

N10036-0900U.S.
Department of
Homeland Security

**United States
Coast Guard**



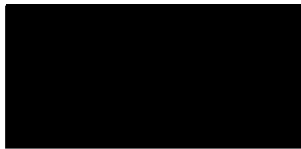
Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937

CERTIFIED MAIL - RETURN RECEIPT REQUESTED
Number: [REDACTED]

5890/DWHZ
Claim# N10036-0900
09 June 2011



RE: Claim Number: N10036-0900

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 N10036-0900 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 N10036-0900.

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 Division
National Pollution Funds Center
Claims Manager

Enclosure: Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00003523

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	N10036-0900
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 27 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.

Claimant works for [REDACTED] as a ship-fitter on a platform near Pascagoula, MS. Claimant alleged lost hours due to the Deepwater Horizon 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.

¹ Typed letter from [REDACTED] addressed to the GCCF.
09/14/11

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

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

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

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

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support his claim, Claimant submitted the following documentation:

- 1) Optional OSLTF claim form dated 26 May 2010
- 2) Letter from Claimant explaining claim to GCCF
- 3) 2008 W-2 from [REDACTED]
- 4) 2009 W-2 from [REDACTED]
- 5) 2009 W-2 from [REDACTED]
- 6) 2010 W-2 from [REDACTED]
- 7) 2010 W-2 from [REDACTED]
- 8) 2010 W-2 from [REDACTED]
- 9) Paystubs from [REDACTED] dated 25 July 2010, 08 August 2010, and 19 August 2010
- 10) Paystubs from [REDACTED] dated 05 February 2010, 12 February 2010, 19 February 2010, 19 March 2010, 26 March 2010, 02 April 2010, 09 April 2010, 23 April 2010, 30 April 2010, 14 May 2010, 28 May 2010, 04 June 2010, 11 June 2010, 25 June 2010, 02 July 2010, 09 July 2010, 16 July 2010, 09 September 2010, 16 September 2010, and 30 September 2010
- 11) Paystubs from [REDACTED] dated 26 August 2010, 02 September 2010, 14 October 2010, 21 October 2010, 28 October 2010, 04 November 2010, 11 November 2010, 18 November 2010, 24 November 2010, 02 December 2010, 09 December 2010, 16 December 2010, 23 December 2010, 30 December 2010,
- 12) GCCF Denial Letter on Interim Payment /Final Payment Claim dated 16 April 2011
- 13) Employment letter from [REDACTED] (Site Recruiter) at [REDACTED] for the time period of August 2010 to January 2011
- 14) Employment letter from [REDACTED] (Assistant Administrative) at Tradesmen International from 29 January 2009 to 16 October 2009

Prior to presentment to the NPFC, Claimant presented multiple claims to the RP/GCCF, including an Emergency Advance Payment (EAP) claim and two Final Payment claims.² All these claims were denied.³

On 27 May 2011, Claimant presented the subject claim 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 his loss of income was due to injury or destruction or loss of real or personal property or a natural resource as a result of a discharge or substantial threat of a discharge of oil. Under 33 C.F.R. § 136.105(a) and § 136.105(e)(6), the claimant bears the burden of providing to the NPFC all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim. The NPFC considered all the documentation submitted by the Claimant.

The claim is denied because the alleged loss in the amount of \$15,000.00 is not due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil.

Claimant alleged that he lost hours while working for [REDACTED] as a result of the Deepwater Horizon oil spill. On 06 June 2011, the NPFC contacted [REDACTED] and spoke with the Benefits Manager there. The Benefits Manager indicated that it is the nature of their business to employ people for projects when ships come in and to reduce hours or release them when the ships depart and reemploy them when the ships return.⁴ The Benefits Manager further indicated that business was not affected by the oil spill.

Because the Claimant failed to demonstrate that his 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 Claim [REDACTED] ation Division*

Date of Supervisor's Review: *6/9/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

² Claimant indicates that his GCCF Claimant ID # is [REDACTED]

³ GCCF denial letters, 17 November 2010 and 16 April 2011.

⁴ PHONECON with [REDACTED] on 6 June 2011.

U.S. Department of
Homeland Security

United States
Coast Guard



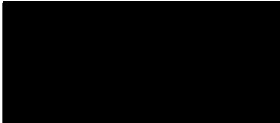
Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937

CERTIFIED MAIL - RETURN RECEIPT REQUESTED
Number: [REDACTED]

5890/DWHZ
Claim# N10036-0901
08 June 2011



RE: Claim Number: N10036-0901

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, #N10036-0901, 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 N10036-0901.

Mail reconsideration requests to:

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

Sincerely,



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

Enclosure: Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00003527

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	N10036-0901
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earnings Capacity
Amount Requested	\$7,000.00

FACTS

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

CLAIM AND CLAIMANT

On 27 May 2011, [REDACTED] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$7,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil-spill.

The Claimant asserted that he "lost earnings [and] profits due to the spill" as an employee of [REDACTED] Cleaning Service.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 incident must be clearly indicated and any saved overhead and other normal expenses not incurred as a result of the incident must be established.

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

¹ Claimant's Optional OSLTF Claim Form dated 16 May 2011.
09/14/11

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

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

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support this claim, Claimant submitted the following documentation:

- Optional OSLTF Claim Form dated 12 May 2011;
- GCCF Interim Payment/Final Payment Claim Denial Letter dated 1 April 2011;
- GCCF letter confirming receipt of final claim form dated 1 February 2011;
- GCCF letter requesting additional information dated 29 January 2011;
- GCCF letter confirming receipt of interim claim dated 24 January 2011; and
- Copies of bi-weekly pay stubs for the periods from December 2010 to May 2011.

Prior to presentment to the NPFC, Claimant presented multiple claims to the RP/GCCF, including Emergency Advance Payment, Interim Payment, and Final Payment claims.² All claims were denied by the GCCF.³

On 27 May 2011, Claimant presented the subject claim for \$7,000.00 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.

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, the Claimant has provided absolutely no information as to the period for which he asserted his alleged losses and has provided no evidence of his wage earnings for 2010 or any prior years. Furthermore, the Claimant has failed to show that his lost wages, if any, were 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 [REDACTED] DENIED.

Claim Supervisor: *NPFC [REDACTED] Adjudication Division*

Date of Supervisor's Review: *6/8/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

² The Claimant's GCCF Claimant ID # is [REDACTED]

³ GCCF denial letters, dated 6 December 2010 and 6 May 2011.

U.S. Department of
Homeland Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

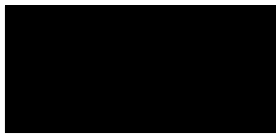
NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937

5890
6/28/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number [REDACTED]



RE: Claim Number: N10036-0902

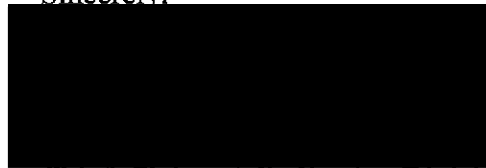
Dear [REDACTED]

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 N10036-0902 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination Form for further explanation.

Disposition of this reconsideration constitutes final agency action.

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

Sincerely,



Chief, Claims Adjudication Division
U.S. Coast Guard

ENCL: Claim Summary / Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-0902
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 claims for certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT:

On 31 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.¹

Claimant was employed as an offshore "cook relief campboss" and alleged that he was let go when work in the Gulf of Mexico slowed following the oil spill.² He seeks \$30,000.00 in lost earnings due to his unemployment.

REQUEST FOR RECONSIDERATION:

On June 22, 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 June 3, 2011 because the NPFC contacted the Claimant's employer, [REDACTED] International Services, Inc. ([REDACTED]) to confirm that the Claimant was employed as an offshore worker, and that he was let go as a result of the Deepwater Horizon oil spill. A representative from [REDACTED] indicated that [REDACTED] was indeed employed by the company, but he was let go for reasons unrelated to the Deepwater Horizon oil spill³ therefore the claim was denied because the Claimant failed to show that his income was reduced as a consequence of injury to, destruction of, or loss of property or natural resources, as a result of discharge or substantial threat of discharge of oil.

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

Prior to presentment to the NPFC, Claimant presented an Emergency Advance Payment and an Interim Payment Claim to the RP/GCCF. Claimant was assigned GCCF Claimant ID [REDACTED]. These claims were denied by the GCCF.⁴

¹ Optional OSLTF Claim Form dated 18 May 2011.

² Letter to NPFC signed by Claimant, undated.

³ Fax from Employer to NPFC staff, dated 31 May 2011.

⁴ GCCF denial letter Re: Claimant's EAP Claim, dated 17 November 2010; GCCF denial letter Re: Claimant's Interim Payment Claim, dated 6 May 2011.

RECONSIDERATION CLAIM ANALYSIS:

The claimant requested reconsideration which was received by the NPFC on June 22, 2011. To support the request for reconsideration the Claimant submitted a handwritten letter that asserted that basically he was never issued a termination letter and he doesn't understand why his employer told the NPFC he was let go for reasons unrelated to the Deepwater oil spill. 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 in his request for reconsideration letter stated that he never received or signed a termination notice, was not made aware of any infractions by way of notice and is entitled to his claim. The Claimant did state in his reconsideration letter that when he called in to his employer after Thanksgiving, he was told that he no longer had a job but was given no reason.

The Claimant has provided no new information to contradict that facsimile page the NPFC received from the employer which indicated his date of hire, the last day of work and the reason for termination listed as "Fired/Insubordination".

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 destruction or injury to real or personal property or natural resources as a result of a discharge or substantial threat of a discharge of oil.

This claim is denied upon reconsideration.

Claim Supervisor 

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

Supervisor Action: *Denial on reconsideration approved*

U.S. Department of
Homeland Security

**United States
Coast Guard**



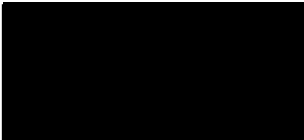
Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number [REDACTED]

5890/DWHZ
Claim # N10036-0903
29 June 2011



Re: Claim Number: N10036-0903

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 N10036-0903 involving the Deepwater Horizon oil spill. Please see the attached Claim Summary/Determination Form for further explanation.

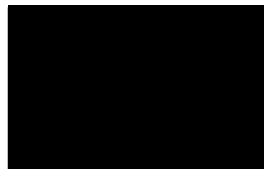
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-0903.

Mail reconsideration requests to:

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

Sincerely,



Division
National Pollution Funds Center
U.S. Coast Guard

Enclosure: Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00003533

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-0903
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$6,000.00

FACTS

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

CLAIM AND CLAIMANT

On 28 May 2011, the [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.¹

Claimant, who worked at [REDACTED] in Orlando, FL and surrounding areas, alleged that he "couldn't find work after the spill" and was "laid off."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 28 May 2011.

² *Id.*

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

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

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

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

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support this claim, Claimant submitted the following documentation:

- Optional OSLTF Claim Form;
- Authorization for NPFC to obtain Claimant's GCCF submission;
- Copy of GCCF Claim Form;
- Pay Stub, [REDACTED] 6 May 2010;
- Pay Stub, [REDACTED] 7 May 2010;
- 2009 Form 1040, showing adjusted gross income of \$18,186.00;
- 2008 Form 1040, showing adjusted gross income of \$23,015.00;
- Unemployment Compensation form for period 4 May 2008 to 17 May 2008;
- Email from Claimant to GCCF, regarding emergency advance payment claim, 27 September 2010;
- Pay Stub, [REDACTED] 9 August 2010;
- Pay Stub, [REDACTED] 10 August 2010;
- Pay Stub, [REDACTED] 15 June 2010;
- Letter from Claimant to GCCF, noting inclusion of pay stubs, 6 January 2011;
- 2010 Form 1040, showing adjusted gross income of \$20,465.00;
- Copy of GCCF Denial Letter on Interim/Final Payment Claim, 6 May 2011.

Prior to presentation to the NPFC, Claimant presented a Final Payment Claim to the RP/GCCF for \$6,000.00 in lost profits and earnings. Claimant was issued GCCF Claimant ID [REDACTED] and Claim [REDACTED]. The Final Payment Claim was denied by the GCCF.³

On 31 May 2011, 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.

³ GCCF Status Report to the NPFC, dated 23 June 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, 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.

In reviewing the information provided by the Claimant, the NPFC contacted a representative of the Claimant's former employer. The representative indicated that the Claimant was employed with [REDACTED] for nearly one year following the Deepwater Horizon oil spill, and was not let go from his position until 9 April 2011.⁴ Furthermore, the Claimant's tax returns indicated that he did not suffer a financial loss in 2010.⁵

This claim is denied because the Claimant has failed to show that he has suffered a loss in profits and earning capacity 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: *6/29/11*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

⁴ PHONECON: Claimant and NPFC Staff, 27 June 2011. Claimant was employed by [REDACTED] from 27 August 2008 to 9 April 2011.

⁵ Claimant's 1040s show an adjusted gross income of \$20,465.00 in 2010, and \$18,186.00 in 2009.

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim # N10036-0904
08 June 2011

Re: Claim Number: N10036-0904

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 N10036-0904 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 N10036-0904.

Mail reconsideration requests to:

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

[REDACTED] Division
[REDACTED] nds Center

U.S. Coast Guard

Enclosure: Claim Summary/Determination Form

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-0904
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$12,500.00

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 31 May 2011, [REDACTED] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$12,500.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.¹

The Claimant was employed as a Public Safety Officer with the State of Louisiana's Department of Education's Recovery School District for two years in New Orleans.² The Claimant's employment with the Recovery School District ended effective 30 June 2010. In order to streamline operations and reduce expenses, the Recovery School District eliminated several positions which included the Claimant's.³

The Claimant stated she sought other employment but was unable to find any. She job searched at several hotels and stated she was told that they were not hiring due to the impact of the Deepwater Horizon oil spill. The Claimant stated that "but for" the oil spill, she would be employed.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:

- (a) That real or personal property or natural resources have been injured, destroyed, or lost.
- (b) That the claimant's income was reduced as a consequence of injury to, destruction of, or loss of property or natural resources, and the amount of that reduction.
- (c) The amount of the claimant's profits or earnings in comparable periods and during the period when the claimed loss or impairment was suffered, as established by income tax returns, financial

¹OSLTF Claim Form signed by Claimant and dated 30 May 2011.

²Letter from Claimant to NPFC explaining the claim received 30 May 2011.

³Letter of Termination to Claimant from State of Louisiana, Department of Education, Recovery School District dated 28 June 2010. Effective date of termination 30 June 2010.

⁴Letter from Claimant to NPFC explaining the claim received 30 May 2011.

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

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

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

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

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

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support this claim, Claimant submitted the following documentation:

- OSLTF Claim Form signed by Claimant and dated 30 May 2011
- Letter from Claimant to NPFC explaining the claim received 30 May 2011
- Letter of Termination to Claimant from State of Louisiana, Department of Education, Recovery School District dated 28 June 2010. Effective date of termination 30 June 2010
- W-2 Wage and Tax Statement from State of Louisiana for 2008, 2009 and 2010
- State of Louisiana pay stubs dated 04 June and 02 July 2010
- GCCF Denial Letter on Interim Payment/Final Payment Claim dated 06 May 2011
- GCCF Denial Letter on Emergency Advance Payment Claim dated 14 December 2010 for Subsistence Loss
- GCCF Denial Letter on Emergency Advance Payment Claim dated 24 November 2010 for Earnings Loss
- GCCF Letter for supporting documentation dated 29 September 2010
- GCCF Letter acknowledging receipt of Interim Payment or Final Payment Claim dated 04 February 2011

Prior to presentation to the NPFC, the Claimant presented an Emergency Advance Payment Claim for Lost Profits/Earnings and Loss of Subsistence Use to the GCCF. She was issued GCCF Claimant ID # [REDACTED] and Claim # [REDACTED] for Lost Earnings and Claim # [REDACTED] for Loss of Subsistence Use. On 24 November 2010 the GCCF denied the Emergency Advance Payment Claim for Lost Earnings.⁵ On 14 December 2010 the GCCF denied the Emergency Advance Payment Claim for Loss of Subsistence Use.⁶

The Claimant then presented an Interim Payment/Final Payment Claim to the GCCF and was issued Claim # [REDACTED]. On 06 May 2011, the GCCF denied the Interim Payment/Final Payment Claim.⁷

⁵GCCF Denial Letter on Emergency Advance Payment Claim dated 24 November 2010 for Earnings Loss.

⁶GCCF Denial Letter on Emergency Advance Payment Claim dated 14 December 2010 for Subsistence Loss.

⁷GCCF Denial Letter on Interim Payment/Final Payment Claim dated 06 May 2011.

On 31 May 2011, the Claimant presented the subject claim for \$12,500.00 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 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 was laid off from her employment as a Public Safety Officer with the State of Louisiana's Department of Education's Recovery School District (ERSD) on 30 June 2010. The official termination letter from ERSD indicated that several positions, including the Claimant's, were being eliminated "to streamline operations and reduce expenses."⁸ The letter makes no mention of the Deepwater Horizon oil spill.

Claimant alleged that she could not find employment in the New Orleans hospitality industry as a result of the Deepwater Horizon oil spill. The Claimant, however, provided no evidence to support this allegation.

Because the Claimant has failed to demonstrate that her alleged loss in the amount of \$12,500.00 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, this claim is denied.

Claim Supervisor:  *ation Division*

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

Supervisor's Action: *Denial approved*

Supervisor's Comments:

⁸ Letter of Termination to Claimant from State of Louisiana, Department of Education, Recovery School District dated 28 June 2010. Effective date of termination 30 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

Fax: 202-493-6937

CERTIFIED MAIL-RETURN RECEIPT REQUESTED
Number: [REDACTED]

5890/DWHZ
Claim # N10036-0905
23 August 2011

Re: Claim Number: N10036-0905

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 N10036-0905 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 N10036-0905.

Mail reconsideration requests to:

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

Sincerely,

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

Enclosures: (1) Claim Summary/Determination Form

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-0905
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$7,000.00

FACTS

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

CLAIM AND CLAIMANT

On 31 May 2011, [REDACTED] (Claimant) presented an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) seeking \$7,000.00 in lost profits and earnings that allegedly resulted from the Deepwater Horizon oil spill.

Claimant worked as a vacation rental house-cleaner in Santa Rosa Beach, FL¹ for [REDACTED] of South Walton.² Claimant began working for [REDACTED] on 1 April 2010.³ Claimant alleged that she would have made \$10,000.00 from 1 April 2010 through 31 December 2010, however due to the Deepwater Horizon oil spill she only made \$2,700.00.⁴

APPLICABLE LAW

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

The OSLTF, which is administered by the NPFC, is available to pay claims for uncompensated damages pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136. With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person by payment within 90 days 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 17 May 2011.

² 2010 1099-MISC from [REDACTED]

³ Optional OSLTF Claim Form, dated 17 May 2011.

⁴ 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 the claim, Claimant presented the following documentation to the NPFC:

- Optional OSLTF form, dated 17 May 2011;
- Letter from Claimant (unaddressed and undated);
- Letter from GCCF indicating receipt of Interim Payment claim form, dated 26 January 2011;
- 2007 Form 1040 Federal Tax Return (no Schedule C included);
- 2010 1099-MISC from [REDACTED] and
- Social Security Statement titled "Your Earnings Record."

Prior to presenting this claim to the NPFC, Claimant filed an Interim Quarter 1 claim (ICQ12010) for loss of earnings with the GCCF on 25 January 2010 in the amount of \$7,000.00.

⁵ She was assigned Claimant II [REDACTED] and Claim [REDACTED]. This claim was denied on 06 May 2011.⁶

Based upon the evidence provided by the Claimant, it appears that the subject matter for the loss of earnings claim before the GCCF is the same as the subject matter of the loss of earnings claim before the NPFC, i.e., that Claimant lost income as a vacation rental house-cleaner because of a decrease in tourism due to the Deepwater Horizon oil spill. The NPFC deems Claimant's GCCF claim to be properly presented to the RP and properly presented to the NPFC. Accordingly, this Claim Summary Determination for NPFC Claim N10036-0905 considers and addresses the earnings claimed in the loss of earnings presented to the responsible party, specifically; GCCF Claim [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.

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 asserted that she lost earnings as a house-cleaner over the span of nine months from April through December of 2010. On 18 July 2011, the NPFC contacted [REDACTED] regarding the Claimant's prior employment. While [REDACTED] confirmed that the Claimant's hours had been affected by the Deepwater Horizon oil spill, it further commented that the Claimant was a seasonal worker, whose seasonal work only extended through September.⁷

On 19 July 2011, the NPFC requested that the Claimant provide additional information to further evaluate the claim and document the alleged financial loss cause by the Deepwater Horizon oil spill. The NPFC requested, among other things, tax returns from 2008 through 2010, copies of paystubs received from [REDACTED] in 2010, and asked the Claimant to answer numerous questions regarding her employment at [REDACTED]. To date, no response has been received by the NPFC. Therefore, the NPFC was unable to verify that the Claimant suffered a financial loss due to the Deepwater Horizon oil spill.

⁵ Report from the GCCF, dated 11 August 2011.

⁶ Denial letter from the GCCF, dated 07 May 2011.

⁷ PHONECON between [REDACTED] and the NPFC on 18 July 2011.

This claim is denied because the Claimant failed to meet her 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 Claims Adjudication Division*

Date of Supervisor's Review: *8/23/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

U.S. Department of
Homeland Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim # N10036-0906
02 June 2011

Re: Claim Number: N10036-0906

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 N10036-0906 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 N10036-0906.

Mail reconsideration requests to:

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

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

Enclosure: Claim Summary/Determination Form

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-0906
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$16,586.55

FACTS

On or about 20 April 2010, the Mobile Offshore Drilling 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 31 May 2011, [REDACTED] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$16,586.55 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

For over twenty years, the Claimant worked as an appliance salesperson for [REDACTED]. She was given a separation letter from the company on September 7, 2010 which noted that she was let go due to "lack of work."¹

Claimant alleged that she "[l]ost her job due to a lack of work from the BP 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, adjoining shorelines or the exclusive economic zone, as described in Section 2702(b) of OPA.

