally declining market conditions. In fact, for the months of May through December of 2009, the Claimant has provided information that indicated a decline in revenues of approximately 18% over the previous year. In light of the significant decline from the year 2008 to the year 2009, the Claimant has failed to establish that year 2010 losses, which were approximately 7% over the prior year, are a result of the oil spill.

The NPFC reviewed all information and documentation provided by the Claimant. This claim is denied because the Claimant has failed to show that the alleged loss in the amount of $64,585.00 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.

[redacted]

Claim Supervisor: ***NPFC Claims Adjudication Division***

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

Supervisor's Action: ***Denial approved***

Supervisor's Comments:

[3] GCCF Determination Letter on Final Payment Claim dated 23 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
[redacted]

5890
7/21/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: [redacted]

[redacted]

RE: Claim Number: N10036-0897

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 N10036-0897 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	: N10036-0897
Claimant	: [redacted]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: $73,592.41

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 27, 2011, [redacted] (Claimant) presented an Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC). The OSLTF claim form alleged $48,493.58 in lost profits and earnings and $19,803.83 in real or personal property resulting from the Deepwater Horizon oil spill.

Based on information provided by the Claimant, the Claimant is a full-time fine artist who depends greatly on tourism to Florida for income. The Claimant stated his "sole income is from fine art which is generated by cultural tourists seeking art from their Florida visit."[1]

The Claimant did not provide copies of the denial letter for his final claim with the GCCF but stated on the Optional OSLTF Claim Form that his claim submitted to the GCCF was denied.

Bases for Claim Submission

1. The Claimant provided a breakdown of the sum certain in which he is requesting a loss of royalties on sales of his paintings equaling $48,493.58. In his cost breakdown the Claimant showed a 1st quarter income of $23,015.49 and speculated a one year total of $92,061.96.

2. The Claimant is also claiming that his home has sustained a loss in value of $19,803.83. The Claimant asserted that a comparable home (four houses down) sold in March 2011 at a lower price than what the Claimant purchased his home for in 2009.

3. Lastly, the Claimant asserted that he paid $5,295.00 for new silk screen equipment to create tee shirts to mitigate his losses as a result of the spill.

Prior to presentment to the NPFC, Claimant presented an Emergency Advance Payment claim to the RP/GCCF in November 2010 in the amount of $41,000.00 and the Claimant also filed a Full Final Review Claim with the RP/GCCF in January 2011 in the amount of $231,772.40. The

[1] Optional OSLTF Claims Form, dated May 26, 2011

NPFC was able to confirm with the GCCF that the claims were both denied via Claimant ID # [redacted]

REQUEST FOR RECONSIDERATION:

On June 15, 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.

The NPFC denied the claim originally on June 8, 2011 because the Claimant's evidence did not demonstrate the correlation, if any, between the alleged loss and the Deepwater Horizon oil spill. The denial noted that the Claimant should have been able to (1) provide purchaser information to demonstrate that the majority of his client base is either Gulf Coast residents or Gulf Coast tourists as asserted, (2) provide data showing where his art is sold, i.e. art galleries, websites, etc., (3) statistical data for all paintings sold in 2008, 2009, and 2010 and (4) evidence demonstrating how he was directly affected by the oil spill as opposed to other economic factors.

The real or personal property portion of the claim in the amount of $25,098.83 was denied because the Claimant had not sustained an actual loss. In the case of the Claimant's home, the Claimant still owned the home therefore had not experienced a loss. Therefore, under OPA, the alleged loss was not an OPA compensable damage. With respect to the Claimant's request for compensation for equipment purchased in order to develop another line of work, those costs are not an OPA compensable damage therefore was also denied.

On reconsideration, the Claimant provided the following documentation for consideration:

- New NPFC OSLTF Claim Form amending his sum certain to $48,493.58;
- Letter from Claimant;
- GCCF Denial letter dated 4/22/11;
- 1099s: 2007 through 2010;
- One page of Schedule C for tax years 2008 through 2010;
- Letter from Artist's Agent asserting loss of income statement;
- Page One only of Claimant's Exclusive Publishing Agreement with [redacted]
- Claimant provided a partial reference list of Florida Fine Art Galleries;
- Pamphlet entitled "Culture Builds Florida's Future";
- US Travel Association Pamphlet entitled "Roadmap to Recovery";
- Report from Oxford Economics on the "Potential Impact of the Gulf Oil Spill on Tourism";
- Article on the "Economic fallout from BP oil spill will haunt Florida for years, reports say".

RECONSIDERATION CLAIM ANALYSIS:

The claimant requested reconsideration which was received by the NPFC on June 15, 2011 via email. To support the request for reconsideration the Claimant submitted the above referenced documentation in support of his request. The Claimant amended his sum certain on reconsideration from $73,592.41 to $48,493.58 which reflects only his alleged lost profits and earnings associated with his profession of "Gallery Fine Artist".