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

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

- (a) That real or personal property or natural resources have been injured, destroyed, or lost.
- (b) That the claimant's income was reduced as a consequence of injury to, destruction of, or loss of property or natural resources, and the amount of that reduction.

¹ Separation Letter provided by Claimant, dated 9/7/2010, indicating "lack of work" as reason for separation.

² OSLTF claim form.

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

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

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

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

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support this claim, Claimant submitted the following documentation:

- OSLTF optional claim form;
- Copy of Interim Payment Claim Form, submitted to the GCCF;
- Copy of 2009 W-2 Form, showing \$31,945.28 in total earnings;
- Copy of 2010 W-2 Form, showing \$21,666.91 in total earnings;
- Two copies of sales bonuses, each for \$6,894;
- Copy of 2010 1099-MISC form showing \$0 in state income, \$2,308.00 in other income.
- Unemployment compensation forms for 2010;
- Separation notice, dated 9/7/2010, signed by Claimant and Claimant's employer, "lack of work" marked as reason for separation;
- Letter written and signed by Claimant, describing hardship;
- Letter written and signed by Claimant, dated April 4 2011, noting inclusion of separation letter;
- Sales Associate Classroom Course Completion Certificate, dated May 13, 2011 & Course Schedule, including tuition fees;
- Letter handwritten by Claimant, totaling amount lost in wages, bonuses and class expenses;
- Claimant's VISA Bill for 2011, showing \$429.00 paid to Captain Agent for "Real Estate School;"

- Certificate of Achievement awarded to Claimant for proficiency in Windows XP, 31 March 2011; and
- Receipts for Computer Classes and gasoline.

Prior to presentment to the NPFC, Claimant presented an Interim Payment and Final Payment Claim to the RP/GCCF and was assigned GCCF Claimant ID Number [REDACTED]. The Claims were denied by the GCCF.⁴

On 31 May 2011, Claimant presented this claim for \$16,586.55 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 also contacted the Claimant's former employer, [REDACTED] to determine if the Claimant lost earnings as a result of the Deepwater Horizon oil spill. A representative of the company indicated that the official reason for the Claimant losing her position was simply a lack of work, due primarily to the general economic climate.⁵

This claim is denied because the alleged loss in the amount of \$16,586.55 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] *Division*

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

Supervisor's Action: *Denial approved*

Supervisor's Comments:

³ Claimant's GCCF Interim Claim Form indicates that she filed for \$16,586.55 in lost profits and earnings.

⁴ GCCF denial letter Re: Claimant's Interim/Final Payment claim, dated 22 April 2011.

⁵ PHONECON between the Williams Corporation and NPFC Staff, 01 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

Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number [REDACTED]

5890/DWHZ
Claim # N10036-0907
02 June 2011

Re: Claim Number: N10036-0907

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 N10036-0907 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 N10036-0907.

Mail reconsideration requests to:

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

Sincerely,

[REDACTED]

ision
National Pollution Funds Center
U.S. Coast Guard

Enclosure: Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00003550

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-0907
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$20,300.00

FACTS

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

CLAIM AND CLAIMANT

On 31 May 2011, [REDACTED] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$20,300.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.¹

Claimant stated that she left her job at [REDACTED] on March 14, 2011 to pursue a job as a waitress near the Florida Keys.² She was unable to find a position, so she relocated and has filed this claim for lost earnings and relocation costs.

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.

² Letter from Claimant, dated 20 May 11.

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

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

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

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

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support this claim, Claimant submitted the following documentation:

1. OSLTF optional claim form;
2. Copy of denial letter on Interim/Final Payment claim from the GCCF;
3. Letter from Claimant dated 20 May 11, describing her inability to find work after leaving her job, and subsequent relocation;
4. Copy of Prepaid Visa statement, highlighting costs of airline tickets for relocation of Claimant and Claimant's dog;
5. Form 1040EZ, 2008 showing adjustable gross income of \$8,741;
6. 2010 TurboTax receipt showing adjusted gross income of \$5,253.00;
7. 2008 W-2 forms, showing state wages of \$144.00, \$193.55, \$2057.20, \$573.68 and \$4,999.51;
8. 2010 W-2 showing state wages of \$1,244.06, \$783.76 and \$621.69.

Prior to presentment to the NPFC, Claimant presented an Interim Payment Claim to the GCCF which the Claimant later withdrew. Claimant also submitted a Final Payment Claim to the GCCF, which was denied on 10 May 2011.³

On 31 May 2011, Claimant presented this claim for \$20,300.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

NPFC Determination

Under 33 U.S.C. § 2702(b)(2)(E) and 33 C.F.R. Part 136, a claimant must prove that her loss of income was due to injury, 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 on Interim Payment/Final Payment Claim, dated 10 May 2011.
09/14/11

and § 136.105(e)(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 has reviewed all information and documentation provided by the Claimant. In a letter to the NPFC, the Claimant stated that she left her job at [REDACTED] and was unable to find work as a waitress.⁴

This claim is denied because the alleged loss in the amount of \$20,300.00 is not 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 also denied because the Claimant has failed to demonstrate that she presented her lost profits and earnings claim for \$20,300.00 to the RP pursuant to 33 C.F.R. § 136.103(a), which states that all claims for removal costs and damages must be presented first to the RP.⁵

[REDACTED]
Claim Supervisor: *NPI [REDACTED] Adjudication Division*

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

Supervisor's Action: *Denial approved*

Supervisor's Comments:

⁴ Letter from Claimant, dated 20 May 11.

⁵ Additionally, Claimant's reported wages were \$8,741.00 in 2008, \$5,253.00 in 2009, and \$2,027.82 in 2010. It is unclear from these figures how Claimant arrives at her sum certain of \$20,300.00, which is nearly four times her 2009 pre-spill reported wages.

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
6/3/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]



RE: Claim Number: N10036-0908

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 N10036-0908 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 N10036-0908.

Mail reconsideration requests to:

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

Sincerely,



ands Center

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-0908
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 April 20, 2010, the Mobile Offshore Drilling Unit Deepwater Horizon (Deepwater Horizon) exploded and sank in the Gulf of Mexico. As a result of the explosion and sinking, oil was discharged. The Coast Guard designated the source of the discharge and identified BP as a responsible party (RP). BP accepted the designation and advertised its OPA claims process. On August 23, 2010, the Gulf Coast Claims Facility (GCCF) began accepting and adjudicating claims for certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On June 1, 2011, [REDACTED] (Claimant) presented a lost profits & earnings capacity claim in the amount of \$15,000.00 to the National Pollution Funds Center (NPFC) for reimbursement. The Claimant provided no written explanation in regards to what type of work he does or how his work was affected by the oil spill. However, the Claimant did provide an affidavit from [REDACTED] stating that the Claimant "did in fact lose wages due to the BP oil spill. Our customer traffic was cut in half from the three (3) previous years causing lost income for our company and all of our employees."¹

The Claimant did not provide copies of the denial letter for his final claim with the GCCF but the NPFC did confirm that the claim was denied on May 13, 2011.

APPLICABLE LAW:

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

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

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

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

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

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

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

DETERMINATION OF LOSS

Claimant's Submission

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

- NPFC OSLTF Form, dated May 28, 2011;
- Affidavit from employer, dated May 26, 2011;
- 2008 & 2009 Tax Return Transcript;
- Paystub dated November 12, 2010;
- Paystub dated December 30, 2010;
- Copy of Driver's License and Social Security Card;

NPFC Determination


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

This claim is denied because the Claimant's evidence does not demonstrate (1) the alleged loss of profits in the amount of \$15,000.00, as claimed, or (2) the correlation, if any, between this alleged loss and the Deepwater Horizon oil spill. The Claimant should be able to demonstrate that his employer was directly affected by the oil spill by providing data from the NPFC.

and proving that their customer base was unable to purchase furniture because they too were directly affected by the 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 the Claimant has failed to demonstrate (1) the alleged loss of profits in the amount of \$15,000.00, as claimed, or (2) that this alleged loss is due to injury or destruction or loss of real or personal property or a natural resource as a result of a discharge or substantial threat of a discharge of oil, this claim is DENIED.

Claim Supervisor: 
Date of Supervisor's review: <i>6/3/11</i>
Supervisor Action: <i>Denial approved</i>
Supervisor's Comments:

U.S. Department of
Homeland Security

United States
Coast Guard



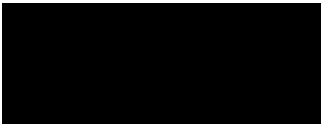
Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937

CERTIFIED MAIL - RETURN RECEIPT REQUESTED
Number: [REDACTED]

5890/DWHZ
Claim # N10036-0909
18 July 2011



Re: Claim Number: N10036-0909

Dear [REDACTED]

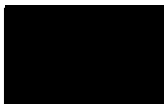
The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number N10036-0909 involving Deepwater Horizon. Please see the attached Claim Summary / Determination Form for the rationale regarding this denial.

You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you find that you will be unable to gather particular information within the time period, you may include a request for an extension of time for a specified duration with your reconsideration request. Reconsideration of the denial will be based upon the information provided. A claim may be reconsidered only once. Disposition of that reconsideration in writing will constitute final agency action. Failure of the NPFC to issue a written decision within 90 days after receipt of a timely request for reconsideration shall, at the option of the claimant, be deemed final agency action. All correspondence should include claim number N10036-0909.

Mail reconsideration requests to:

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

Sincerely,



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

Enclosure: Claim Summary/Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-0909
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: \$15,925.37

FACTS:

On or about 20 April 2010, the Mobile Offshore Drilling 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 31 May 2011 [REDACTED] (Claimant) presented an Optional Oil Spill Liability Trust (OSLTF) claim form to the National Pollution Funds Center (NPFC). The OSLTF claim form alleged \$15,925.37 in loss of profits and earning capacity resulting from the Deepwater Horizon oil spill.

Claimant asserted that she was actively looking for work during the time of the spill and had very little response from potential employers.¹ The claimant alleged that as a result of the Deepwater Horizon oil spill, she has not been able to find work.²

APPLICABLE LAW:

Damages that may be paid from the OSLTF are those that are described by the Oil Pollution Act of 1990 (OPA) and that result from a discharge or substantial threat of discharge of oil into or upon the navigable waters, adjoining shorelines or the exclusive economic zone. 33 USC 2702. The NPFC may pay a claim for OPA damages from the Oil Spill Liability Trust Fund (OSLTF) if the claim has been presented first to the responsible party and that claim is denied or not settled after 90 days. 33 USC 2713.

OPA damages that may be paid include “damages equal to the loss of profits or impairment of earning capacity due to the injury, destruction, or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant” 33 USC 2702(b)(2)(E).

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

- (a) That real or personal property or natural resources have been injured, destroyed, or lost.
- (b) That the claimant’s income was reduced as a consequence of injury to, destruction of, or loss of property or natural resources, and the amount of that reduction.

¹ OSLTF optional claim form dated 31 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.

DETERMINATION OF LOSS:

Claimant's Submission to the OSLTF

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

- OSLTF claim Form dated May 31, 2011
- Letter to GCCF dtd 3 April 2011
- 2010 1099 Form
- Letter to GCCF dtd 24 March 2011 and Full Review Final Claim form
- Florida Employment Referral
- 2010 Unemployment Claim Certification Forms
- Peoples First Properties Retirement Saving Statement
- 2008 (1) Pay statement - [REDACTED]
- 2008 (1) Pay statement - [REDACTED]
- 2008 Tax Return
- 2009 Tax Return
- 2010 Tax Return

Claimant seeks \$15,925.37 in loss profits and earnings capacity allegedly resulting from the Deepwater Horizon spill.

Prior to presentment to the NPFC the Claimant submitted an Emergency Advance Payment Claim in the amount of \$12,910.00 and a Final Review Claim in the amount of \$15,925.31 to the RP/GCCF on 24 March 2011, both claims were denied.

NPFC Determination

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

The documentation provided by the Claimant demonstrated that she did not experience a loss resulting from the Deepwater Horizon incident. The Claimant has been unemployed since 2008, two years prior to the spill. The documentation provided by the Claimant showed that the Claimant has been receiving unemployment benefits since 2008. [REDACTED] Human Resources confirmed that the Claimant was laid off due to the company's decision to downsize from 15 hotels to 3 back in 2008.

The claim is denied because the evidence presented by the Claimant does not demonstrate (1) the alleged loss of profits in the amount of \$15,925.37, 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:  *NPFC Claims Adjudication Division*

Date of Supervisor's review: *7/18/11*

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

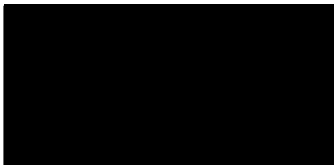
NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937

5890
6/27/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]



RE: Claim Number: N10036-0910

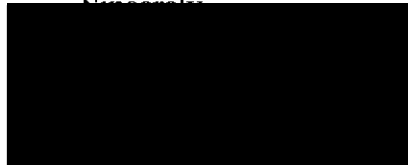
De: [REDACTED]

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 N10036-0910 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination Form for further explanation.

Disposition of this reconsideration constitutes final agency action.

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

Sincerely,



Chief, Claims Adjudication Division
U.S. Coast Guard

ENCL: Claim Summary / Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-0910
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: \$10,000,000.00

FACTS:

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

CLAIM AND CLAIMANT:

On 01 June 2011, [REDACTED] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$10,000,000.00, originally consisting of \$2,500,000.00 in government revenues, \$5,000,000.00 in removal costs, and \$2,500,000.00 in real or personal property damages resulting from the Deepwater Horizon oil spill. On 2 June 2011, the Claimant advised the NPFC that she wished to amend her claim type to a claim for loss of profits and impairment of earnings capacity.¹

Claimant alleged that after the oil spill she “came up with a safe procedure” using vacuums which, according to the Claimant, “resulted in the removal of thousands of gallons of oil.”²

Claimant alleged that she sent detailed plans to President Obama, Louisiana Governor [REDACTED] and officials from numerous Louisiana parishes.³

Claimant seeks \$4,000,000.00 in plan development, \$4,000,000.00 in septic truck rentals, \$1,000,000.00 for truck drivers, \$1,000,000.00 in barge rentals, and \$1,000,000.00 in loss of wages due to time spent on oil spill.⁴

Prior to presentment to the NPFC, Claimant asserted that she presented a claim to the RP/GCCF in October 2010. Per the Claimant, the claim was denied.⁵ The NPFC was able to confirm with the GCCF that the Claimant filed a claim for \$10,000,000.00 that was denied by the GCCF via Claimant ID [REDACTED]

¹ E-mail from Claimant dated 2 June 2011.

² Undated Optional OSLTF Claim Form.

³ Letter from Claimant dated 05 May 2011.

⁴ Although these expenses/losses total \$11,000,000.00, Claimant seeks \$10,000,000.00 from the OSLTF.

⁵ Optional OSLTF Claim Form.

REQUEST FOR RECONSIDERATION:

On June 14, 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 3, 2011 on the grounds that she had not demonstrated that her alleged loss was due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil. Claimant alleged that she developed a safe method for removing thousands of gallons of oil during the Deepwater Horizon oil spill, seeking \$10,000,000.00 for alleged expenses incurred in the development and deployment of the Claimant's removal method.

On reconsideration, the Claimant provided an eight page handwritten letter. The Claimant provided no new documentation in support of her request for reconsideration.

RECONSIDERATION CLAIM ANALYSIS:

The claimant requested reconsideration which was received by the NPFC on June 24, 2011. To support the request for reconsideration the Claimant submitted an eight page letter that asserted that her vacuum system was approved and adopted. The Claimant stated the Coast Guard shut it down to make sure it was safe. The Claimant's letter goes on to describe goals and strategies associated with her invention.

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 her vacuum system was approved and adopted. The Claimant stated the Coast Guard shut it down to make sure it was safe. The Claimant's letter goes on to describe goals and strategies associated with her invention.

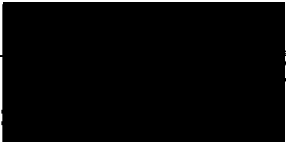
The Claimant has provided no new information to support her assertion that her invention was used and adopted. In particular, the Claimant has provided no written evidence that her product was going to be used or the details and costs and expenses associated with the alleged vacuum system.

The Oil Spill Liability Trust Fund (the Fund) is available to pay claims for uncompensated removal costs approved by the federal onscene coordinator and consistent with the National Contingency Plan (NCP.) Damages include: (1) damages for injury to, or economic losses resulting from the destruction of real or personal property recoverable by any person owning or

leasing that property; (2) damages equal to the loss of profits or impairment of earning capacity due to the injury, destruction, or loss of real or personal property or natural resources, which shall be recoverable by any claimant. 33 U.S.C. § 2702(b)(1) and (2)(B) and (E).

Claimant's asserted that she invented an effective vacuum system that was allegedly approved but shut down by the Coast Guard. Claimant asserted that she incurred costs to create and implement the system although the cost associated with this submission is not an OPA compensable damage. Further, even if Claimant's alleged damages were OPA-compensable, she has provided no detailed information on the associated costs or expenses with her vacuum system.

This claim is denied upon reconsideration.

Claim Supervisor 

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

Supervisor Action: *Denial on reconsideration approved*

Supervisor's Comments:

U.S. Department of
Homeland Security

United States
Coast Guard



Director
National Pollution Funds Center
United States Coast Guard

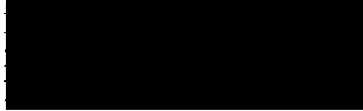
NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim # N10036-0911
8 June 2011



Re: Claim Number: N10036-0911

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 N10036-0911 involving the Deepwater Horizon oil spill. Please see the attached Claim Summary/Determination Form for further explanation.

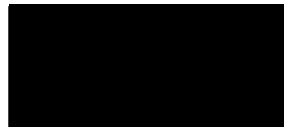
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-0911.

Mail reconsideration requests to:

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

Sincerely,



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

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

FOIA2011-3380-00003566

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-0911
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$28,000.00

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 31 May 2011, [REDACTED] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$28,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.¹

Claimant alleged that on 29 April 2010 he was laid off from his job on as a bartender in Naples, FL.² Claimant stated that this lay-off date was four months prior to the expiration of his contract.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 returns, financial statements, and similar documents. In addition, comparative figures for

¹ Optional OSLTF Claim Form dated 26 May 2011.

² *Id.*

³ *Id.*; PHONECON: Claimant and NPFC Staff, 8 June 2011, Claimant stated that he would not be able to provide a copy of the contract.

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

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

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

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

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

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support this claim, Claimant submitted the following documentation:

- Optional OSLTF Claim Form;
- 2010 W-2 Form, showing employment with HHG I, Inc. and wages of \$24,227.95;
- Letter signed by [REDACTED] of [REDACTED] indicating that [REDACTED] was hired as a seasonal employee and termed on 29 April 2010;
- Hardship letter signed by claimant, indicating that his contract ended four months early, dated 26 May 2011;
- 2008 W-2 showing gross pay of \$25,255.73; and
- 2009 W-2 showing gross pay of \$22,129.31.

Claimant alleged that he has presented this claim to the RP/GCCF, and that he was denied.⁴ However, the NPFC has not been able to verify presentment.

On 31 May 2011, the Claimant presented this claim for \$28,000.00 as a claim for “public services” provided. We have reclassified this claim as a claim for lost profits and earnings because claimant has indicated in a letter to the NPFC that his alleged loss was due to his employment contract ending four months earlier than anticipated, following the Deepwater Horizon oil spill.⁵

⁴ Optional OSLTF Claim Form received 31 May 2011.

⁵ Letter from Claimant to NPFC, dated 26 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 his loss of income was due to injury, destruction or loss of real or personal property 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. In conducting our review, we contacted representatives of [REDACTED] Claimant's employer.⁶ In separate conversations, two representatives of the company indicated that the Claimant was hired seasonally and was termed at the end of his contract, on 29 April 2010.⁷ Both representatives stated that his position was not ended early because of the Deepwater Horizon oil spill, and that he is currently employed by [REDACTED] again as a seasonal employee.⁸

Furthermore, the Claimant's gross earnings in 2010 were \$2,098.64 higher than in 2009.⁹

Claim is denied as the Claimant has failed to establish that he suffered a loss, and has failed to show that his alleged loss of \$28,000.00 is due to injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of discharge of oil.

Claim Supervisor: NPFC [REDACTED] Adjudication Division

Date of Supervisor's Review: 6/8/11

Supervisor's Action: *Denial approved*

Supervisor's Comments:

⁶ PHONECONS: Between Claimant and NPFC Staff, 1 June 2011 & 8 June 2011.

⁷ Id.

⁸ Id.

⁹ 2009, 2010 W-2 Forms, provided by Claimant to NPFC Staff.

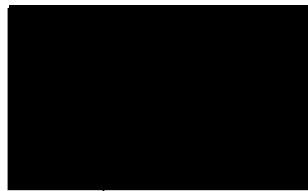
U.S. Department
of Homeland
Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD



Fax: 202-493-6937

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Number: [REDACTED]



5890/DWHZ
Claim # N10036-0912
6 June 2011

Re: Claim Number: N10036-0912

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 N10036-0912, 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 N10036-0912.

Mail reconsideration requests to:

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

Sincerely,



National Pollution Funds Center
U.S. Coast Guard

Enclosures: Claim Summary/Determination Form

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-0912
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 certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On 1 June 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.

Claimant was employed in the hospitality industry at the [REDACTED] of New Orleans LLC (Deja Vu).¹ The Claimant relies on both salary and tips from customers at [REDACTED]

Claimant asserted that as a result of the Deepwater Horizon oil spill, the number of customers at [REDACTED] plummeted, resulting in reduced tips and income for the Claimant.³

Claimant did not provide a calculation for her sum certain of \$10,000.00.

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

¹ Letter dated 27 April 2011 to GCCF describing Claim.

² PHONECON between NPFC and [REDACTED] dated 2 June 2011.

³ Letter dated 27 April 2011 to GCCF describing Claim.