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 stated that he was deeply impacted financially by the Deepwater Horizon incident. The Claimant further asserted that 50% of his fine art income comes from the cultural tourism traveling to Florida for the arts and local Florida art collectors. The Claimant stated that he sells to an "[e]xclusive, notable and financially well-to-do clientele who come to Florida from all over the world to visit galleries that maintain my works which sell for thousands and tens of thousands of dollars".

The Claimant made arguments that he is not privy to some of the information the NPFC identified as being important to help support his alleged loss. Claimant states that the galleries that sell his art do not give out the names of purchasing clients as it is a conflict of interest to the galleries for fear the client will go straight to the artist. Additionally, the Claimant stated that the galleries do not want their client list getting out to competing galleries and therefore the lists are confidential. The Claimant argued that it would be highly irregular for him as an artist to request his client list and put his position as an exhibiting artist in their gallery at risk of losing their representation.

Moreover, he stated that he is in an exclusive contract with his agent [redacted] who negotiates the gallery representation and they maintain the gallery relationship on his behalf. He advised that he is not privy, under contract, to the full complement of galleries or clients who purchase his art, nor is he permitted to contact the galleries directly. Under the Claimant's contract, his agent is his exclusive and sole representative of [redacted]

The Claimant did provide a listing of four galleries as well as the information for his Artist Agent [redacted] Upon receipt of the gallery information, the NPFC contacted each of the four galleries and left a message requesting a call back. None of the galleries have returned our calls. In the NPFC's initial denial determination, the NPFC advised the Claimant that the assertions he made along with the evidence presented did not demonstrate the correlation between his alleged loss and the Deepwater Horizon oil spill.

The Claimant's Schedule C for tax years 2008 through 2010 reflect a decline in income in 2010 vice previous years; however, the reduction in income at this time is not sufficient enough to establish that the 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.

Additionally, it is important to note that while the Claimant asserted that he sells to an "[e]xclusive, notable and financially well-to-do clientele who come to Florida from all over the world…" for the arts and local Florida art collectors and that about 50% of his income comes from Florida. Further, the C.E.O. of [redacted] in a letter dated December 15, 2010, states that [redacted] realizes about one half of his annual income from the Florida art market. However, Claimant has not provided evidence that any clientele did not come to Florida or buy his art because of the incident.

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 due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil.

This claim is denied upon reconsideration.

Claim Supervisor [redacted]

Date of Supervisor's review: *7/21/11*

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
[redacted]
Fax: 202-493-6937

CERTIFIED MAIL - RETURN RECEIPT REQUESTED
Number: [redacted]

5890/DWHZ
Claim# N10036-0898
7 June 2011

[redacted]

RE: Claim Number: N10036-0898

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, #N10036-0898, 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 N10036-0898.

Mail reconsideration requests to:

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

Sincerely,

[redacted]vision
National Pollution Funds Center
U.S. Coast Guard

Enclosure: Claim Summary/Determination Form

09/14/11 FOIA2011-3380-00003520

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	N10036-0898
Claimant	[redacted]
Type of Claimant	Private (US)
Type of Claim	Loss of Subsistence Use of Natural Resources
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 27 May 2011, [redacted] (Claimant) presented an Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Fund Center (NPFC) for $5,000.00 in natural resource damage.

Claimant asserted that "[d]ue o the oil spill, fishing waters [were] closed. I had to spend extra money at the seafood market since I couldn't fish my normal catch."[1] Although the Claimant has elected a claim for natural resource damage, his statements on his OSLTF claim form indicate that he is asserting a claim for loss of subsistence use of natural resources. His claim will be addressed as such herein.[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. One type of damages available pursuant to 33 C.F.R. § 136.219 is a claim for loss of subsistence use of natural resources.

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

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

[1] Claimant's Optional OSLTF Claim Form Section 9 dated 17 May 2011.
[2] Claimant individually cannot claim natural resource damage under OPA and the associated regulations at 33 C.F.R. Part 136 because such a claim may only be presented by an appropriate natural resources trustee. 33 C.F.R. § 136.207(a). Claimant has not indicated that he is an appropriate natural resources trustee.

6) 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]

DETERMINATION OF LOSS:

Claimant's Submission

To support this claim, Claimant submitted the following documentation:

— Optional OSLTF Claim Form dated 17 May 2011.

Claimant asserts that he filed a claim with the GCCF and was denied by the GCCF.[4]

On 27 May 2011, Claimant presented the subject claim to the NPFC for $5,000.00 in loss of subsistence use of natural resources.

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.

The claim is denied because Claimant's submission fails to meet the requirements of 33 C.F.R. § 136.219-233 to establish a claim for loss of subsistence use of natural resources.

For the foregoing reason, this claim is denied.

Claim Supervisor: ***NPFC [redacted] dication Division***

Date of Supervisor's Review: ***6/3/11***

Supervisor's Actions: ***Denial approved***

Supervisor's Comments:

[3] More information about subsistence claims is available at http://www.uscg.mil/npfc/Claims/DWH.asp.

[4] OSLTF claim form.