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

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

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

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

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

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

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

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

- Optional Oil Spill Liability Trust Fund ('OSLTF') Claim Form received 1 June 2011;
- Instructions for filling out OSLTF Claim Form;
- Letter dated 27 April 2011 to GCCF describing claim;
- Photocopies of Social Security card and Louisiana Driver's License;
- 2008 version of W-2 tax form from HDV No 1 [REDACTED] of New Orleans [REDACTED]
- 2009 version of W-2 tax form from [REDACTED]
- 2010 version of W-2 tax form from [REDACTED]
- Pay Stubs from [REDACTED] 30 April 2010-12 November 2010.

Prior to presenting this Claim, Claimant presented multiple claims to the RP/GCCF, including an Emergency Advance Payment and Final Payment claim.⁴ The EAP claim was denied by the GCCF.⁵ However, Claimant was offered a Final Payment Offer on her Final Payment claim.⁶

On 1 June 2011, Claimant presented the subject 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 documentation presented by Claimant.

Claimant's provided tax documentation indicating that she earned the following annual amounts in wages, tips and other compensation: \$18,797.36 (2008), \$26,222.15 (2009), and \$23,143.05 (2010).⁷ Claimant's 2010 earnings exceeded the average of her 2008 and 2009 earnings. It is unclear how the Claimant arrived at her loss figure of \$10,000.00 from these reported annual income amounts, and the Claimant does not explain how she calculated her sum certain.

The Claimant additionally provided no documentation from her employer or clientele verifying the impact of the Deepwater Horizon oil spill on her wages and tips.

Because the Claimant has failed to demonstrate (1) her loss of \$10,000.00, 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, this claim is denied.

Claim Supervisor: *NPFC [REDACTED] Division*

Date of Review: *6/6/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

⁴ Claimant indicates that her GCCF Claimant ID # is [REDACTED]

⁵ GCCF Denial Letter dated 9 November 2010.

⁶ Claimant has not indicated to the NPFC whether she will accept or has accepted this offer.

⁷ Claimant's W-2's from 2008-2010.

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
National Pollution Funds Center
United States Coast Guard

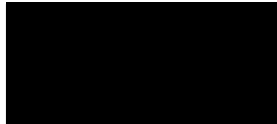
NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim # N10036-0913
8 June 2011



Re: Claim Number: N10036-0913

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 N10036-0913 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 N10036-0913.

Mail reconsideration requests to:

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

Sincerely,



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

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

FOIA2011-3380-00003574

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-0913
Claimant	██████████
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 1 June 2011, ██████████ (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 alleged that the Deepwater Horizon oil spill caused him to lose his job.² Claimant alleged to have presented his claim to the RP/GCCF in October 2010, but the NPFC did not have sufficient information to verify presentment.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 returns, financial statements, and similar documents. In addition, comparative figures for

¹ Optional OSLTF Claim Form dated 1 June 2011.

² Id.

³ Id.

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

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

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

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

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

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support this claim, Claimant submitted the following documentation:

1. OSLTF optional claim form;
2. 2010 W-2, showing state wages of \$9,642.16;
3. 2008 W-2, showing lottery winnings of \$5,000.00 and other state wages of \$12,760.00 and \$16,085.00.
4. 2008 Individual Income Tax Return, showing state wages of \$28,845.00;
5. 2008 Form, Earned Income Credit;
6. 2008 Form, Additional Child Tax Credit;
7. Bank Product Information form, dated 2/2/2011, showing anticipated refund of \$7,755.10;
8. 2009 Income Tax Return, showing state wages of \$12,664.00 and unemployment compensation of \$3,396.00.
9. 2009 Additional Child Tax Credit Form;
10. 2009 Earned Income Credit Form;
11. 2010 Form, showing unemployment compensation of \$6,097.00;
12. Bank Product Information form, dated 1/22/2011, showing anticipated refund of \$6,398.00;
13. Forms indicating unemployment compensation for period 5/2/10 to 5/15/10;
14. Forms indicating unemployment compensation for period 4/18/10 to 5/1/10;
15. Earnings statement for period 1/12/08 to 1/18/08;
16. Earnings Statement for period 8/14/09 to 8/24/09;
17. Earnings Statement for period 5/16/09 to 5/22/09.

On 1 June 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.

The NPFC reviewed all information and documentation provided by the Claimant. According to W-2 Forms provided by the Claimant, [REDACTED] was Claimant's only place of employment in 2010.⁴ When the NPFC contacted this employer, a representative indicated that the Claimant was hired on 17 May 2010 and that he is currently employed by the company.⁵ Furthermore, the representative indicated that the retirement community has suffered no adverse effects from the Deepwater Horizon oil spill.⁶

Additionally, documents provided by the Claimant indicated that the Claimant had collected unemployment benefits immediately prior to the oil spill, on 19 April, 2010.⁷

This claim for \$10,000.00 in lost profits and earnings capacity is denied because the Claimant has failed to show that he suffered a loss due to the injury, destruction or loss of property due to 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:

⁴ 2010 W-2 Form provided by Claimant to NPFC Staff.

⁵ PHONECON: NPFC Staff and Representative of [REDACTED] 6 June 2011.

⁶ Id.

⁷ Unemployment Compensation benefit forms indicate payment on 19 April 2010, for unemployment period 10 April 2010 – 17 April 2010.

U.S. Department of
Homeland Security

United States
Coast Guard



Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937

CERTIFIED MAIL - RETURN RECEIPT REQUESTED
Number: [REDACTED]

5890/DWHZ
Claim# N10036-0914
10 June 2011



RE: Claim Number: N10036-0914

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 33 C.F.R. Part 136, denies payment on your claim, #N10036-0914, 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 N10036-0914.

Mail reconsideration requests to:

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

Sincerely,



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

Enclosure: Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00003578

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	N10036-0914
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and 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 1 June 2011, [REDACTED] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$25,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

Claimant, an auction, real estate and tax preparation company, asserted that it lost income “[d]ue to clients’ businesses being affected by 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.

¹ Claimant’s Optional OSLTF Claim Form Section 9 dated 27 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 undertaken, but reasonably available;
- (d) Any saved overhead or normal expenses not incurred as a result of the incident; and
- (e) State, local, and Federal taxes.

DETERMINATION OF LOSS

Claimant's Submission

To support this claim, Claimant submitted the following documentation:

- Optional OSLTF Claim Form dated 27 May 2011;
- Letter to the NPFC dated 20 May 2011;
- GCCF Interim Payment/Final Payment Claim Denial Letter dated 22 April 2011;
- Gulf Coast Claims Facility Full Review Final Payment Claim Form;
- 2010 IRS Form 1120S;
- 2009 IRS Form 1120S;
- 2008 IRS Form 1120S; and
- Profit and Loss Statements for the periods from January 2008 to December 2010.

Claimant seeks \$25,000.00 for loss of profits and earnings capacity allegedly resulting from the Deepwater Horizon incident.

Claimant filed a Final Payment Claim with the GCCF and was assigned GCCF Claimant ID # [REDACTED]. Claimant's Interim Payment/Final payment Claim was denied on 22 April 2011.²

NPFC Determination

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

² GCCF Interim Payment/Final Payment Claim Denial Letter dated 22 April 2011.

Claimant has not provided information or documentation which might establish that its alleged losses are 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] Judication Division*

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

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

U.S. Department of
Homeland Security

United States
Coast Guard



Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937
5890
6/8/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]

[REDACTED]

RE: Claim Number: N10036-0915

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 N10036-0915 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 N10036-0915.

Mail reconsideration requests to:

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

Sincerely,

[REDACTED]

nds Center

U.S. Coast Guard

Encl: (1) Claim Summary/Determination Form

09/14/11

FOIA2011-3380-0003582

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-0915
Claimant	██████████
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: \$25,000.00

FACTS:

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

CLAIM AND CLAIMANT

On June 2, 2011, ██████████ (Claimant) presented a lost profits & earnings capacity claim in the amount of \$25,000.00 to the National Pollution Funds Center (NPFC) for reimbursement. The Claimant stated that he was laid off from his job at Great Southern Wood Preserving in Mobile, Alabama as a result of the oil spill. The Claimant provided an unsigned affidavit from ██████████ which stated that “volume has taken a drastic drop in revenue since May of 2010 due to the April 2010 oil spill. As a result, ██████████ was included in the lay-off in September 2010.”¹

The Claimant did not provide copies of the denial letter for his final claim with the GCCF but stated in his claim submission that his claim had been denied.

APPLICABLE LAW:

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

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

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

¹ Unsigned affidavit from ██████████ Preserving, dated May 25, 2011

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

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

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

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

DETERMINATION OF LOSS

Claimant's Submission

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

- Signed affidavit from Claimant, dated May 17, 2011;
- Unsigned affidavit from [REDACTED] of [REDACTED] dated May 25, 2011;
- 2008, 2009, and 2010 Wage and Income Tax Statement;
- Summary of unemployment benefits from the state of Alabama, dated May 9, 2011

NPFC Determination

Under 33 C.F.R. § 136.105(a) and 136.105(e)(6), the claimant bears the burden of providing to the NPFC all evidence, information and documentation deemed necessary by the director, NPFC, to support the claim. The NPFC considered all documentation presented by 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. The Claimant has not proven that his decreased earnings for 2010 were directly caused by the Deepwater Horizon oil spill and not other extraneous national or regional economic factors.

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."

Should the Claimant choose to come back on reconsideration, he will also have to provide financial data from his employer to assist in determining the nexus between the Claimant's income and the oil spill.

This claim is denied 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.


Claim Supervisor: *Claims Administration Division*

Date of Supervisor's review: *6/8/11*

Supervisor Action: *Denial approved*

Supervisor's Comments:

U.S. Department of
Homeland Security

United States
Coast Guard



Director
National Pollution Funds Center
United States Coast Guard

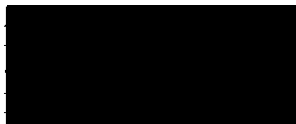
NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim# N10036-0916
08 Jun 2011



RE: Claim Number: N10036-0916

Dear [REDACTED]

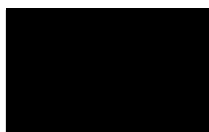
The National Pollution Funds Center (NPFC), in accordance with 33 C.F.R. Part 136, denies payment on your claim, #N10036-0916. Please see the enclosed Claim Summary/Determination Form for further explanation.

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 N10036-0916.

Mail reconsideration requests to:

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



National Pollution Funds Center
U.S. Coast Guard

Encl: (1) Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00003586

CLAIM SUMMARY / DETERMINATION FORM

Date	08 June 2011
Claim Number	N10036-0916
Claimant	A [REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earnings Capacity
Amount Requested	\$8,407.00

FACTS:

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

CLAIM AND CLAIMANT

On 31 May 2011, [REDACTED] (Claimant) presented an Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Fund Center (NPFC) seeking \$8,407.00 for loss of profits and earnings capacity damages that allegedly resulted from the Deepwater Horizon oil-spill.

With respect to his alleged losses, the Claimant asserted that he is a handyman who did miscellaneous work for a regular clientele but that "because of the oil spill several clients have had to cut back and are unable to use my services."¹

Claimant filed an Interim Payment/Final Payment claim with the GCCF. Claimant was assigned GCCF Claimant ID # [REDACTED]. Claimant's Interim Payment/Final payment Claim was denied on 1 April 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.

¹ Letter from claimant to NPFC Staff misdated 25 March 2011

² GCCF Interim Payment/Final Payment Claim Denial Letter dated 1 April 2011
09/14/11

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 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 undertaken, 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

Claimant seeks \$8,407.00 for loss of profits and earnings capacity allegedly resulting from the Deepwater Horizon incident.

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

- Optional OSLTF Claim Form (undated);
- GCCF Deficiency Letter dated 25 March 2011;:
- Letter from Claimant to NPFC staff misdated 25 March 2011³;
- Interim Payment/Final Payment Claim Denial Letter dated 1 April 2011;
- 2010 profit and loss statement; and

³ The employee to whom the subject letter was addressed was not employed by the NPFC on 25 March 2011.

— 2011 profit and loss statement.

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 because the Claimant's evidence does not demonstrate (1) the alleged loss of profits in the amount of \$8,407.00, 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. Additionally, comparative figures for profits or earnings for the same or similar activities outside of the area affected by the incident also must be established."

Because the Claimant has failed to demonstrate (1) the alleged loss of profits in the amount of \$8,407.00, 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, the claim is DENIED.

Claim Supervisor: *Claims [REDACTED] Division*

Date of Supervisor's review: *6/8/11*

Supervisor Action: *Denial approved*

Supervisor's Comments:

U.S. Department of
Homeland Security

United States
Coast Guard



Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim # N10036-0917
08 June 2011

Re: Claim Number: N10036-0917

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 N10036-0917 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 N10036-0917.

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

FOIA2011-3380-00003590

CLAIM SUMMARY/DETERMINATION FORM

Date	June 8, 2011
Claim Number	N10036-0917
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
Amount Requested	\$45,000.00

FACTS

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

CLAIM AND CLAIMANT

On 02 June 2011, [REDACTED] on behalf of [REDACTED] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$45,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

Claimant is reported to be a 501c organization that alleged to “serve all poor people and low income” through a variety of support and services. Claimant asserted that due to the Deepwater Horizon oil spill, donations and monetary gifts were lost, thereby impacting their not for profit organization.^{1 2}

APPLICABLE LAW

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

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

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

- (a) That real or personal property or natural resources have been injured, destroyed, or lost.
- (b) That the claimant’s income was reduced as a consequence of injury to, destruction of, or loss of property or natural resources, and the amount of that reduction.

¹ See, Agency Details page retrieved by the NPFCA on 02 June 2011 from the website [REDACTED]

² See, Optional OSLTF Claim Form dated 01 June 2011
09/14/11

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

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

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

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

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support this claim, Claimant submitted the following documentation:

- Optional OSLTF Claim Form, dated 01 June 2011, received on 02 June 2011;
- Federal Agency Pollution Removal Funding Authorization (PRFA) document describing the “maximum limit of authorization”;
- Business Credit Notification letter from D&B advising “incomplete credit profile”;
- Partial GCCF claim form and
- 2009 Department of the Treasury IRS Form 990-N for Tax-Exempt Organizations not Required to File Form 990 or 990-EZ.

Prior to presentment to the NPFC, Claimant presented an Emergency Advance Payment claim to the RP/GCCF and was assigned Claimant Identification Number [REDACTED]. This claim was denied in a letter dated 03 December 2010. Claimant also presented an Interim Payment/Final Payment claim to the RP/GCCF and this claim was subsequently denied in a letter dated 22 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.

This claim is denied because the Claimant's evidence does not demonstrate (1) the alleged loss of profits in the amount of \$45,000.00, as claimed, or (2) the correlation, if any, between this alleged loss and the Deepwater Horizon oil spill.

It is also important to note that the Claimant has provided NO comparable financial documentation pursuant to the governing claims regulations at 33 CFR 136.233 (c) which states... "The amount of the claimant's profits or earnings in comparable periods and during the period when the claimed loss or impairment was suffered, as established by income tax returns, financial statements, and similar documents. In addition, comparative figures for profits or earnings for the same or similar activities outside of the area affected by the incident also must be established."

The NPFC reviewed all information and documentation provided by the Claimant. The NPFC was unable to find evidence of causation or economic loss, or that any potential causation or loss was subsequent to the Deepwater Horizon oil spill.

Because the Claimant has failed to demonstrate (1) the alleged loss of profits in the amount of \$45,000.00, 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, the claim is DENIED.


Claim Supervisor: *Claims Adjudication Division*

Date of Supervisor's review: *6/8/11*

Supervisor Action: *Denial approved*

Supervisor's Comments:

U.S. Department of
Homeland Security

**United States
Coast Guard**



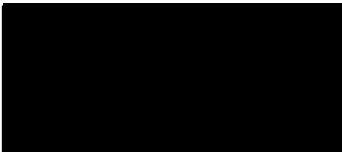
Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937
5890
6/8/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]



RE: Claim Number: N10036-0918

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 N10036-0918 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 N10036-0918.

Mail reconsideration requests to:

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



Claims Manager
U.S. Coast Guard

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-0918
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: \$6,000.00

FACTS

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

CLAIM AND CLAIMANT

On June 2, 2011, [REDACTED] (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC). The OSLTF claim form alleged \$6,000 in what the Claimant categorized as loss of subsistence use resulting from the Deepwater Horizon oil spill.

Claimant alleged that she was exposed to bad seafood and subsequently went to the doctor and was diagnosed with food poisoning on or about January 5, 2011. Claimant is requesting \$6,000.00 with no further explanation as to what that amount represents.

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. Under 33 U.S.C. § 2712 (b), private OSLTF claimants may only recover for damages to real or personal property, subsistence use and profits or earning capacity due to the injury, destruction or loss of natural resources. Personal injury damages are not recoverable under OPA.

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

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

- OSLTF Claim Form signed by Claimant dated June 1, 2011;
- Copy of 2010 W-2;
- Copy of hospital sheet demonstrating diagnosis of food poisoning.


Claimant stated on her OSLTF Claim Form that she filed a claim with the RP and was subsequently denied. Claimant gave her GCCF claimant ID # as 3084001. NPFC has not been able to confirm denial.

NPFC Determination

This claim is denied. Under 33 U.S.C. § 2712 (b), private OSLTF claimants may only recover for damages to real or personal property, subsistence use and profits or earning capacity due to the injury, destruction or loss of natural resources. Personal injury damages are not recoverable under OPA and the associated regulations at 33 C.F.R. 136.

Based on the information provided by Claimant to NPFC, Claimant's alleged loss in the amount of \$6,000 stems entirely from personal injuries caused by her alleged food poisoning. Because the Claimant's asserted loss stems entirely from personal injuries, and because damages from these types of injuries do not fall within the purview of OPA, Claimant's loss is not compensable under OSLTF.

This claim is accordingly denied.

Claim Supervisor: NP  *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
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937
5890
6/10/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]

[REDACTED]

RE: Claim Number: N10036-0920

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 N10036-0920 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 N10036-0920.

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

FOIA2011-3380-00003597

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-0920
Claimant	[REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: \$8,000.00

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 June 2, 2011, [REDACTED] (Claimant) presented a lost profits & earnings capacity claim in the amount of \$8,000.00 to the National Pollution Funds Center (NPFC) for reimbursement. The Claimant stated on the Optional OSLTF Claim Form that he was laid off from his job at [REDACTED] due to the oil spill.

The Claimant did not provide copies of the denial letter for his final claim with the GCCF but the NPFC did confirm that the interim claim was denied on April 22, 2011.

APPLICABLE LAW:

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

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

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 20, 2011;
- GCCF Interim claim payment form, undated

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 \$8,000.00, as claimed, or (2) the correlation, if any, between this alleged loss and the Deepwater Horizon oil spill. The NPFC contacted the Human Resources (HR) division of [REDACTED] to determine if the Claimant was laid off as a direct result of the oil spill. The HR assistant stated that the Claimant was laid off from September 3, 2010 to November 18, 2010 due to his contracted job ending. The Claimant is currently working and has been since November 18, 2010.

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. Additionally, comparative figures for profits or

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

Because the Claimant has failed to demonstrate (1) the alleged loss of profits in the amount of \$8,000.00, as claimed, or (2) that this alleged loss is due to injury or destruction or loss of real or personal property or a natural resource as a result of a discharge or substantial threat of a discharge of oil, this claim is DENIED.

Claim Supervisor: *Claims Administration Division*

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

Supervisor Action: *Denial approved*

Supervisor's Comments:

U.S. Department of
Homeland Security

United States
Coast Guard



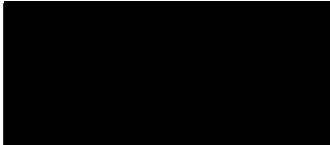
Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937
5890
6/28/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]



RE: Claim Number: N10036-0921

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 N10036-0921 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 N10036-0921.

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

FOIA2011-3380-00003601

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	N10036-0921
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$739,272.00

FACTS

On or about 20 April 2010, the Mobile Offshore Drilling 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 June 3, 2011, [REDACTED] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) on behalf of [REDACTED] for \$739,272.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

The Claimant asserted that his business, [REDACTED] is a grading, storage, and handling warehouse that specializes in Gulf shrimp. The Claimant provided very little explanation regarding the company but stated that the "drop in shrimp populations in the Gulf has severely impacted these revenue streams and the related operations."¹

Prior to presentment to the NPFC, Claimant presented an Emergency Advance Payment Claim for \$583,180.00 in lost profits and earnings to the RP/GCCF on October 10, 2010 and was compensated \$583,200.00. The Claimant then presented a Full Final Review claim for \$9,946,190.00 in lost profits and earnings to the RP/GCCF on January 11, 2011. The GCCF made the Claimant an offer of \$289,755.63 on April 9, 2011, to which the Claimant has not accepted, at this time.

While the Full Final Review claim was pending, on May 23 2011, the Claimant presented this claim to the OSLTF for \$739,272.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

To date, the Claimant has received a total of \$583,200.00 from the RP/GCCF.

APPLICABLE LAW

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

¹ Letter from Claimant to NPFC dated May 23, 2011
09/14/11

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

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

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

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

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

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

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

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

- Explanation of claim with sum certain, dated May 23, 2011;
- Document titled "All Service Lines – Total Revenue";
- Document listing all customers alphabetically;
- Monthly Income Statements from 2007 through 2010;
- Annual Financial Statements for 2007, 2008, 2009, and 2010

NPFC Determination

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

NPFC, to support the claim. The NPFC considered all documentation presented by the Claimant.

Documentation provided indicated that the damages sought by the Claimant were for future losses. Based on the data provided by the Claimant, we calculate lost net profits from May through December 2010 totaling \$502,542.00. The Claimant has already received from GCCF payments totaling \$583,200.00.

Based on the financial data, there is a decline in revenue during 2010 compared to 2009. However, monthly revenues started declining as early as December 2009. In each of the months prior to the incident dating back to December 2009, monthly revenue is lower than the prior year. Therefore, we calculated the trend from the 6 months prior to the incident and multiplied that by the revenue from May through December 2009 to project sales for 2010. This is a reasonable projection method as it is greater than simply taking the average from the past several years. Nevertheless, after deducting saved expenses, we calculated a loss that is less than the amounts already paid by GCCF.

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

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


Claim Supervisor: *NPFC Claims Adjudication Division*

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

Supervisor's Action: *Denial approved*

Supervisor's Comments:

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937
5890
6/6/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number [REDACTED]



RE: Claim Number: N10036-0922

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 N10036-0922 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 N10036-0922.

Mail reconsideration requests to:

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

Sincerely,



Center

U.S. Coast Guard

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

FOIA2011-3380-00003605

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-0922
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 April 20, 2010, the Mobile Offshore Drilling Unit Deepwater Horizon (Deepwater Horizon) exploded and sank in the Gulf of Mexico. As a result of the explosion and sinking, oil was discharged. The Coast Guard designated the source of the discharge and identified BP as a responsible party (RP). BP accepted the designation and advertised its OPA claims process. On August 23, 2010, the Gulf Coast Claims Facility (GCCF) began accepting and adjudicating claims for certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On June 2, 2011, [REDACTED] (Claimant) presented a lost profits & earnings capacity claim in the amount of \$30,000.00 to the National Pollution Funds Center (NPFC) for reimbursement. The Claimant stated on the Optional OSLTF Claim Form that he was laid off from his job at [REDACTED] due to the oil spill. However, the Claimant provided a termination letter from [REDACTED] stating that the termination was due to a reduction in force. The cause for the reduction states, [REDACTED] has experienced a market decline in the U.S Gulf of Mexico operations. A factor in the decline is our client's inability to obtain drilling permits from the Federal Government."¹

The Claimant did not provide copies of the denial letter for his final claim with the GCCF but the NPFC did confirm that the claim was denied on 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 Termination letter from [REDACTED] dated January 26, 2011
09/14/11

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

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

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

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

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

DETERMINATION OF LOSS

Claimant's Submission

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

- NPFC OSLTF Form, dated May 23, 2011;
- Termination letter from employer, dated January 26, 2011;
- Copy of Merchant Mariner License, TWIC, Social Security card, Driver's License, and Birth Certificate;
- Paystub dated September 22, 2010;
- Paystub dated October 7, 2010;
- 2009 & 2010 W-2

NPFC Determination

Under 33 C.F.R. § 136.105(a) and 136.105(e)(6), the claimant bears the burden of providing to the NPFC all evidence, information and documentation deemed necessary by the director, NPFC, to support 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 \$30,000.00, as claimed, or (2) the correlation, if any, between this alleged loss and the Deepwater Horizon oil spill. The termination letter provided by the Claimant clearly stated that the reduction in force was due to "our client's inability to obtain drilling permits from the federal government."² Therefore, the loss is not a direct result of the oil spill.

Because the Claimant has failed to demonstrate (1) the alleged loss of profits in the amount of \$30,000.00, as claimed, or (2) that this alleged loss is due to injury or destruction or loss of real or personal property or a natural resource as a result of a discharge or substantial threat of a discharge of oil, this claim is DENIED.

Claim Supervisor: *Claims Adjudication Division*

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

Supervisor Action: *Denial approved*

Supervisor's Comments:

² Termination letter from [REDACTED] dated January 26, 2011
09/14/11

U.S. Department of
Homeland Security

United States
Coast Guard



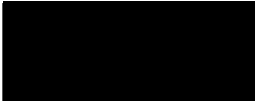
Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937
5890
6/8/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]



RE: Claim Number: N10036-0923

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 N10036-0923 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 N10036-0923.

Mail reconsideration requests to:

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

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

Encl: (1) Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00003609

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-0923
Claimant	[REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: \$8,930.00

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 June 3, 2011, [REDACTED] (Claimant) presented a lost profits & earnings capacity claim in the amount of \$8,930.00 to the National Pollution Funds Center (NPFC) for reimbursement. The Claimant stated that his hours were cut from his job at [REDACTED] in Daphne, Alabama as a result of the oil spill. The Claimant provided an affidavit from Tim [REDACTED] stating that "with the loss of business, Andy has lost hours due to a lack of orders. Since the majority of our business is along the Gulf Coast, we have lost many orders due to the lack of summer tourism."¹

The Claimant did not provide copies of the denial letter for his final claim with the GCCF but stated in his claim submission that his claim has been denied.

APPLICABLE LAW:

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

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

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

¹ Affidavit from [REDACTED] dated August 6, 2010
09/14/11

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

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

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

- (a) 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 May 24, 2011;
- Affidavit from [REDACTED] Owner of [REDACTED] dated August 6, 2010;
- 2008 and 2009 Tax Returns;
- Copy of diploma;
- Letter to the GCCF from Claimant, dated August 3, 2010;
- Letter to the NPFC from Claimant, dated May 24, 2011

NPFC Determination

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

This claim is denied because the Claimant's evidence does not demonstrate (1) the alleged loss of profits in the amount of \$8,930.00, 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."

Should the Claimant choose to come back on reconsideration, he will have to provide financial data from his employer to assist in determining the nexus between the Claimant's income and the oil spill.

This claim is denied because the Claimant has failed to demonstrate (1) the alleged loss of profits in the amount of \$8,930.00, 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:  *tion Division*

Date of Supervisor's review: *6/8/11*

Supervisor Action: *Denial approved*

Supervisor's Comments:

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
National Pollution Funds Center
United States Coast Guard

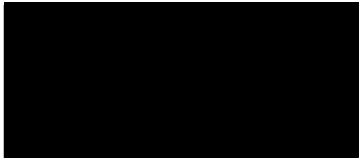
NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937

DWHZ/5890
7/13/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]



RE: Claim Number: N10036-0924

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 N10036-0924 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 N10036-0924.

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

Enclosure: Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00003613

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-0924
Claimant	[REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: \$15,935.00

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 June 3, 2011, [REDACTED] on behalf of Alabama Computer Repair (collectively Claimant) presented a claim to the National Pollution Fund Center (NPFC), on an optional Oil Spill Liability Trust Fund (OSLTF) claim form seeking \$15,935.00 in lost profits and earning capacity resulting from the Deepwater Horizon incident.

Claimant asserts that he provides computer servicing for businesses and that, due to the oil spill, customers cancelled and business dropped. The Claimant asserts that he did additional advertising and phone calls to attain new business in order to mitigate his loss.

The Claimant provided copy of his denial letter from the GCCF for his interim/final claim dated April 22, 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.
- (c) The amount of the claimant's profits or earnings in comparable periods and during the period when the claimed loss or impairment was suffered, as established by

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

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

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

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

- (a) 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 May 18, 2011;
- Letter of explanation from Claimant, dated May 18, 2011;
- Letters (3) from customers stating they cancelled scheduled work;
- 2008, 2009, and 2010 Profit and Loss Statement;
- 2008, 2009, and 2010 Income Tax Returns;
- GCCF denial letter for Final claims, dated April 22, 2011

On June 3, 2011, Claimant presented his claim to OSLTF seeking \$15,935.00 in lost profits and earning capacity resulting from the Deepwater Horizon incident. Prior to submitting his claim to the NPFC, Claimant submitted a Second Quarter Interim Claim 2011 (Q2IC2011) to the GCCF seeking damages in the amount of \$33,326.00 and was issued Claimant ID [REDACTED] and Q2 IC2011 Claim [REDACTED]. Claim [REDACTED] was denied by the GCCF.

NPFC Determination

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

On June 13, 2011, the NPFC sent, via certified mail, a request for additional information to the Claimant in order to obtain the necessary information to adjudicate the claim. The documentation requested consisted of the following:

- a) Provide copies of pay stubs, pay checks and earnings statements for all employment held during 2009 and 2010.
 - a. If the above is not available, provide copies of bank statements to support your earnings. Specifically identify on the bank statements, any deposits that are related to your employment.
- b) Each client that provided a letter stated that you provided computer services for the past 4 years. Please provide invoices for those clients for the past 4 years.
- c) Provide written confirmation from the former clients of your computer services business detailing the services provided, amount paid, hours worked, and frequency of services used.
- d) Provide monthly Profit and Loss statements for 2008, 2009, and 2010.
- e) If you have received unemployment benefits from 2009 through the present, provide copies of payments received and statements of benefits.
- f) If you had contracts set up to perform computer services, please provide copies.

The NPFC also asked the Claimant to answer the following questions:

- a) Describe your employment history from 2008 through the current period.
 - a. Include a description of dates worked, your position held and job duties.
- b) Identify your position, job title and responsibilities for your employment position that you believe was impacted by the Deepwater Horizon incident.
- c) Identify any specific periods of time that you were unemployed from 2008 through the current period.
- d) If you have received unemployment benefits during 2009 and 2010 identify the periods of time when you received benefits and the amounts received.
- e) Describe how you computed your claimed lost earnings.
- f) Have you sought new clients for either business outside the region in which you normally operate?
- g) Have you sought alternative forms of employment?
- h) Do you retain any employees for either business claimed on Schedule C of your Individual tax return? If so, please list their positions, job duties, compensation, and hours.
- i) When was the computer services business founded?
- j) What is the ownership makeup of the computer services business?
- k) Please describe how your clients were impacted by the oil spill. You must prove that your clientele suffered damages as a direct result of the oil spill.

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

Claim Supervisor: *NPFC Claim*  *Division*

Date of Supervisor's review: *7/13/11*

Supervisor Action: *Denial approved*

Supervisor's Comments:

U.S. Department of
Homeland Security

United States
Coast Guard



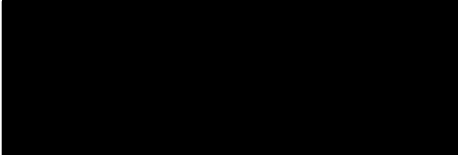
Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Number: [REDACTED]



5890/DWHZ
Claim # N10036-0925
02 August 2011

Re: Claim Number: N10036-0925

Dear [REDACTED]

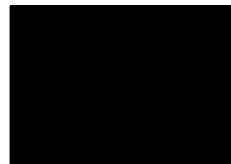
The National Pollution Funds Center (NPFC) in accordance with the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq. (OPA) and the associated regulations at 33 C.F.R. Part 136, denies payment on your claim number N10036-0925 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination 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 N10036-0925.

Mail reconsideration requests to:

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



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

Enclosures: (1) Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00003618

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-0925
Claimant	[REDACTED]
Type of Claimant	Business
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$145,000.00

FACTS

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

CLAIM AND CLAIMANT

On 03 June 2011, [REDACTED] on behalf of [REDACTED] (collectively Claimant) presented an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) seeking \$145,000.00 in loss of profits and impairment of earnings capacity that allegedly resulted from the Deepwater Horizon oil spill.

The Claimant owns a construction business operating in the Pensacola, Florida region.¹ The Claimant's business specifically focuses on commercial interior build outs.² The Claimant asserted that as a result of the Deepwater Horizon oil spill, the tourism industry in the Pensacola, Florida region collapsed, lowering the number of buyers and investors in the area.³ This lack of tourism and accompanying lack of investment lowered the demand for the Claimant's services, therefore causing a decline in the Claimant's revenues.⁴

The Claimant did not provide a calculation of her sum certain of \$145,000.00.

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

¹ Letter from Claimant, undated, describing claim.

² Id.

³ Id.

⁴ Id.

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.

Pursuant to the claims regulations, 33 C.F.R. 136.315, a claimant must establish the following to prove damage to real or personal property:

- (a) An ownership or leasehold interest in the property;
- (b) That the property was injured or destroyed;
- (c) The cost or repair or replacement;
- (d) The value of the property both before and after injury occurred.

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

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

- (a) 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:

- Optional OSLTF Claim Form received 03 June 2011;
- Letter from Claimant, undated, describing claim;
- Profit and loss statements from: January 2010-April 2011; and
- 2009 1120S Federal tax form.

Prior to presenting this claim to the NPFC, the Claimant filed an Emergency Advance Payment (EAP) Claim with the GCCF on 14 October 2010 in the amount of \$130,000.00.⁵ The Claimant was assigned Claimant Identification [REDACTED] and Claim Identification [REDACTED]. The Claimant's EAP Claim was granted in the amount of \$15,100.00 on 11 November 2011.⁶ Additionally, the Claimant filed a Full Review Final (FRF) Claim with the GCCF on 25 January 2011 in the amount of \$152,688.00.⁷ The Claimant was assigned Claim Identification # [REDACTED]. As of this determination, the GCCF has not issued a determination on the Claimant's FRF claim.⁸

Based upon the evidence provided by the Claimant, it appears that the subject matter for the two GCCF claims is the same as the subject matter of Claimant's claim before the NPFC, i.e., that due to the Deepwater Horizon oil spill, the tourism industry in the Pensacola region collapsed, reducing business investment in the area and reducing demand for the Claimant's services. The NPFC deems the Claimant's GCCF claims to be properly presented to the RP and properly presented to the NPFC. Accordingly, this Claim Summary Determination for NPFC Claim N10036-0925 considers and addresses the earnings claimed in the claim presented to the responsible party, specifically; GCCF Claim # [REDACTED] (EAP) and [REDACTED] (FRF).

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. The Claimant asserted that the Deepwater Horizon oil spill caused reduced interest from potential investors and buyers in the Pensacola, FL region. The Claimant stated the lack of demand for her business reduced the Claimant's income in 2010 and 2011. The Claimant, however, failed to provide documentation to support these assertions.

⁵ Report from the GCCF dated 29 July 2011.

⁶ GCCF Notice of Determination, Emergency Advance Payment, dated 11 November 2011.

⁷ Report from the GCCF dated 29 July 2011.

⁸ GCCF Claimant Status.

On 14 June 2011, the NPFC requested additional information from the Claimant to further evaluate the claim and determine the effects of the Deepwater Horizon oil spill on the demand for the Claimant's business. The NPFC requested that the Claimant provide, among other things, income tax return filings for 2009 and 2010, copies of documentation supporting completed projects from 2009-2011, copies of contracts that were cancelled as a result of the oil spill, copies of relevant licensing to work as a contractor, monthly profit and loss statements from 2009, and a sales ledger or listing of all projects. To date no response regarding the above request has been received by the NPFC.

This claim is denied because the Claimant failed to meet her burden to demonstrate (1) that there was an alleged loss in the amount of \$145,000.00, 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.

Claim Supervisor: *Claim [REDACTED] Division*

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

Supervisor Action: *Denial approved*

Supervisor's Comments:

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim # N10036-0926
22 June 2011

Re: Claim Number: N10036-0926

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 N10036-0926 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 N10036-0926.

Mail reconsideration requests to:

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

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

Enclosure: Claim Summary/Determination Form

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-0926
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$120,000.00

FACTS

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

CLAIM AND CLAIMANT

On 03 June 2011, [REDACTED] Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$120,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

The Claimant worked on a commercial fishing boat named the [REDACTED] in Pointe la Hache, Louisiana. She stated that the boat failed to work on 21 April 2010 because of the Deepwater Horizon oil spill and she was unable to return to work on the boat.¹ The Claimant provided a copy of pay stubs for November and December 2009 from the Captain of the boat.² She provided no W-2 Wage and Tax Statements for her work on the boat.

The Claimant indicated that she doesn't know if the boat owner was compensated by the GCCF for the damages to his boat. She claimed \$120,000.00 because she did not know how much NPFC would pay her.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:

¹Hand-written response to NPFC letter requesting additional information.

²Pay check stubs from Kirk Carbajal for October and November 2009.

³Hand-written response to NPFC letter requesting additional information.

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

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

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

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

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support this claim, Claimant submitted the following documentation:

1. OSLTF Claim Form signed by the Claimant on 01 June 2011
2. GCCF Denial Letter for Emergency Advance Payment to Claimant dated 28 January 2011
3. Form 1040 US Individual Income Tax Return for 2009 and 2010
4. Pay check stubs from [REDACTED] for October and November 2009
5. W-2 Wage and Tax Statements for 2008, 2009 and 2010 from [REDACTED]
6. W-2 Wage and Tax Statements for 2010 from Shadows Bend Court
7. Hand-written response to NPFC letter requesting additional information

On 09 June 2011, the NPFC sent the Claimant a letter requesting additional information in order to evaluate the claim. On 16 June 2011, the Claimant responded to the request by fax.

Prior to presentment to the NPFC, the Claimant presented an Emergency Advance Payment Claim to the RP/GCCF for \$12,222.00 in lost profits and earnings. She was issued GCCF Claimant I [REDACTED] and Claim [REDACTED]. On 28 January 2011, the GCCF denied the claim.⁴

The Claimant also presented a Final Payment Claim to the RP/GCCF for \$70,000.00 in lost profits and earnings. On 27 May 2011, the GCCF denied the Final Payment Claim in a letter.⁵

On 3 June 2011, Claimant presented this claim for \$120,000.00 in lost earnings from the non-operability of [REDACTED] on 21 April 2010, which Claimant attributes to 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). Although the Claimant presented an Emergency Advance Payment and Final Payment Claim for lost profits and earnings, the claimed loss amount for either claim is not \$120,000.00—the sum certain that the Claimant alleges before the NPFC. The larger claimed amount presented to the RP/GCCF is \$70,000.00 for the Final Payment Claim. This amount is properly before the NPFC pursuant to 33 C.F.R. § 136.103(a). The portion of the Claimant's sum certain exceeding \$70,000.00 is denied as not being properly presented to the RP.

The portion of the claim that has been properly presented to the RP, \$70,000.00, is similarly denied because the Claimant failed to demonstrate (1) her alleged loss amount 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.

With respect to her loss amount, the Claimant admitted that she only claimed \$120,000.00 because she did not know how much the NPFC would pay her. She provided no calculation for her claimed loss amount.

Additionally, the Claimant failed to show how the failure of *Miss Rhonda* on 21 April 2010 resulted from the Deepwater Horizon oil spill.

For the foregoing reasons, this claim is denied.

Claim Supervisor: *Claim [REDACTED] Division*

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

Supervisor's Action: *Denial approved*

Supervisor's Comments:

⁴ GCCF denial letter Re: Claimant's EAP claim dated 28 January 2011.

⁵ GCCF denial letter Re: Claimant's Final Payment Claim, dated 27 May 2011.

U.S. Department of
Homeland Security

**United States
Coast Guard**



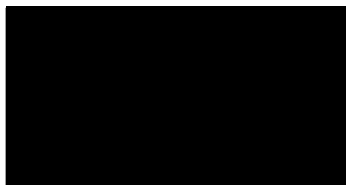
Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD

[REDACTED]
Fax: 202-493-6937
5890
6/13/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]



RE: Claim Number: N10036-0927

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with 33 C.F.R. Part 136, denies payment on your claim, #N10036-0927. 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 N10036-0927.

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

FOIA2011-3380-00003627

CLAIM SUMMARY / DETERMINATION FORM

Date	June 13, 2011
Claim Number	N10036-0927
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earnings Capacity
Amount Requested	\$35,000.00

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 June 3, 2011, [REDACTED] (Claimant) presented an Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Fund Center (NPFC) on behalf of her company [REDACTED], seeking \$35,000.00 for loss of profits and earnings capacity damages that allegedly resulted from the Deepwater Horizon oil-spill.

The Claimant provided no explanation regarding her claim or how she at her alleged loss. While reviewing documentation submitted by the Claimant the NPFC determined, based off of a fax sent to the GCCF, that the Claimant owns a non-medical home health business.

The Claimant did not provide a denial letter from the GCCF but the NPFC verified that the Claimant did present a claim, which was subsequently denied.

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 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 undertaken, 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

Claimant seeks \$35,000.00 for loss of profits and earnings capacity allegedly resulting from the Deepwater Horizon incident.

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

- Optional OSLTF Claim Form, dated May 25, 2011;
- Copy of GCCF claim submission, undated;
- Copy of Claimant's direct deposit banking information;
- Paystubs from September 18, 2010 to October 19, 2010;
- Court documents for Relais Esplanade vs. Miriam Martinez for non-payment of rent, dated October 26, 2010;
- Fax from Claimant to GCCF explaining claim, dated November 22, 2010;
- Business status for [REDACTED];
- Copy of Asset Statement, dated October 26, 2010;
- Copy of calendar for week of 22-28 May 2011

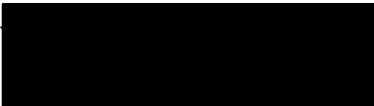
DETERMINATION:

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 of the documentation submitted 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 \$35,000.00, as claimed or (2) the correlation, if any, between this alleged loss and the Deepwater Horizon oil spill. The Claimant provided no explanation of the claim or how she arrived at the asserted damages. The Claimant must be able to prove that a financial loss occurred and that it was a direct result of the injury to the natural resource as a result of a discharge or substantial threat of discharge of oil.

It is also important to note that the Claimant has provided NO comparable financial documentation pursuant to the governing claims regulations at 33 CFR 136.233 (c) which states... "The amount of the Claimant's profits or earnings in comparable periods and during the period when the claimed loss or impairment was suffered, as established by income tax returns, financial statements, and similar documents. Additionally, comparative figures for profits or earnings for the same or similar activities outside of the area affected by the incident also must be established."

Because the Claimant has failed to demonstrate (1) the alleged loss of profits in the amount of \$35,000.00, 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, the claim is DENIED.

Claim Supervisor:  n

Date of Supervisor's review: 6/13/11

Supervisor Action: *Denial approved*

Supervisor's Comments:

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim # N10036-0929
8 June 2011

Re: Claim Number: N10036-0929

Dear Ms. Bello:

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 N10036-0929 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 N10036-0929.

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

FOIA2011-3380-00003631

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-0929
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of 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 2 June 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.¹

Claimant alleged that she was unable to secure employment as a result of the Deepwater Horizon oil spill. When she did find a job, on 23 October, 2010, Claimant alleged that her hours were reduced as a result of 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 3 June 2011.

² PHONECON: Claimant and NPFC Staff, 6 June 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 undertaken, but reasonably available;
- (d) Any saved overhead or normal expenses not incurred as a result of the incident; and
- (e) State, local, and Federal taxes.

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support this claim, Claimant submitted the following documentation:

1. OSLTF optional claim form;
2. Letter from Claimant to NPFC, dated 3 June 2011;
3. Copy of GCCF Denial Letter on Interim Payment/Final Payment Claim, 6 May 11;
4. Copy of GCCF Claim Form;
5. Form documenting Claimant's collection of unemployment benefits from 08/02/09 to 08/18/09;
6. Form documenting Claimant's collection of unemployment benefits from 12/14/08 to 12/27/08;
7. Form documenting Claimant's collection of unemployment benefits from 12/28/08 to 1/10/09;
8. Copy of bill from Florida Power and Electric, 25 May 11;
9. Pay Stubs showing yearly earnings from 3/26/2011 to 4/01/2011;
10. Print-out of TurboTax Electronic Filing Instructions, 2008
11. 2008 Individual Income Tax Return;
12. 2008 Form 8880, "Credit for Qualified Retirement Savings Contributions";
13. 2008 Recovery Rebate Credit Worksheet;
14. 2008 Tax Payments Worksheet;
15. 2008 Federal Carryover Worksheet;
16. Print-out of TurboTax Electronic Filing Instructions, 2009;
17. Form documenting Unemployment benefits for 2009, totaling \$12,457.00;
18. 2009 Form 1099-R;
19. 2009 Form 1040;
20. 2009 Tax Payment Worksheet;
21. 2009 Federal Carryover Worksheet;
22. 2010 Form showing unemployment compensation of \$10,298.00
23. 2010 W-2, showing wages of \$2,295.00

24. 2010 Income Tax Return;
25. 2010 Schedule M, Making Work Pay Credit;
26. 2010 Earned Income Credit Worksheet;
27. 2010 8867, Paid Preparer's Earned Income Credit Checklist; and
28. Copy of phone bill, 22 March 2011.

Prior to presentment to the NPFC, Claimant presented an Interim Payment/Final payment Claim to the RP/GCCF, and was assigned GCCF Claimant ID number [REDACTED]. The claim was denied on 6 May 2011.³

On 2 June 2011, Claimant presented this 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, 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 claim is denied for failure to show loss and failure to demonstrate that the alleged injury was a result of discharge or substantial threat of discharge of oil.

Claimant indicated that prior to the Deepwater Horizon oil spill; she was unemployed and collecting unemployment benefits. Following the spill, she was briefly employed, until she left her job, and then continued to collect unemployment.⁴

Furthermore, the Claimant's reported income in 2010 is actually greater than in the previous year. In 2009, she reported \$12,052.00 in unemployment benefits and IRA distributions.⁵ In 2010, she reported \$12,594.00 in unemployment benefits and wages.⁶ Therefore, the Claimant has not demonstrated that she has suffered a loss resulting from discharge or substantial threat of discharge of oil, and the claim is denied.

[REDACTED]

Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *6/8/11*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

³ GCCF denial letter Re: Claimant's Interim/Final Payment claim, dated 6 May 2011.

⁴ 2010 Form W-2, showing short-term employment at [REDACTED] PHONECON: Claimant and NPFC Staff, 6 June 11.

⁵ 2009 Individual Income Tax Return Form 1040.

⁶ 2010 Individual Income Tax Return Form 1040.

U.S. Department of
Homeland Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

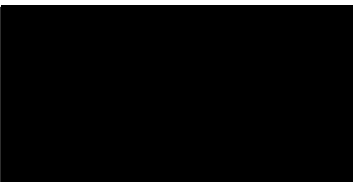
NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937

5890
8/16/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]



RE: Claim Number: N10036-0930

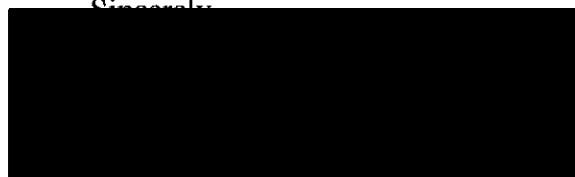
Dear [REDACTED]

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 N10036-0930 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination Form for further explanation.

Disposition of this reconsideration constitutes final agency action.

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

Sincerely,



Chief, Claims Adjudication Division
U.S. Coast Guard

ENCL: Claim Summary / Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-0930
Claimant	[REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: \$25,000.00

FACTS:

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

CLAIM AND CLAIMANT:

On 3 June 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, a mortgage company, alleged that "the spill adversely affected the real estate business," causing loss of profits, and eventually resulting in the closure of the business.²

Prior to presentment to the NPFC, the Claimant presented an Interim Payment/Final payment Claim to the RP/GCCF, which was denied on 27 May 2011.³

REQUEST FOR RECONSIDERATION:

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

The NPFC denied the claim originally on July 5, 2011 because the Claimant's evidence did 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.

The NPFC reviewed all information and documentation provided by the Claimant. On 15 June 2011, the NPFC requested that the Claimant provide evidence, such as records of lost or cancelled sales, in order to determine if the Claimant's loss was a result of the oil spill.⁴ Claimant has not provided such documentation, and has not otherwise demonstrated that the oil spill caused his alleged losses.

¹ Optional OSLTF Claim Form dated 3 June 2011.

² Id.

³ Id.

⁴ Request for Additional Information, 15 June 2011.

Furthermore, the NPFC requested an explanation as to how the Claimant quantified his losses to arrive at his claimed amount of \$25,000.00. The Claimant has not responded to this request, only stated that he "asked for \$25,000.00 because that was the amount for businesses with no documentation."⁵ Under 33 C.F.R. § 136.235, the amount of compensation allowable for a claim involving loss of profits or impairment of earning capacity is limited to the actual net reduction or loss of earnings or profits suffered.

The NPFC advised the Claimant in its initial determination that should the Claimant choose to come back on reconsideration, he will have to provide financial data to assist in determining the nexus between the Claimant's income and the oil spill. If the alleged losses are solely related to the spill, the Claimant must describe in detail the rationale and source(s) of documentation for the position.

This claim was denied 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.

On reconsideration, the Claimant provided a one page letter requesting reconsideration. The Claimant only made an assertion on reconsideration that his income relied on the realtors in his building and he further asserted they were paid for damages. Based on this information, the Claimant asserted that it is logical that if the realtors were paid damages for losses, he naturally should be. He provided none of the requested information the NPFC stated he would need to provide should he come back on reconsideration.

RECONSIDERATION CLAIM ANALYSIS:

The claimant requested reconsideration which was received by the NPFC on August 4, 2011 via regular mail. The Claimant provided a one page letter providing no new information in support of his request for reconsideration other than an oral assertion.

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 in support of his request for reconsideration other than his reiteration of the circumstance surrounding his alleged loss and the fact that he asserts realtors in

⁵ Response to Request for Additional Information, 22 June 2011.

his building from which his income relies, were paid damages therefore it is logical he in turn has losses.

The NPFC cannot speak to the validity of any claimed losses by realtors against the RP/GCCF. The NPFC can confirm no realtor claims have been presented to the NPFC and paid therefore the NPFC has no comment regarding the Claimant's assertions about the claimed loss of others. The NPFC can confirm that the Claimant has provided no new information in support of his request for reconsideration nor has the Claimant provided any of the information the NPFC articulated he would need to present should he come back on reconsideration.

This claim is denied upon reconsideration.

Claim Supervisor

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

Supervisor Action: *Denial on reconsideration approved*

Supervisor's Comments:

U.S. Department of
Homeland Security

United States
Coast Guard



Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim # N10036-0930
05 July 2011

Re: Claim Number: N10036-0930

Dear Mr. Crigler:

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 N10036-0930 involving the Deepwater Horizon oil spill. Please see the attached Claim Summary/Determination Form for further explanation.

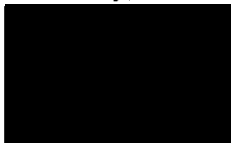
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-0930.

Mail reconsideration requests to:

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

Sincerely,



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

Enclosure: Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00003639

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-0895
Claimant	[REDACTED]
Type of Claimant	Corporate (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 3 June 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, a mortgage company, alleged that “the spill adversely affected the real estate business,” causing loss of profits, and eventually resulting in the closure of the business.²

Prior to presentment to the NPFC, the Claimant presented an Interim Payment/Final payment Claim to the RP/GCCF, which was denied on 27 May 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.
- (c) The amount of the claimant’s profits or earnings in comparable periods and during the period when the claimed loss or impairment was suffered, as established by income tax

¹ Optional OSLTF Claim Form dated 3 June 2011.

² *Id.*

³ *Id.*

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

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

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

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

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

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

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

- Optional OSLTF Claim Form;
- Letter from Claimant, 3 June 2011;
- Denial Letter on Interim Payment/Final Payment Claim, 27 May 2011;
- 2007 Form 1120S;
- 2007 Income Statements;
- 2008 Form 1120S;
- 2009 Form 1120S;
- 2009 Balance Sheet;
- 2009 Income Statements;
- Articles of Dissolution, 23 May 2011;
- 2008 Income Statements;
- 2010 Income Statements;
- Response to request for additional information;

On 3 June 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.

The NPFC has reviewed all information and documentation provided by the Claimant. On 15 June 2011, the NPFC requested that the Claimant provide evidence, such as records of lost or cancelled sales, in order to determine if the Claimant's loss was a result of the oil spill.⁴ Claimant has not provided such documentation, and has not otherwise demonstrated that the oil spill caused his alleged losses.

Furthermore, the NPFC requested an explanation as to how the Claimant quantified his losses to arrive at his claimed amount of \$25,000.00. The Claimant has not responded to this request, only stated that he "asked for \$25,000.00 because that was the amount for businesses with no documentation."⁵ Under 33 C.F.R. § 136.235, the amount of compensation allowable for a claim involving loss of profits or impairment of earning capacity is limited to the actual net reduction or loss of earnings or profits suffered.

Should the Claimant choose to come back on reconsideration, he will have to provide financial data to assist in determining the nexus between the Claimant's income and the oil spill. If the alleged losses are solely related to the spill, the Claimant must describe in detail the rationale and source(s) of documentation for the position.

This claim is denied 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.


Claim Supervisor: *Claims Adjudication Division*

Date of Supervisor's review: *7/5/11*

Supervisor Action: *Denial approved*

Supervisor's Comments:

⁴ Request for Additional Information, 15 June 2011.

⁵ Response to Request for Additional Information, 22 June 2011.

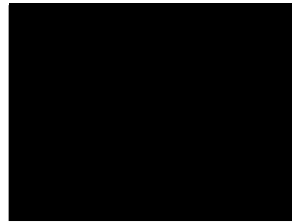
U.S. Department
of Homeland
Security



Director
United States Coast Guard
National Pollution Funds Center

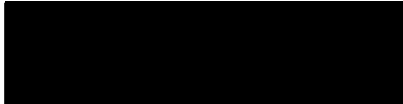
NPFC CA MS 7100
US COAST GUARD

**United States
Coast Guard**



CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Number: [REDACTED]



5890/DWHZ
Claim # N10036-0931
21 June 2011

Re: Claim Number: N10036-0931

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 N10036-0931 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 N10036-0931.

Mail reconsideration requests to:

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

Sincerely,



NPFC CA MS 7100
US COAST GUARD
National Pollution Funds Center
U.S. Coast Guard

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

FOIA2011-3380-00003643

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-0931
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings 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 certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On 3 June 2011, [REDACTED] (Claimant) presented an Optional Oil Spill Liability Trust Fund ('OSLTF') Claim Form to the National Pollution Funds Center ('NPFC') seeking \$6,500.00 in lost profits and impairment of earnings capacity that allegedly resulted from the Deepwater Horizon oil spill.

Claimant was employed in the hospitality industry at [REDACTED]. Claimant asserted that as a result of the Deepwater Horizon oil spill, her wages were reduced.² Claimant has failed to provide an explanation regarding the calculation of her sum certain in the amount of \$6,500.00.³

Prior to presenting this claim to the NPFC, Claimant filed an Emergency Advance Payment ("EAP") claim with the GCCF for \$100.00 on 9 September 2010. Claimant was assigned Claimant ID Number [REDACTED] and Claim ID [REDACTED].⁴ This claim was denied on 12 November 2010.⁵ Additionally, on 4 February 2011 Claimant filed an Interim Payment Claim with the GCCF and was assigned Claim ID Number [REDACTED]. The Interim Payment Claim was denied on 16 April 2011.⁷ Claimant has filed a request for a review of her denial that as of this determination has not been acted upon.⁸

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,

¹OSLTF Claim Form.

²PHONECON between NPFC and Claimant dated 3 June 2011.

³Id.

⁴Report from GCCF dated 10 June 2011.

⁵GCCF Denial Letter dated 12 November 2010

⁶Report from GCCF dated 10 June 2011.

⁷GCCF Denial Letter dated 16 April 2011.

⁸GCCF Claimant Status Report.

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

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

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

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

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

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

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

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

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

- Optional OSLTF Claim Form received 3 June 2011;
- Employee Wage Verification for Dianna Patton.

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's evidence does not demonstrate (1) the alleged loss of profits in the amount of \$6,500.00, as claimed, or (2) the correlation, if any, between this alleged loss and the Deepwater Horizon oil spill.

The Claimant's sole supporting documentation consisted of an employee wage verification form regarding her wages from 1 January 2010 through 31 December 2010. This summary of earnings is absent of any discernable downward trend in earnings following the Deepwater Horizon oil spill. The NPFC contacted the Claimant's employer to verify whether it had reduced the Claimant's hours due to the oil spill. The Claimant's employer proved unresponsive to the NPFC's verification attempt, stating that the company's policy is to not respond to inquiries regarding the Deepwater Horizon oil spill.⁹ Further, the Claimant provided no other documentation to support the concept of a loss due to the Deepwater Horizon oil spill.

Because the Claimant has failed to demonstrate (1) the alleged loss of profits in the amount of \$6,500.00, as claimed, or (2) that this alleged loss is due to injury or destruction or loss of real or personal property or a natural resource as a result of a discharge or substantial threat of a discharge of oil, this claim is DENIED.

Claim Supervisor: *Claims Adjudication Division*

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

Supervisor Action: *Denial approved*

Supervisor's Comments:

⁹ PHONECON between NPFC and [REDACTED] dated 8 June 2011.
09/14/11

U.S. Department of
Homeland Security

United States
Coast Guard



Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD

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[Redacted]

Fax: 202-493-6937

5890
7/26/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number [Redacted]

[Redacted]

RE: Claim Number: N10036-0933

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 N10036-0933 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 N10036-0933.

Mail reconsideration requests to:

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

Sincerely,

[Redacted Signature]

National Pollution Funds Center
U.S. Coast Guard

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

FOIA2011-3380-00003647

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-0933
Claimant	[REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: \$14,500.00

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 12 July 2011, [REDACTED] (Owner) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) on behalf of [REDACTED] (Claimant) for \$14,500.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.¹

Claimant is a mobile dog grooming business located in Destin, Florida, serving residents of Destin, Sandestin and Santa Rosa Beach, as well as vacationing tourists to those areas.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 23 May 2011 and received on 3 June 2011.

² Handwritten, unaddressed letter dated 30 September 2010, re: statement of claim.

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

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

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

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

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

Prior to presentment to the NPFC, Claimant filed a Full Review Final Payment Claim with the Responsible Party on 27 December 2010.³ The NPFC independently verified that the Claimant had presented to the RP/GCCF an Emergency Advance Payment (EAP) Claim on 30 September 2010 in the amount of \$14,500.00 and a Full Review Final Payment Claim on 5 January 2011 in the amount of \$5,384.00. GCCF Claimant ID Number [REDACTED] was assigned and applied to both of these claims.⁴ The EAP claim was denied on 2 November 2010⁵ and the Full Review Final Payment Claim was denied on 22 April 2011.⁶

On 12 July 2011, Claimant presented this claim in the amount of \$14,500.00 for loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.⁷

To support this claim, Claimant submitted the following documentation:

- Optional OSLTF Claim Form dated 23 May 2011 and received on 3 June 2011;
- Handwritten statement of 2008 Deposits;
- Handwritten statement of 2009 and 2010 income and comparison;
- Handwritten, unaddressed letter dated 30 September 2010, re: statement of claim;
- 2007 IRS Tax Form 1040 (joint), pages 1 & 2;
- 2008 IRS Tax Form 1040 (joint), pages 1 & 2, with Schedule C;
- 2009 IRS Tax Form 1040 (joint), pages 1 & 2, with Schedule C;
- 2010 IRS Tax Form 1040 (joint), pages 1 & 2, with Schedule C;
- 2010-2011 Okaloosa County (Florida) Local Business Tax Receipt for [REDACTED]

³ GCCF Final Payment Claim Form dated 27 December 2010, page 14.

⁴ GCCF – U.S. Coast Guard Report (as of 6/10/2010)

⁵ GCCF letter dated 2 November 2010.

⁶ GCCF letter dated 22 April 2010.

⁷ Optional OSLTF Claim Form dated 23 May 2011 and received on 3 June 2011.

- GCCF Interim Payment/Final Payment Claim denial letter dated 22 April 2011;
- GCCF Full Review Final Payment Claim Form dated 27 December 2010, pages 1, 3, 8, 11, 13 and 14.

NPFC Determination

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

After an initial review, the NPFC sent the Claimant a letter requesting additional information to further evaluate the claim. The letter requested, among other things, additional financial documentation to support lost profits and documentation/explanations supporting how the Deepwater Horizon oil spill caused the Claimant's business losses. The Claimant was given 14 days to respond to the letter, dated 8 June 2011. To date, no response has been received from the Claimant.

The NPFC considered all documentation presented by the Claimant.

Claimant's profits from 2007 through 2010, as indicated by IRS Tax Forms for 2007, 2008, 2009 and 2010 were \$8,215 (2007), \$8,305 (2008), \$3,128 (2009) and \$406 (2010). Claimant did not provide details or explain the downward trend in profitability indicated by those records, as requested by the NPFC. Neither did the Claimant provide documentation that the cause for the business's losses were the Deepwater Horizon oil spill.

This claim is DENIED for the following reasons: (1) Claimant has failed to meet the evidentiary burden to provide all evidence, information, and documentation deemed necessary by the Director, NPFC, to support its claim, pursuant to 33 C.F.R. § 136.305(e)(6); (2) Claimant has also failed to demonstrate it alleged loss of profits in the amount of \$14,500.00 through financial documentation; and (3) claimant has failed to demonstrate that its alleged loss is due to injury or destruction or loss of real or personal property or a natural resource as a result of a discharge or a substantial threat of a discharge of oil.

Claim Supervisor: **NPFC  Regulation Division**

Date of Supervisor's Review: **7/26/11**

Supervisor's Action: **Denial approved**

Supervisor's Comments:

U.S. Department
of Homeland
Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim # N10036-0934
13 June 2011

Re: Claim Number: N10036-0934

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 N10036-0934 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 N10036-0934.

Mail reconsideration requests to:

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

Signature [REDACTED]

National Pollution Funds Center
U.S. Coast Guard

Enclosures: Claim Summary/Determination Form

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-0934
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$12,500.00

FACTS

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

CLAIM AND CLAIMANT

On 3 June 2011, [REDACTED] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$12,500.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

Claimant is employed as a chef in New Orleans, LA and Atlanta, GA.¹ Claimant works for both J. [REDACTED] and [REDACTED]. Claimant indicated that he divided his time working at the various restaurants, working two weeks in Atlanta and two weeks in New Orleans a month.²

Claimant asserted that as a result of the Deepwater Horizon oil spill, his hours and tips at [REDACTED] were reduced, resulting in lower income for the Claimant.³

Claimant did not provide a calculation for his sum certain of \$12,500.00.⁴

APPLICABLE LAW

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

The OSLTF, which is administered by the NPFC, is available to pay claims for uncompensated damages pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136. With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person by payment within 90 days 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 between Claimant and NPFC dated 6 June 2011.

² Id.

³ OSLTF Claim Form.

⁴ PHONECON between Claimant and NPFC dated 6 June 2011.

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

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

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

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

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

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

- Optional Oil Spill Liability Trust Fund Claim Form received 3 June 2011;
- 2007 version of W-2 tax statement from [REDACTED]
- 2007 version of W-2 tax statement from [REDACTED]
- 2007 version of W-2 tax statement from [REDACTED]
- 2008 version of W-2 tax statement from [REDACTED]
- 2008 version of W-2 tax statement from [REDACTED]
- 2009 version of W-2 tax statement from [REDACTED]
- 2009 version of W-2 tax statement from [REDACTED]
- 2010 version of W-2 tax statement from [REDACTED]
- 2010 version of W-2 tax statement from [REDACTED]

Prior to presenting this Claim, Claimant presented multiple claims to the RP/GCCF, including an Interim and Final Payment claim. Both claims were denied by the GCCF.⁵

On 3 June 2011, Claimant presented the subject claim to the NPFC for \$12,500.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

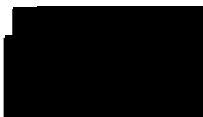
NPFC Determination

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

The claim is denied because the Claimant has not proven that he suffered a loss in the amount of \$12,500.00 due to the injury, destruction, loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil. Claimant's supporting documentation consisted of tax forms regarding his 2007, 2008, 2009 and 2010 wages. Claimant, however, failed to present a connection between his documentation and the Deepwater Horizon oil spill.

Additionally, even if the Claimant could provide a connection between his documentation and the Deepwater Horizon oil spill, the Claimant has not proven he suffered a loss in profits or a diminishment in earnings capacity. Claimant worked at [REDACTED] and [REDACTED] Restaurant Inc in 2008, 2009 and 2010. In 2008, the Claimant's gross wages at Hillstone were \$31,025.36 and at J. Alexander's were \$36,455.20, totaling \$67,480.56.⁶ In 2009, Claimant's gross wages at [REDACTED] were \$35,514.95 and at [REDACTED] were \$38,102.30, totaling \$73,617.25.⁷ In 2010, Claimant's gross wages at [REDACTED] were \$38,661.83 and at [REDACTED] were \$39,048.40, totaling 77,710.23.⁸ Comparing the individual and total wages from 2008, 2009 and 2010, Claimant's wages rose each year and did not decrease in 2010. Thus, the Claimant has not demonstrated a loss in profits or reduced earnings capacity due to the Deepwater Horizon oil spill.⁹

In sum, the Claimant has not proven that he suffered a loss in income due to the damage or destruction of natural resources or property caused by discharged oil from the Deepwater Horizon oil spill. Accordingly, the Claimant has not met the evidentiary burden prescribed in 33 C.F.R. Part 136, and the claim is denied.



Claim Supervisor: *NPTC Claims Adjudication Division*

Date of Review: *6/13/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

⁶ 2008 version of W-2 tax statement from [REDACTED] 2008 version of W-2 tax statement from J. Alexander's Restaurant.

⁷ 2009 version of W-2 tax statement from [REDACTED] 2009 version of W-2 tax statement from J. Alexander's Restaurant.

⁸ 2010 version of W-2 tax statement from [REDACTED] 2010 version of W-2 tax statement from J. [REDACTED]

⁹ Additionally, Claimant's alleged loss of profits and impairment of earnings capacity in the amount of \$12,500.00 includes prospective damages. Any claimed prospective damage is not compensable because only actual net reductions or loss of earnings or profits are compensable under OPA. Claimant's inclusion of future profits is entirely prospective in nature. There is no indication that Claimant would continue to generate the necessary hours ~~on his place~~ of employment to substantiate the claimed amount irrespective of the Deepwater Horizon oil spill.

U.S. Department
of Homeland Security

United States
Coast Guard



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

U.S. Coast Guard Stop 7100

16480

23 June 2011

CERTIFIED MAIL Number: [REDACTED]

RE: Claim Number: N10036- 0935

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 for \$5,000 to the GCCF following the Deepwater Horizon spill for lost subsistence use of natural resources, which was denied on 20 April 2011. On 3 June 2011, the NPFC received your claim for \$5,000.

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 3 June 2011, included your claim form, your claim to the GCCF and the associated denial letter, and proof of a valid fishing license prior to and following the spill. You describe your loss as the value of the fish that you regularly caught (12 times per month at approximately \$165 per trip) but were unable to catch due to fishing closures in your area due to the spill.

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 demonstrated that you subsist upon natural resources or suffered any loss due to the spill. That is, you have not provided sufficient evidence to support a regular pattern of catch that you or your family relied upon (e.g., statements or affidavits that address the type and amount of subsistence catch and consumption), nor have you identified your traditional fishing areas or documented that all of these areas were closed during the period of your claimed loss. Finally, you have not explained 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).

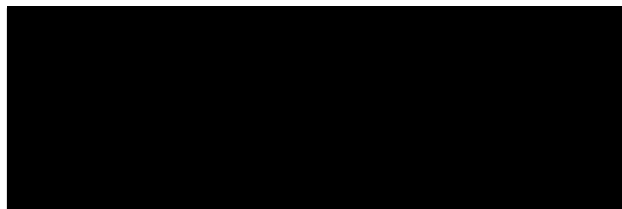
Request for Reconsideration

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 (N10036-0935) 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.



U.S. Coast Guard

U.S. Department
of Homeland Security

United States
Coast Guard



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

U.S. Coast Guard Stop 7100

16480

23 June 2011

CERTIFIED MAIL Number: [REDACTED]

RE: Claim Number: N10036- 0936

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 for \$5,000 to the GCCF following the Deepwater Horizon spill for lost subsistence use of natural resources, which was denied on 20 April 2011. On 3 June 2011, the NPFC received your claim for \$5,000.

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 3 June 2011, included your claim form, your claim to the GCCF and the associated denial letter, and proof of a valid fishing license prior to and following the spill. You describe your loss as the value of the fish that you regularly caught (12 times per month at approximately \$165 per trip) but were unable to catch due to fishing closures in your area due to the spill.

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 demonstrated that you subsist upon natural resources or suffered any loss due to the spill. That is, you have not provided sufficient evidence to support a regular pattern of catch that you or your family relied upon (e.g., statements or affidavits that address the type and amount of subsistence catch and consumption), nor have you identified your traditional fishing areas or documented that all of these areas were closed during the period of your claimed loss. Finally, you have not explained 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

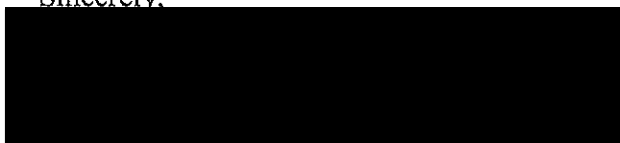
Under OPA, you may ask the NPFC to reconsider this determination. Reconsideration requests must be received by the NPFC in writing within 60 days of the date of this letter, and will be based upon the additional factual or legal information that you provide with your request. A claim may be reconsidered 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 (N10036-0936) 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,

A large black rectangular redaction box covers the signature and name of the official.

National Pollution Funds Center
U.S. Coast Guard

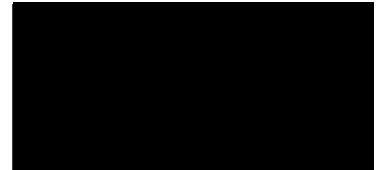
U.S. Department
of Homeland Security

United States
Coast Guard



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

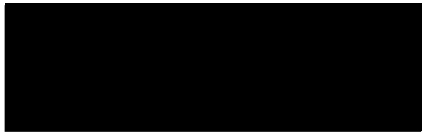
U.S. Coast Guard Stop 7100



16480

22 June 2011

CERTIFIED MAIL Number [REDACTED]



RE: Claim Number: N10036- 0937

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 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 3 June 2011, the NPFC received your claim for \$3,500. The NPFC considers this to be a claim for lost subsistence use of natural resources¹ for food.

¹ You marked the category for natural resource damages on your optional claim form. 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.

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 3 June 2011, was limited to the Optional OSLTF Claim Form, your denial letter from the GCCF, and information from your doctor related to your health.

NPFC Determination

The NPFC finds that you have not met your burden of proving a loss as defined by OPA (33 U.S.C. 2701 et seq.) and OPA claims regulations (33 C.F.R. Part 136). Your claim is denied because you have not documented what you are claiming to have lost. You submitted information from your doctor suggesting that you include seafood in your diet, but do not provide any explanation or evidence of a loss that you incurred as a result of the spill. Further, you provide no information to explain how you determined your claimed loss of \$3,500.

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 (N10036-0937) 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.



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

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937

CERTIFIED MAIL - RETURN RECEIPT REQUESTED
Number [REDACTED]

5890/DWHZ
Claim# N10036-0938
09 June 2011



RE: Claim Number: N10036-0938

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 N10036-0938 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.

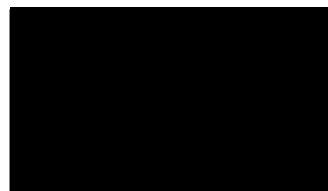
Reconsideration of the denial will be based upon the information provided. A claim may be reconsidered only once. Disposition of that reconsideration in writing will constitute final agency action. Failure of the NPFC to issue a written decision within 90 days after receipt of a timely request for reconsideration shall, at the option of the claimant, be deemed final agency action. All correspondence should include claim number N10036-0938.

Mail reconsideration requests to:

Director (ca)
NPFC CA MS 7100
US COAST GUARD



Sincerely,



Claims Manager

Division
s Center

Enclosure: Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00003664

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	N10036-0938
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$8,000.00

FACTS

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

CLAIM AND CLAIMANT

On 25 May 2011, [REDACTED] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$8,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.¹

In 2009, Claimant worked at the [REDACTED] Biloxi Hotel in Biloxi Beach, MS.² Claimant indicated that she was let go from the [REDACTED] Biloxi Hotel in 2009. She began collecting unemployment in 2009.³ Claimant additionally collected \$9,310.00 in unemployment compensation in 2010.⁴ Claimant appears to allege that she has not found gainful employment 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 NPFCA, is available, pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136, to pay claims for uncompensated damages. One type of damages available pursuant to 33 C.F.R. § 136.231 is a claim for loss of profits or impairment of earning capacity due to injury to or destruction of natural resources.

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

- (a) That real or personal property or natural resources have been injured, destroyed, or lost.
- (b) That the claimant's income was reduced as a consequence of injury to, destruction of, or loss of property or natural resources, and the amount of that reduction.

¹ OSLTF claim form.

² Handwritten letter by Claimant explaining claim.

³ PHONECON with Claimant on 8 June 2011.

⁴ 2010 Mississippi Department of Employment Security Form 1099-G.

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

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

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

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

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support her claim, Claimant submitted the following documentation:

- 1) Optional OSLTF claim form dated 16 May 2010
- 2) Handwritten explanation of claim dated 16 May 2010 addressed to the NPFC
- 3) GCCF denial letter for Interim Payment/Final payment Claim dated 06 May 2011
- 4) 2010 Mississippi Resident Individual Income Tax Return
- 5) 2010 Mississippi Department of Employment Security Form 1099-G
- 6) 2009 W-2 from Economy Inns, Inc.

Prior to presentation to the NPFC, Claimant presented an Interim Payment claim to the RP/GCCF and was assigned GCCF Claimant ID # [REDACTED] and Claim # [REDACTED]. On 6 May 2011 the GCCF denied her claim.⁵

On 25 May 2011, Claimant presented the subject claim for \$8,000.00 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)

⁵ GCCF denial letter Re: Claimant's Interim Payment claim, dated 6 May 2011.

and § 136.105(e)(6), the claimant bears the burden of providing to the NPFC all evidence, information, and documentation deemed necessary by the Director, NPFC, to support her claim. The NPFC considered all the documentation submitted by the Claimant.

Claimant was released from her employment with [REDACTED] Hotel in Biloxi, MS in 2009 and she has not found gainful employment since. Claimant collected unemployment in 2009 and 2010. To the extent that Claimant's alleged a loss from not being able to find gainful employment, she has not demonstrated the this alleged loss is due to the Deepwater Horizon oil spill and not other national, regional or local factors, which may impact the job market.

Because the Claimant failed to demonstrate that her alleged loss in the amount of \$8,000.00 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: *N [REDACTED] lication Division*

Date of Supervisor's Review: *6/9/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937
5890
6/10/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]

[REDACTED]

RE: Claim Number: N10036-0939

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 N10036-0939 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 N10036-0939.

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

FOIA2011-3380-00003668

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-0939
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: \$10,000.00

FACTS:

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

CLAIM AND CLAIMANT

On June 4, 2011, [REDACTED] (Claimant) presented a lost profits & earnings capacity claim in the amount of \$10,000.00 to the National Pollution Funds Center (NPFC) for reimbursement. The Claimant stated on the Optional OSLTF Claim Form that he was laid off from his job at [REDACTED] due to the oil spill.

The Claimant provided a copy of his denial letter for his final claim with the GCCF dated May 10, 2011.

APPLICABLE LAW:

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

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

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

- (a) That real or personal property or natural resources have been injured, destroyed, or lost.
- (b) That the claimant's income was reduced as a consequence of injury to, destruction of, or loss of property or natural resources, and the amount of that reduction.
- (c) The amount of the claimant's profits or earnings in comparable periods and during the period when the claimed loss or impairment was suffered, as established by income tax

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

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

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

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

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

DETERMINATION OF LOSS

Claimant's Submission

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

- NPFC OSLTF Form, dated May 20, 2011;
- GCCF Interim claim payment form, undated;
- Page 1 of his 2008 Individual Income Tax Return;
- Letter from [REDACTED] of [REDACTED] confirming dates employed

NPFC Determination

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

This claim is denied because the Claimant's evidence does not demonstrate (1) the alleged loss of profits in the amount of \$10,000.00, as claimed, or (2) the correlation, if any, between this alleged loss and the Deepwater Horizon oil spill. The NPFC contacted the Human Resources (HR) division of [REDACTED] to determine if the Claimant was laid off as a direct result of the oil spill. The HR assistant faxed a letter that stated no one from [REDACTED] was laid off as a result of the oil spill. The NPFC also contacted [REDACTED] to confirm that the Claimant was laid off due to the oil spill. She stated that he was laid off due to the job he was hired to work being finished; it had nothing to do with the 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. Additionally, comparative figures for profits or earnings for the same or similar activities outside of the area affected by the incident also must be established."

Because the Claimant has failed to demonstrate (1) the alleged loss of profits in the amount of \$10,000.00, as claimed, or (2) that this alleged loss is due to injury or destruction or loss of real or personal property or a natural resource as a result of a discharge or substantial threat of a discharge of oil, this claim is DENIED.

Claim Supervisor:

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

Supervisor Action: *Denial approved*

Supervisor's Comments:

U.S. Department of
Homeland Security

United States
Coast Guard



Director
National Pollution Funds Center
United States Coast Guard

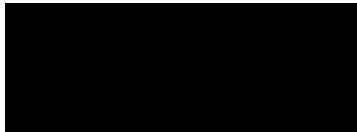
NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim# N10036-0940
08 June 2011



RE: Claim Number: N10036-0940

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, #N10036-0940, 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 N10036-0940.

Mail reconsideration requests to:

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

Sincerely,



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

Enclosure: Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00003672

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	N10036-0940
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Subsistence Use and Loss of Profits and Earnings Capacity
Amount Requested	\$9,211.00

FACTS

On or about 20 April 2010, the Mobile Offshore Drilling 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 3 June 2011, [REDACTED] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$3,528.00 in loss of subsistence use of natural resources and \$5,683.00 in loss of profits and impairment of earnings capacity for a total loss of \$9,211.00, resulting from the Deepwater Horizon oil-spill.

Claimant asserted that she caught wild fish and sold part of her catch and reserved the remainder for her personal consumption.¹

APPLICABLE LAW

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

The OSLTF which is administered by the NPFC, is available, pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136, to pay claims for uncompensated damages. Under 33 C.F.R. § 136.105(a) and § 136.105(e)(6), the claimant bears the burden of providing to the NPFC, all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim.

Subsistence Use Loss Claims Requirements

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

- (a) be for lost subsistence use by an eligible client;
- (b) identify and describe the actual subsistence use of each natural resource for which compensation is being claimed;
- (c) describe how and to what effect the claimant's subsistence use was affected by injury to or loss of each specific natural resource;
- (d) describe efforts to mitigate the subsistence loss;
- (e) be based on the reasonable cost to replace the lost subsistence use of natural resources; and
- (f) be reduced by the amount of all compensation made available to the claimant to compensate for the loss, all income which was derived utilizing the time which otherwise would have been used to obtain the subsistence resources, and any avoided costs associated with the subsistence

¹ PHONECON with the Claimant on 06 June 2011.
09/14/11

activity, such as gas for vehicles or boats, bait, and other overhead costs not incurred due to the spill.²

Lost Profits and Earnings Capacity Claims Requirements

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

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

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

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

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support this claim, Claimant submitted the following documentation:

— Optional OSLTF Claim Form dated 25 May 2011.

The Claimant alleged that she presented a claim to the Responsible Party (RP) and her claim was denied prior to presentation of this claim to the NPFC. She advised the NPFC that her GCCF Claimant ID # is [REDACTED]

On 03 June 2011, the Claimant presented this claim for \$3,528.00 in loss of subsistence use of natural resources and \$5,683.00 in loss of profits and impairment of earnings capacity for a total loss of \$9,211.00.

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.

Subsistence Use Loss

² Additional information about subsistence use claims is available at <http://www.uscg.mil/npfc/Claims/DWH.asp>.

The claim is denied because the 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.

Loss of Profits or Impairment of Earnings Capacity

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, the Claimant has advised that she does not maintain a valid commercial fishing license that would demonstrate that she is legally entitled to catch fish and market fish in the state of Mississippi³.

For the foregoing reasons, this claim for a total loss of \$9,211.00 is denied.

Claim Supervisor:  *NPI Claims Adjudication Division*

Date of Supervisor's Review: *6/8/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

³ PHONECON with the Claimant on 06 June 2011.
09/14/11

U.S. Department of
Homeland Security

United States
Coast Guard



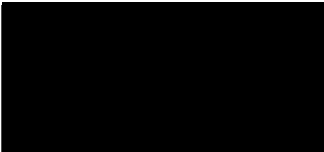
Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD

5890
6/8/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]



RE: Claim Number: N10036-0941

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 N10036-0941 involving Deepwater Horizon. Please see the attached Claim Summary/Determination Form for further explanation.

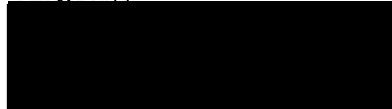
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-0941.

Mail reconsideration requests to:

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

Sincerely,



U.S. Coast Guard

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

FOIA2011-3380-00003676

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-0941
Claimant	: ██████████
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: \$78,787.00

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 June 6, 2011, ██████████ on behalf of ██████████ (Claimant) presented an Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC). The OSLTF claim form alleged \$78,787.00 in lost profits and earnings resulting from the Deepwater Horizon oil spill.

The Claimant asserted on the Optional OSLTF Claim Form that her business that specializes in fine art was affected due to a lack of tourism in New Orleans. The Claimant stated “tourists stopped coming to the French Quarter because they were afraid to breathe our air and eat or seafood.”¹

The Claimant provided a copy of her Emergency Advance Payment (EAP) claim and interim/final claim with the GCCF. The claimant was compensated \$53,800.00 for her EAP claim by the GCCF on April 8, 2011. Also, the Claimant has a current offer from the GCCF for her interim/final claim in the amount of \$49,784.00. At this time, the Claimant has not accepted payment for the interim/final claim.

APPLICABLE LAW:

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

The 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 Optional OSLTF Claim Form, dated June 2, 2011
09/14/11

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 June 2, 2011;
- Handwritten ledger of finances for 2008, 2009, and 2010, undated;
- Letter of explanation to NPFC; dated June 2, 2011;
- Copy of GCCF offer for interim/final claim, dated May 27, 2011;

NPFC Determination

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

This claim is denied because the Claimant's evidence does not demonstrate (1) the alleged loss of profits in the amount of \$78,787.00, 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."

Furthermore, the Claimant asserted that tourism in New Orleans was down in 2010 due to the oil spill. However, based on a report released on April 14, 2011 from the New Orleans Convention and Visitors Bureau, "New Orleans' tourism industry has achieved a major milestone, welcoming 8.3 million visitors in 2010, a 10.7 percent increase over 2009, and the first time to reach 8 million visitors since Hurricane Katrina. Those 8.3 million visitors spent \$5.3 billion, a \$1.1 billion increase over 2009 and the highest spending in the city's history."²

This claim is denied because the Claimant has failed to demonstrate (1) the alleged loss of profits in the amount of \$78,787.00, as claimed, or (2) that this alleged loss is due to injury or destruction or loss of real or personal property or a natural resource as a result of a discharge or substantial threat of a discharge of oil.

Claim Supervisor: 

Date of Supervisor's review: 6/8/11

Supervisor Action: *Denial approved*

Supervisor's Comments:

² 2010 New Orleans Area Visitor Profile, dated April 14, 2010
09/14/11

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim # N10036-0941
15 July 2011



Re: Claim Number: N10036-0941

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 N10036-0941 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 N10036-0941.

Mail reconsideration requests to:

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

Sincerely,

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

Enclosures: (1) Claim Summary/Determination Form
(2) Evidence Presented in Support of NPFC Claim N10036-0941

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-0941
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits & Earnings Capacity
Amount Requested	\$78,787.00

FACTS

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

CLAIM AND CLAIMANT

On 03 June 2011, G [REDACTED] represented by owner [REDACTED] (collectively, Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) alleging loss of profits or impairment of earning capacity damages in the amount of \$78,787.00 due to the Deepwater Horizon oil spill.¹

Claimant owns and operates an art gallery named [REDACTED] located on Royal Street in New Orleans, Louisiana. Claimant alleges that her business is reliant on tourism and that, immediately following the Deepwater Horizon oil spill, tourists stopped visiting the French Quarter.² Claimant asserts that tourists are no longer visiting the French Quarter because they are "afraid to breathe our air and eat our [Louisiana] seafood."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 returns, financial statements, and similar documents. In addition, comparative figures for profits or

¹ Optional OSLTF Claim Form dated 02 June 2011; received and filed by NPFC on 03 June 2011.

² Optional OSLTF Claim Form dated 02 June 2011, paragraph 10; received and filed by NPFC on 03 June 2011.

³ Optional OSLTF Claim Form dated 02 June 2011, paragraph 10; received and filed by NPFC on 03 June 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 undertaken, but reasonably available;
- (d) Any saved overhead or normal expenses not incurred as a result of the incident; and
- (e) State, local, and Federal taxes.

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

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

Prior to presentation to the NPFC, Claimant submitted an Emergency Advanced Payment (EAP) claim to the GCCF in the amount of \$73,238.32 and was issued Claimant ID [REDACTED] and EAP Claim [REDACTED]. The GCCF paid Claimant \$53,800.00 on her EAP claim. Claimant submitted her First Interim Claim (Interim 1) to the GCCF requesting \$114,369.21 on 10 January 2011 and was issued Interim 1 Claim [REDACTED]. The GCCF paid Claimant \$5,475.00 on her Interim 1 claim. On 02 June 2011, Claimant submitted her Second Interim Claim to the GCCF (Interim 2) and was issued Interim 2 Claim # [REDACTED]. Claimant's Interim 2 claim remains unresolved. In sum, Claimant has received \$59,275.00 from the GCCF.

On 03 June 2011 the NPFC received Claimant's OSLTF claim form requesting \$78,787.00. Claimant is dissatisfied with the amount that she has received from the GCCF on her EAP and Interim 1 claims. Claimant presented her claim to the OSLTF to cover one year from the date of the Deepwater Horizon oil spill (May 2010 through to April 2011). The NPFC deems Claimant's claim as being properly presented for the amount and time period claimed in the OSLTF claim form and accompanying documentation because it covers the time period represented by both the GCCF EAP and first interim claim period and is based upon the same evidence as presented originally to the GCCF. Thus, this determination establishes the NPFC's decision regarding both Claimant's EAP Claim and her Interim 1 Claim.

NPFC Determination


This claim is denied. Pursuant to 33 C.F.R. § 136.233(b), a Claimant must prove, among other things, that her income was reduced as a consequence of injury to, destruction of, or loss of property or natural resources, and the amount of that reduction. Under 33 C.F.R. § 136.105(a) and § 136.105(e)(6), the 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 has reviewed all of the evidence presented by the Claimant.

This claim is denied on two bases. First, the evidence presented in support of the claim does not establish a causal link between the Claimant's alleged loss and the Deepwater Horizon oil spill. Second, while the Claimant has presented evidence indicating an economic loss, she has not shown an economic loss greater than the amount she has already been compensated by the GCCF for the time period claimed.

Regarding the first basis, a Claimant must prove that her income was reduced as a consequence of injury to, destruction of, or loss of property or natural resources. Here, the Claimant has alleged a causal connection between her reduction in business and the Deepwater Horizon oil spill but she has not provided evidence to substantiate that connection other than her financial documentation and her own allegations that tourists are afraid to breathe New Orleans air or eat Louisiana seafood.⁴ While the NPFC did determine that Claimant experienced a reduction in business following the Deepwater Horizon oil spill, a concurrent loss, by itself, is insufficient to prove that her loss resulted from the oil spill. Similarly, Claimant's assertions with regards to the loss of her customer base, by themselves, do not establish a causal connection between her loss and the oil spill.

Regarding the second basis, the NPFC has determined that while the Claimant has experienced an economic loss during the time period claimed, her loss is not greater than the compensation she has already received from the GCCF. This determination is based upon the analysis of the claim by a forensic accountant and takes into consideration the Claimant's revenues versus expenses, projected growth trends, claim preparation fees, and the amount of income already received from the GCCF.

For the foregoing reasons, this claim is denied.

Claim Supervisor: *NPFC*  *n*

Date of Supervisor's Review: *7/15/11*

Supervisor's Action: *Denial approved*

⁴ PHONECON between NPFC and Claimant of 211445Q JUN 11.
09/14/11

Enclosure (2)

Evidence Presented in Support of NPFC Claim N10036-0941

- Profits & Loss statement for month of October 2010
- GCCF Emergency claim analysis
- Business Loss calculation for month of Sept 2010
 - o Schedule A - trend Analysis of gross sales
 - o Schedule B - Cost of Goods Sold worksheet
 - o Schedule C - Operation expense worksheet
 - o Schedule D - Extra Expense Worksheet
- [REDACTED] Monthly income statements
- Form 1065 U.S. Return of Partnership income for 2007
- Form 1065 U.S. Return of partnership income for 2008
- Louisiana Dept of revenue sales tax return for Sept 2009-10
- Louisiana Dept of revenue sales tax return for Aug 2009-10
- Louisiana Dept of revenue sales tax return for Jul 2009-10
- Louisiana Dept of revenue sales tax return for Jun 2009-10
- Louisiana Dept of revenue sales tax return for May 2009-10
- Louisiana Dept of revenue sales tax return for April 2009-10
- Louisiana Dept of revenue sales tax return for March 2009-10
- Louisiana Dept of revenue sales tax return for February 2009-10
- [REDACTED] June projected Revenues
- [REDACTED] Emergency claim analysis for June 2010
- Trend Analysis of Gross Sales: January 2007 – current month
- Schedule B Cost of Goods Sold Worksheet (relation between Gross sales to Cost of goods Sold)
- Operation expense worksheet –Schedule C
- Schedule D – Extra expense worksheet
- [REDACTED] July projected revenues
- [REDACTED] August projected revenues
- GCCF Emergency claim analysis August 2010
- Business Loss calculation August 2010
- Schedule A: Trend Analysis August 2010
- Business Loss calculation August 2010
- Schedule A: Trend Analysis of gross sales: January –current month
- Schedule B: Cost of Goods Sold worksheet
- Schedule C: Operation expense worksheet (all of 2009)
- Schedule D: extra expense worksheet
- [REDACTED] September projected revenue
- Fax communication from claimant to GCCF
- City of New Orleans 2011 Real Estate Tax Bill
- Entergy disconnection notice mailed 1/11/2011
- AT&T service bill for Jan 30, 2011
- Merchant Services Recovery Dept. billing statement
- Blue Cross Blue Shield of Louisiana Health insurance termination notice.
- Where-Morris visitor publications invoice dated 12/01/2010
- [REDACTED]
- GCCF Global notes for [REDACTED] – [REDACTED]

- Determination letter on Interim payment / Final payment claim from GCCF
- Authorization to release from [REDACTED]
- GCCF Invoice from [REDACTED]
- [REDACTED] monthly income statements 2008
- [REDACTED] monthly income statements 2009
- Form 1040 Schedule C – profit or loss from business for 2009
- [REDACTED] monthly income statements January 10-Sept 10
- City of New Orleans tax return for Sept 2010
- City of New Orleans Occupational license
- Facsimile from [REDACTED] to GCCF
- GCCF claim form generated online 2000-C
- GCCF expiration of re-review option for determination letter on interim payment / Final payment claim
- Louisiana Mobility Impaired ID Card, Handicap Placard, exp. 07-31-2012
- [REDACTED] – Business Analyzed checking statement
- Louisiana Department of Revenue Sales tax return for 2010
- Hardship letter to GCCF dated 1/9/2011
- Interim payment claim form - page 8
- Interim payment claim form – page 14
- Interim payment claim form – page 11
- Interim payment claim form – page 3
- Breakdown of monthly income & losses (Nov 2010)
- City of New Orleans – Form 8070
- GCCF Interim payment claim form – page 1
- GCCF Interim payment claim form – page 3
- GCCF Interim payment claim form – page 8
- GCCF Interim payment claim form – page 7
- GCCF Interim payment claim form – page 11
- GCCF Interim payment claim form – page 13
- GCCF Interim payment claim form – page 14
- Louisiana Dept. of Revenue Form R-1029 (7/09)
- GCCF notice of Determination Emergency Advance Payment
- Determination letter on interim payment / Final payment claim
- Expiration of re-review option for determination

U.S. Department of
Homeland Security

**United States
Coast Guard**



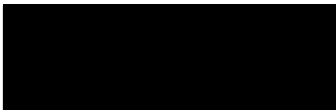
Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD



CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number [REDACTED]



5890/DWHZ
Claim # N10036-0942
14 July 2011

Re: Claim Number: N10036-0942

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 N10036-0942 involving the Deepwater Horizon oil spill. Please see the attached Claim Summary/Determination Form for further explanation.

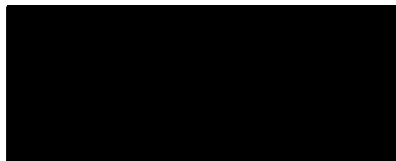
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-0942.

Mail reconsideration requests to:

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

Sincerely,



National Pollution Funds Center
U.S. Coast Guard

Enclosure: Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00003686

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-0942
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$8,400.00

FACTS

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

CLAIM AND CLAIMANT

On 3 June 2011, [REDACTED] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$8,400.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.¹

Claimant catches and sells crawfish in south Louisiana, primarily in the lower Atchafalaya Basin. Claimant began catching and selling crawfish in 2010 and alleges that much of his catch was dead in the traps due to low oxygen levels in the water.²

Claimant seeks lost profits in the amount of \$8,400.00.

APPLICABLE LAW

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

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

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

- (a) That real or personal property or natural resources have been injured, destroyed, or lost.
- (b) That the claimant's income was reduced as a consequence of injury to, destruction of, or loss of property or natural resources, and the amount of that reduction.
- (c) The amount of the claimant's profits or earnings in comparable periods and during the period when the claimed loss or impairment was suffered, as established by income tax returns, financial statements, and similar documents. In addition, comparative figures for

¹ Optional OSLTF Claim Form dated 23 May 2011, received by NPFC 03 June 2011.

² PHONECON: Claimant and NPFC Staff 28 June 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 undertaken, but reasonably available;
- (d) Any saved overhead or normal expenses not incurred as a result of the incident; and
- (e) State, local, and Federal taxes.

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support this claim, Claimant submitted the following documentation:

- Optional OSLTF Claim Form, 23 May 2011;
- Letter from GCCF requesting additional information, 21 October, 2011;
- GCCF Denial Letter on Interim/Final Payment Claim, 10 May 2011;
- 2010 Form 1040;
- 2010 Form 1040, Schedule C;
- 2009 Form 1040;
- 2008 Form 1040;
- Copy of Claimant's fishing licenses;
- Copies of checks and receipts from Claimant;

Prior to presentment to the NPFC, Claimant presented an Emergency Advance Payment (EAP) Claim to the RP/GCCF for \$40,000 in lost wages and earnings, and was issued Claimant ID # [REDACTED] and Claim [REDACTED]. Claimant then presented a Full Review Final Claim (FRF) on 7 February 2011 for \$12,000 in loss of subsistence use, which was assigned Claim [REDACTED]. Finally, Claimant submitted a Second Quarter 2011 Interim [REDACTED] Claim for \$8,400.00 on 15 April 2011, which was assigned ICQ22011 Claim [REDACTED].

Claimant's EAP was denied on 24 November 2010. Claimant's FRF and ICQ22011 were also denied on 10 May 2011.

On 3 June 2011, Claimant presented this claim to the OSLTF seeking \$8,400.00 for loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill. This NPFC Claim Summary Determination for claim N10036-0942 considers and addresses the earnings claimed in both Claimants EAP claim [REDACTED] and ICQ22011 [REDACTED] to the extent that the subject matter of those claims is his alleged lost profits and earnings resulting from reduced crawfish catch and only in the amount claimed before the NPFC of \$8,400.00.

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, 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 documentation provided by Claimant.

This claim is denied because Claimant has failed to demonstrate that his alleged loss in the amount of \$8,400.00 is due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of discharge of oil. The evidence provided by the Claimant does not sufficiently establish the causal connection between the Deepwater Horizon oil spill and the reduction Claimant experienced in his crawfish catch.

Claim Supervisor:	[REDACTED]
Date of Supervisor's Review:	[REDACTED]
Supervisor's Action:	Claim is Denied
Supervisor's Comments:	

U.S. Department of
Homeland Security

United States
Coast Guard



Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD



CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Number 

5890/DWHZ
Claim# N10036-0943
10 June 2011



RE: Claim Number: N10036-0943

De: 

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, #N10036-0943, involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination Form for further explanation.

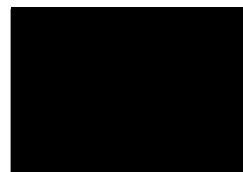
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-0943.

Mail reconsideration requests to:

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

Sincerely,



on Division
Funds Center

U.S. Coast Guard

Enclosure: Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00003690

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	N10036-0943
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 3 June 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.

Claimant, who owns her own business, [REDACTED], and who has also filed a claim with the NPFC on behalf of her business (NPFC Claim N10036-0914), alleged that, in her capacity as an employee of [REDACTED] Income [REDACTED] she suffered a "loss of income due to [the] BP 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

¹ Claimant's Optional OSLTF Claim Form Section 9 dated 26 May 2011.
09/14/11

clearly indicated and any saved overhead and other normal expenses not incurred as a result of the incident must be established.

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

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

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

DETERMINATION OF LOSS

Claimant's Submission

To support this claim, Claimant submitted the following documentation:

- Optional OSLTF Claim Form dated 26 May 2011;
- Letter to the NPFC dated 26 May 2011;
- GCCF Interim Payment/Final Payment Claim Denial Letter dated 22 April 2011;
- Gulf Coast Claims Facility Full Review Final Payment Claim Form;
- 2010 IRS Form 1040;
- 2009 IRS Form 1040; and
- 2008 IRS Form 1040.

Claimant seeks \$10,000.00 for loss of profits and earnings capacity allegedly resulting from the Deepwater Horizon incident.

Claimant alleged that she filed an individual claim with the GCCF which was subsequently denied.²

NPFC Determination

Under 33 C.F.R. § 136.105(a) and § 136.105(e)(6), the claimant bears the burden of providing to the NPFC, all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim. The NPFC considered all of the documentation submitted 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. As to her alleged losses, the information provided by the Claimant within her individual tax returns indicated that she was paid a salary of \$12,600.00 for the years 2008, 2009, and 2010. The IRS Form 1120 filings provided by the Claimant within claim N10036-0914 indicated that the business paid her \$12,600.00 each year as an officer of the company. As such, the Claimant has

² The NPFC notes that Claimant filed a claim with the GCCF on behalf of her personal business, Bunch Auction-
[REDACTED], and was assigned Claimant [REDACTED]. The NPFC has not been able to independently verify that the claimant also filed an individual claim with the GCCF.

failed to sufficiently establish any loss. Additionally, the Claimant has failed to provide any information which might establish that any 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 Claim [REDACTED] tion Division*

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

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

U.S. Department of
Homeland Security

United States
Coast Guard



Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim# N10036-0944
10 June 2011



RE: Claim Number: N10036-0944

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, #N10036-0944, 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 N10036-0944.

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 and Litigation Division
National Pollution Funds Center
U.S. Coast Guard

Enclosure: Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00003694

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	N10036-0944
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and 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 31 May 2011, [REDACTED] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$6,000.00 for loss of profits and earnings capacity resulting from the Deepwater Horizon oil spill.¹

Claimant asserted that he “lost earnings as a result of the oil spill.”² Claimant was employed as a union carpenter in 2009, where he worked during various periods of time on assorted union projects in Mobile, Alabama.

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

¹ Claimant’s additional information letter to the NPFC, dated 6 June 2011.

² Claimant’s Optional OSLTF Claim Form Section 10 (undated).

clearly indicated and any saved overhead and other normal expenses not incurred as a result of the incident must be established.

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

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

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

DETERMINATION OF LOSS

Claimant's Submission

To support this claim, Claimant submitted the following documentation:

- Optional OSLTF Claim Form (undated);
- GCCF letter requesting additional information dated 29 January 2011;
- GCCF Interim Payment/Final Payment Claim Denial Letter dated 15 April 2011;
- Letter to Claimant dated 07 February 2011 re: preparation of 2010 tax returns;
- Letter from [REDACTED] dated 07 February 2011 re: privacy notice;
- Wage and Earnings Report by the Unemployment Compensation Agency dated 09 April 2008 re: 2007 wages and earnings;
- GCCF Fax cover sheet;
- Copy of Alabama driver license;
- Letter from Claimant to the GCCF dated 26 April 2011;
- Letter from Carpenter's Union dated 15 October 2010;
- Wage and Earnings Report by the Alabama Department of Industrial Relations Unemployment Compensation Agency dated 13 November 2009 re: wages and earnings for periods from July 2008 to June 2009;
- Wage and Earnings Report by the Alabama Department of Industrial Relations Unemployment Compensation Agency dated 18 November 2009 re: wages and earnings for periods from July 2009 to June 2010;
- Gulf Coast Claims Facility Interim Payment Claim Form;
- Turner Industries check stubs for the periods from 12 November 2010 to 24 December 2010;
- Letter from the Alabama Department of Industrial Relations Unemployment Agency to the Claimant re: emergency unemployment compensation dated 28 April 2010;
- Alabama Form 40 2009 Individual Tax Return;
- 2009 IRS Form 1040A Individual Tax Return;
- Alabama Department of Industrial Relations electronic 1099 G printout; and
- [REDACTED] paystubs for various periods from 09 March 2009 to 16 September 2009.

Claimant seeks \$10,000.00 for loss of profits and earnings capacity allegedly resulting from the Deepwater Horizon incident.

Claimant filed an Interim Payment Claim with the GCCF and was assigned GCCF Claimant ID # 1187865. Claimant's Interim Payment/Final payment Claim was denied on 15 April 2011.³

NPFC Determination

Under 33 C.F.R. § 136.105(a) and § 136.105(e)(6), the claimant bears the burden of providing to the NPFC, all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim. The NPFC considered all of the documentation submitted 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. The information provided by the Claimant indicated that he did not work during the last quarter of 2009 and that he commenced receiving unemployment payments from the Alabama Department of Industrial Relations Unemployment Agency in January of 2010.⁴ Claimant was continuously unemployed prior to the oil spill and remained unemployed until 29 October 2010.⁵ Claimant has not met his burden under OPA to establish that his alleged losses are 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 Claims Adjudication Division*

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

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

³ GCCF Interim Payment/Final Payment Claim Denial Letter dated 15 April 2011.

⁴ Claimant's Interim Claim Form Page 11, Part 7 and Wage and Earnings Report by the Alabama Department of Industrial Relations Unemployment Compensation Agency dated 18 November 2009 re: wages and earnings for periods from July 2009 to June 2010.

⁵ Claimant's Interim Claim Form, Pages 2 and 11.

U.S. Department of
Homeland Security

United States
Coast Guard



Director
National Pollution Funds Center
United States Coast Guard

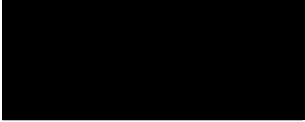
NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim# N10036-0940
08 Jun 2011



RE: Claim Number: N10036-0945

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act of 1990, 33 U.S.C. § et seq. (OPA) and the associated regulations at 33 C.F.R. Part 136, denies payment on your claim, #N10036-0945, 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 N10036-0945.

Mail reconsideration requests to:

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

Sincerely,



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

Enclosure: Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00003698

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	N10036-0945
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earnings Capacity
Amount Requested	\$33,000.00

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 3 June 2011, [REDACTED] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$33,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil-spill.

The Claimant asserted that he “got hired to work for the oil spill company and only was able to work six months verses [sic] 2 years [because the] company pulled out[.]”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 incident must be clearly indicated and any saved overhead and other normal expenses not incurred as a result of the incident must be established.

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

¹ Claimant’s Optional OSLTF Claim Form Section 9 dated 12 May 2011.
09/14/11

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

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

DETERMINATION OF LOSS

Claimant's Submission to the OLSTF

To support this claim, Claimant submitted the following documentation:

- Optional OSLTF Claim Form dated 12 May 2011; and
- GCCF Interim Payment/Final Payment Claim Denial Letter dated 1 April 2011.

Prior to presentment to the NPFC, the Claimant indicated that he filed multiple claims with the RP/GCCF. Claimant was assigned GCCF Claimant ID [REDACTED] Claimant's Interim Payment/Final payment Claim was denied on 1 April 2011.²

NPFC Determination

Under 33 C.F.R. § 136.105(a) and § 136.105(e)(6), the claimant bears the burden of providing to the NPFC, all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim. The NPFC considered all of the documentation submitted 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, the Claimant has provided absolutely no information as to his prior employment and wages. Even assuming for the sake of argument that the Claimant might be able to provide evidence as to his prior employment, the damages which the Claimant seeks are not compensable under OPA as the alleged damages are not due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil.

Claim Supervisor: [REDACTED] *Judication Division*

Date of Supervisor's Review: *6/8/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

² GCCF Interim Payment/Final Payment Claim Denial Letter dated 1 April 2011.
09/14/11

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: [REDACTED]

5890/DWHZ
Claim # N10036-0946
13 June 2011

Re: Claim Number: N10036-0946

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 N10036-0946 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 N10036-0946.

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

FOIA2011-3380-00003701

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-0946
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings
Amount Requested	\$28,000.00

FACTS

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

CLAIM AND CLAIMANT

On 7 June 2011, [REDACTED] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$28,000.00 in loss of profits and impairment of earnings capacity.¹

Claimant alleged that, presumably as a result of the oil spill, he “lost hours” and “lost [his] job.”²

Prior to presentment to the NPFC, the Claimant presented an Emergency Advance Payment and Interim Payment Claims to the RP/GCCF and was assigned claimant identification number [REDACTED]. The GCCF denied the claims on 2 November 2010.³

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 returns, financial statements, and similar documents. In addition, comparative figures for

¹ OSLTF Claim Form dated 27 May 2011

² Id

³ Letter from the GCCF to Claimant dated 2 November 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 undertaken, but reasonably available;
- (d) Any saved overhead or normal expenses not incurred as a result of the incident; and
- (e) State, local, and Federal taxes.

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

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

- OSLTF optional claim form dated 27 May 2011;
- Letter from [REDACTED] dated 16 November 2010 (unsigned)⁴;
- 2010 earnings statement;
- Letter from Claimant dated 16 November 2011 re: May 2010 P2S earnings statement;
- P2S Earnings statement for various pay periods from 29 May 2010 to 01 October 2010;
- Unaddressed letter from P2S Plant Performance Services dated 20 September 2010;
- Undated employment verification letter from Reliable Staffing;
- Reliable Staffing, Inc. employee pay summary for periods from 28 September 2011 to 25 April 2011;
- Undated letter from Claimant re: 2008 and 2009 W-2's;
- 2009 Electronic Form W-2 Wage and Tax Statement;
- 2008 Electronic Form W-2 Wage and Tax Statement.

On 7 June 2011, Claimant presented this claim for \$28,000.00 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

⁴ The NPFC was unable to verify the authenticity of the letter from [REDACTED]. The phone number provided within the letter is a working number, but does not belong to [REDACTED].

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 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, the Claimant has provided a letter from [REDACTED] which indicated that the Claimant was laid off on 30 April 2011. However, this correspondence does not establish that the Claimant was laid off as a result of a discharge or substantial threat of a discharge of oil. Furthermore, the letter was unsigned and the NPFC was unable to verify its authenticity. (See Footnote 4 above)

The Claimant subsequently received oil spill cleanup training from [REDACTED] in May of 2010, for which he was paid \$521.79. As such, the Claimant actually *gained* employment due to the oil spill. The Claimant asserted that he was not actually employed in cleanup activities until August of 2010, but this fact is not outcome determinative. The Claimant has not established that his lack of income during June and July of 2010 was the result of a discharge or substantial threat of a discharge of oil as opposed to other possible factors such as internal staffing decisions by his employer.

The Claimant has also not provided information which justifies his calculations for a loss in the amount of \$28,000.00, and as such has not met his burden of proof for damages under OPA. Accordingly, this claim is denied because the Claimant has failed to show that the alleged loss in the amount of \$28,000.00 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.

Claim Supervisor: *Claims Adjudication Division* [REDACTED]

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

Supervisor Action: *Denial approved*

Supervisor's Comments:

U.S. Department of
Homeland Security

**United States
Coast Guard**



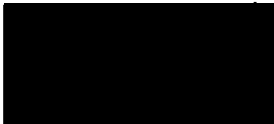
Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100



CERTIFIED MAIL-RETURN RECEIPT REQUESTED
Number: [REDACTED]

5890/DWHZ
Claim # N10036-0947
01 August 2011



Dear [REDACTED]

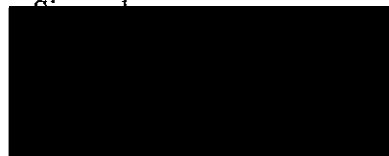
The National Pollution Funds Center (NPFC) in accordance with the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq. (OPA) and the associated regulations at 33 C.F.R. Part 136, denies payment on your claim number N10036-0947 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination 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 N10036-0947.

Mail reconsideration requests to:

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



National Pollution Funds Center
U.S. Coast Guard

Enclosures: (1) Claim Summary/Determination Form

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-0947
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings 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 certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On 07 June 2011, [REDACTED] (Claimant) presented an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) seeking \$6,500.00 in lost profits and earnings that allegedly resulted from the Deepwater Horizon oil spill.

The Claimant works as an Accounting Assistant for Louisiana [REDACTED] (LABS) in Metairie, LA.¹ The Claimant indicated that LABS does accounting work for small Hispanic businesses; such as restaurants, grocery stores, and construction companies.² The Claimant stated that after the Deepwater Horizon oil spill, many of these companies closed and cancelled their contracts with LABS.³ Because of this decrease in business, the Claimant asserted that her hours and number of days worked were reduced.⁴

The Claimant did not provide an explanation regarding the calculation of her sum certain of \$6,500.00.

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).

¹ Letter from Manager at Louisiana [REDACTED] dated 26 May 2011

² Optional OSLTF Claim Form, dated 1 June 2011

³ Id.

⁴ Id.

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

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

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

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

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

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

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

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

- Optional OSLTF Claim Form, dated 1 June 2011;
- Letter from Manager at Louisiana Bookkeeping Services, dated 26 May 2011;
- Payroll records from 1 January 2010 through 10 November 2010;
- Copy of Claimant's passport and visa renewals; and

- 2008, 2009, and 2010 Federal Tax Returns, including Schedule C's for 2009 and 2010.

Prior to presenting her claim to the NPFC, the Claimant filed an Emergency Advance Payment (EAP) claim for loss of earnings with the GCCF in the amount of \$6,500.00. She was assigned Claimant ID [REDACTED] and Claim [REDACTED]. This claim was denied on 30 November 2010.⁶ Additionally, the Claimant filed a Full Review Final (FRF) claim with the GCCF for loss of earnings in the amount of \$6,500.00. She was assigned Claim [REDACTED]. This claim was denied on 22 April 2011.⁸

Based upon the evidence provided by the Claimant, it appears that the subject matter for each of the two loss of earnings claims before the GCCF are the same as the subject matter of her loss of earnings claim before the NPFC, i.e., that Claimant is claiming she lost earnings at LABS because many of their clients closed due to the Deepwater Horizon oil spill. The NPFC deems each of the Claimant's two (2) denied GCCF claims to be properly presented to the RP and properly presented to the NPFC. Accordingly, this Claim Summary Determination for NPFC Claim N10036-0947 considers and addresses the earnings claimed in both claims for loss of earnings presented to the responsible party, specifically; GCCF Claim [REDACTED] (EAP) and [REDACTED] (FRF).

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. The Claimant asserted that many of the businesses she provided accounting services for closed due to the Deepwater Horizon oil spill, which resulted in a reduction of her earnings. The Claimant provided a letter from her employer,⁹ as well as payroll records,¹⁰ which indicated that her earnings decreased after the Deepwater Horizon oil spill. However, the Claimant's tax returns indicated that the Claimant's gross earnings were higher in 2010 than in both 2008 and 2009.

On 10 June 2011, the NPFC requested that the Claimant provide additional information to further evaluate her claim. The NPFC requested, among other things, a list of the Claimant's clients who cancelled their contracts due to the Deepwater Horizon oil spill and their contact information, as well as the Claimant's earnings records from 2008 and 2009. To date, no response has been received by the NPFC. Therefore, the NPFC was unable to verify that the Claimant suffered a financial loss due to the Deepwater Horizon oil spill.

⁵ Report from the GCCF, dated 26 July 2011.

⁶ Denial letter from the GCCF, dated 20 November 2010.

⁷ Report from the GCCF, dated 26 July 2011.

⁸ Denial letter on Interim Payment/Final Payment Claim, dated 22 April 2011.

⁹ Letter from Manager at [REDACTED], dated 26 May 2011.

¹⁰ Payroll records from 1 January 2010 through 10 November 2010.

This claim is denied because the Claimant failed to meet the burden to demonstrate (1) that there was an alleged loss in the amount of \$6,500.00, 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.

Claim Supervisor: *Claims [REDACTED] Division*

Date of Supervisor's review: *8/1/11*

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



CERTIFIED MAIL-RETURN RECEIPT REQUESTED
Number: [REDACTED]

5890/DWHZ
Claim # N10036-0948
10 August 2011



Re: Claim Number: N10036-0948

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 N10036-0948 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 N10036-0948.

Mail reconsideration requests to:

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

Sincerely,



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

Enclosures: (1) Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00003710

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-0948
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Earning Capacity and Subsistence Use
Amount Requested	\$21,000.00

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 06 June 2011, [REDACTED] (Claimant) presented an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) seeking \$16,000.00 in loss of profits and impairment of earnings capacity and \$5,000.00 in loss of subsistence use that allegedly resulted from the Deepwater Horizon oil spill.

With respect to her alleged loss of \$16,000.00 in lost profits and earnings, the Claimant asserted that she works as an emergency cosmetologist based out of Mobile, AL.¹ The Claimant spends her summers commuting from Mobile to Pensacola, FL and to Gulf Shores, AL as an on-call cosmetologist serving the tourist industry.² The Claimant asserted that due to the Deepwater Horizon oil spill, there were fewer tourists, which resulted in a loss of clients and income.³

With respect to her alleged subsistence loss of \$5,000.00, the Claimant asserted that as a result of the Deepwater Horizon oil spill, she has been prevented from catching fish and shrimp in the Gulf of Mexico.⁴ As a result, the Claimant states she has incurred the increased costs of buying rather than catching her food.⁵

APPLICABLE LAW

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

¹ Optional OSLTF Claim Form dated 06 June 2011.

² Letter from Claimant dated 20 May [no year listed].

³ Id.

⁴ Letter from Claimant, undated.

⁵ Id.

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

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

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

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

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

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

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

The claims regulations (33 C.F.R. §§136.219-223) provide additional requirements for claims for loss of natural resources relied upon for food (i.e., 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.

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

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

- Optional OSLTF Claim Form received 06 June 2011;
- Letter from Claimant dated 20 May [no year listed];
- Document titled 'Biological Impacts and the Recovery Process';
- Timeline from March 2008-August 2010 concerning the Deepwater Horizon oil spill;
- Internal Revenue Service Tax Return Transcript for tax period ending 31 December 2010;
- GCCF Denial Letter dated 20 April 2011;
- GCCF Letter dated 29 January 2011;
- Letter from Claimant, undated;
- 2010 W-2 Federal tax form from Second Choice Inc.;
- 2010 W-2 Federal tax form from Tower Home Care, LLC;
- GCCF Denial Letter dated 15 December 2010;
- Expense Report from Claimant to NPFC dated 20 April 2011;
- Internal Revenue Service Tax Return Transcript for tax period ending 31 December 2008;
- 2009 1040 Federal tax return;
- New York Times article titled 'Size of Spill in Gulf of Mexico Is Larger Than Thought' dated 28 April 2010;
- NPFC Request for Additional Information dated 13 June 2011 with Claimant's handwritten notations;
- Document entitled 'Documentation Requested', including answers to NPFC's Request for Additional Information;
- State of Alabama Department of Industrial Relations letter dated 26 July 2011;
- Mobile [REDACTED] Employee QuickReport for dates 1 October 2008-1 February 2009;
- Letter from Lisa Claypool [undated] regarding Claimant's work at answnet;
- Untitled spreadsheet with financial information for dates 24 May 2009-13 September 2009;
- Pay receipts for dates:

- May 2008: 13 May-31 May;
- June 2008: 06 June-28 June;
- July 2008: 05 July-25 July;
- May 2009: 01 May-30 May;
- June 2009: 05 June-27 June;
- July 2009: 03 July-31 July;
- State of Alabama Department of Industrial Relations Unemployment Compensation Agency 2008 1099-G tax form;
- State of Alabama Department of Industrial Relations Unemployment Compensation Agency 2009 1099-G tax form;
- State of Alabama Department of Industrial Relations Unemployment Compensation Agency 2010 1099-G tax form;
- Letter from Patricia Flynn dated 25 July 2011;
- Spreadsheet titled 'Directory Distributing Check History-Summary' for dates 12 June 2008-16 July 2008;
- Ashford University Grade History dated 26 July 2011; and
- [REDACTED] Payroll Summary dated 01 January 2010-24 June 2011.

Prior to presenting this claim to the NPFC, the Claimant filed a Full Review Final (FRF) Claim with the GCCF on 01 December 2010 in the amount of \$15,000.00 for loss of subsistence use.⁶ The Claimant was assigned Claimant Identification [REDACTED] and Claim [REDACTED]. The Claimant's FRF Claim was denied on 20 April 2011.⁷

Based upon the evidence provided by the Claimant, it appears that the subject matter for the denied subsistence claim to the GCCF is the same as the subject matter of her subsistence claim before the NPFC, i.e., that Claimant was unable to catch fish and shrimp in the Gulf of Mexico due to the Deepwater Horizon oil spill. The NPFC deems the Claimant's denied subsistence claim to the GCCF to be properly presented to the RP and properly presented to the NPFC. Accordingly, this Claim Summary Determination for NPFC Claim N10036-0948 considers and addresses the loss of subsistence use claimed in Claimant's claim presented to the responsible party, specifically; GCCF Claim [REDACTED].

NPFC Determination

Loss of Earning Capacity

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 a Full Review Final (FRF) Claim to the GCCF for loss of subsistence use. The Claimant's FRF claim to the GCCF omitted any claim for loss of profits and impairment of earnings capacity.⁸ The Claimant then presented a claim to the NPFC that included both loss of subsistence use in the amount of \$5,000.00 and loss of profits and impairment of earnings capacity in the amount of \$16,000.00. Due to the Claimant's failure to present a claim for loss of profits and impairment of earnings capacity to the GCCF, the

⁶ Report from the GCCF dated 29 July 2011.

⁷ GCCF Denial Letter dated 20 April 2011.

⁸ Report from the GCCF dated 29 July 2011. Additionally, the NPFC received confirmation in an email from the GCCF on 9 August 2011 that Claimant had not filed a loss of earnings claim with the GCCF.

Claimant has not properly presented a claim for loss of profits and impairment of earnings capacity to the RP/GCCF pursuant to 33 C.F.R. § 136.103(a) and any amount of damages regarding loss of profits and impairment of earnings capacity presented to the NPFC is therefore denied.

Loss of Subsistence Use

This claim is denied because the Claimant has not met her 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). Her claim is deficient because she has not provided sufficient evidence of a loss suffered due to the spill. She has not documented a pattern of subsistence use prior to the spill for which she seeks compensation, that is, where, how often, and how much seafood she and her family regularly caught and consumed for subsistence purposes. The Claimant submitted no statements or affidavits that address the frequency and amount of subsistence catch and consumption that she and or her family relied upon to meet the minimum necessities of life. She has also failed to prove that she was in possession of a valid fishing license from the state of Alabama which would help support a legal subsistence use of the resources. Additionally, the Claimant has not provided any basis to support her claim that she suffered a \$5,000 loss of subsistence use. The NPFC cannot determine the period of claimed loss or actual costs incurred to replace the fish that she would have caught and eaten if the spill had not occurred (i.e., insufficient receipts or statements were provided to support damages incurred in the amount claimed).

Based on the foregoing, this claim is denied.

Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *8/10/11*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

U.S. Department of
Homeland Security

United States
Coast Guard



Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]



5890/DWHZ
Claim # N10036-0949
16 June 2011

Re: Claim Number: N10036-0949

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 N10036-0949 involving the Deepwater Horizon oil spill. Please see the attached Claim Summary/Determination Form for further explanation.

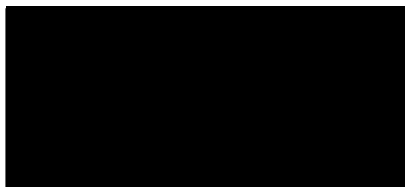
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-0949.

Mail reconsideration requests to:

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

Sincerely,



U.S. Coast Guard

Enclosure: Claim Summary/Determination Form
Documentation Submitted by the Claimant

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-0949
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$24,000.00

FACTS

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

CLAIM AND CLAIMANT

On 7 June 2011, [REDACTED] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$24,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.¹

Claimant resigned from his job as an offshore cook with [REDACTED] when his hours were cut following the oil spill and subsequent moratorium.²

Claimant alleged that many cooks were hired in towns along the Gulf Coast during the oil spill clean-up process, leaving "too many cooks and not enough jobs" after most of the clean-up was complete.³ According to the Claimant, his hours were reduced significantly, and after three weeks of little work, the Claimant left his position and took a job with another offshore company, [REDACTED].⁴ He seeks \$24,000.00 in lost profits as well as difference in pay, including future losses.⁵

APPLICABLE LAW

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

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

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

¹ Optional OSLTF Claim Form dated 26 May 2011.

² PHONECON: Claimant and NPFC Staff, 10 June 2011.

³ *Id.*

⁴ *Id.*

⁵ Letter from Claimant to GCCF.

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

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

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

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

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support this claim, the Claimant submitted the documentation listed in Enclosure (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, and was assigned Claimant ID [REDACTED]. Claimant's EAP was denied by the RP/GCCF on 1 Dec. 2010, and Interim Payment/Final Payment Claim was denied on 27 May 2011.⁶

On 7 June 2011, Claimant presented this claim for \$24,000.00 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.

⁶ GCCF denial letters, dated 1 December 2010 and 27 May 2011.

In reviewing the information provided by the Claimant, the NPFC notes that the Claimant's pay remained steady in the months of April, May and June of 2010, immediately after and during the oil spill.⁷ According to the Claimant, his hours were not affected until around July 2010 after the clean-up operations slowed and workers who had traveled to work at the clean-up camps began taking offshore jobs.⁸ Claimant alleged that this caused increased competition for offshore work, resulting in a reduction of the Claimant's working hours for a period of about three weeks.⁹ The Claimant then resigned from his position with ESS to take a position with [REDACTED] where he is currently employed, but being paid at a lower rate, with no employment benefits.¹⁰

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 \$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.

Claim Supervisor: [REDACTED]

Date of Supervisor's Review: *6/16/11*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

⁷ Bank Statements and Pay Stubs provided by Claimant to NPFC show that Claimant's pay remained steady until the end of June 2010.

⁸ PHONECON: Claimant and NPFC Staff, 10 June 2011.

⁹ Id.

¹⁰ Id.

DOCUMENTATION SUBMITTED BY THE CLAIMANT:

- OSLTF optional claim form;
- Cover Sheet listing submission inclusions, dated 20 May 2010;
- Letter from GCCF to Claimant, requesting financial records, dated 31 Jan. 2011;
- Denial Letter from GCCF on Interim Payment/Final Payment Claim, dated 27 May 2011;
- Letter from Claimant to GCCF regarding Claimant's losses;
- Document titled "Taylors International Offshore Catering Pay Schedule," noting Claimant's pay from 19 July 2010 to 30 Nov. 2010;
- Document titled "Eurest Support Serv. Offshore Catering Pay Schedule," noting Claimant's pay from 12 Jan. 2010 to 8 June 2010;
- Letter from Claimant, noting inclusion of pay stubs and bank statements;
- Bank statement showing pay from ESS of \$1,692.89 on 13 Jan. 2010; \$1,813.88 on 20 Jan. 2010; \$1,692.49 on 10 Feb. 2010; \$1,796.68;
- Pay stub from ESS, showing earnings of \$1,692.49 on 9 Feb. 2010;
- Pay stub from ESS, showing earnings of \$1,699.57 on 9 Mar. 2010;
- Pay stub from ESS, showing earnings of \$1,796.69 on 16 Mar. 2010;
- Pay stub from ESS, showing earnings of \$1,832.42 on 4 May 2010;
- Pay stub from ESS, showing earnings of \$1,797.30 on 11 May 2010;
- Pay stub from ESS, showing earnings of \$1,832.42 on 1 June 2010;
- Pay stub from ESS, showing earnings of \$1,797.32 on 8 June 2010;
- Pay stub from ESS, showing earnings of \$1,248.13 on 28 June 2010;
- Direct Deposit Earnings Statement showing payment of \$304.00 from Taylors International from pay period 18 July 2010 to 19 July 2010;
- Direct Deposit Earnings Statement showing payment of \$1,406.00 from Taylors International from pay period 11 July 2010 to 17 July 2010;
- Direct Deposit Earnings Statement showing payment of \$1,172.50 from Taylors International for pay period 20 July 2010 to 26 July 2010;
- Direct Deposit Earnings Statement showing payment of \$1,187.50 from Taylors International for pay period 27 July 2010 to 3 August 2010;
- Direct Deposit Earnings Statement showing payment of \$120.00 from Taylors International for pay period 28 July 2010 to 3 August 2010;
- Direct Deposit Earnings Statement showing payment of \$1,202.50 from Taylors International for pay period 3 Aug. 2010 to 10 Aug. 2010;
- Direct Deposit Earnings Statement showing payment of \$1,605.50 from Taylors International for pay period 23 Aug. 2010 to 30 Aug. 2010;
- Direct Deposit Earnings Statement showing payment of \$1,605.50 from Taylors International for pay period 30 Aug. 2010 to 7 Sept. 2010;
- Direct Deposit Earnings Statement showing payment of \$76.00 from Taylors International for pay period 31 Aug. 2010 to 7 Sept. 2010;
- Direct Deposit Earnings Statement showing payment of \$1,605.50 from Taylors International for pay period 21 Sept. 2010 to 27 Sept. 2010;
- Direct Deposit Earnings Statement showing payment of \$1,605.50 from Taylors International for pay period 28 Sept. 2010 to 4 Oct. 2010;
- Direct Deposit Earnings Statement showing payment of \$76.00 from Taylors International for pay period 5 Oct. 2010 to 5 Oct. 2010;
- Direct Deposit Earnings Statement showing payment of \$76.00 from Taylors International for pay period 5 Oct. 2010 to 5 Oct. 2010;

- Direct Deposit Earnings Statement showing payment of \$1,605.50 from Taylors International for pay period 18 Oct. 2010 to 24 Oct. 2010;
- Direct Deposit Earnings Statement showing payment of \$1,605.50 from Taylors International for pay period 25 Oct. 2010 to 2 Nov. 2010;
- Direct Deposit Earnings Statement showing payment of \$1,776.50 from Taylors International for pay period 2 Nov. 2010 to 8 Nov. 2010;
- Direct Deposit Earnings Statement showing payment of \$114.00 from Taylors International for 9 Nov. 2010;
- Direct Deposit Earnings Statement showing payment of \$1,605.50 from Taylors International for pay period 31 Nov. 2010 to 29 Nov. 2010;
- Direct Deposit Earnings Statement showing payment of \$114.00 for 30 Nov. 2010;
- Direct Deposit Earnings Statement showing payment of \$114.00 for 30 Nov. 2010, and gross wages of \$20,393.00 for period starting on 11 July 2010 and ending on 30 Nov. 2010;
- 2008 Form 1040, showing gross wages of \$53,512.00;
- 2008 W-2, showing wages of \$53,512.00;
- 2009 Form 1040, showing gross wages of \$63,792.00;
- 2009 W-2, showing wages of 63,792.00

U.S. Department of
Homeland Security

United States
Coast Guard



Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim # N10036-0950
14 July 2011

Re: Claim Number: N10036-0950

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 N10036-0950 involving the Deepwater Horizon oil spill. Please see the attached Claim Summary/Determination Form for further explanation.

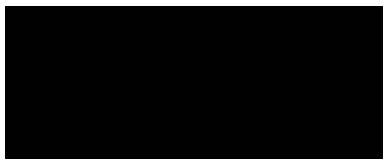
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-0950.

Mail reconsideration requests to:

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

Sincerely,



National Pollution Funds Center
U.S. Coast Guard

Enclosure: Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00003722

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-0950
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$15,900.00

FACTS

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

CLAIM AND CLAIMANT

On 7 June 2011, [REDACTED] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$15,900 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.¹

Claimant, a commercial crawfisher, alleges that “over half of [his] catch died in the traps . . . because early on in the year, we did not get enough water through the [REDACTED] because they had to let the water go down the Mississippi to keep the oil out of the marsh.”²

Claimant further alleges that some of the areas where he usually caught crawfish were closed due to the Deepwater Horizon oil spill.³ He seeks lost profits as well as reimbursement for money spent on bait and fuel.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 NPFCA, is available, pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136, to pay claims for uncompensated damages. One type of damages available pursuant to 33 C.F.R. § 136.231 is a claim for loss of profits or impairment of earning capacity due to injury to or destruction of natural resources.

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

- (a) That real or personal property or natural resources have been injured, destroyed, or lost.
- (b) That the claimant’s income was reduced as a consequence of injury to, destruction of, or loss of property or natural resources, and the amount of that reduction.

¹ Optional OSLTF Claim Form dated 7 June 2011.

² Letter from Claimant describing losses, dated 18 Nov. 2010.

³ Optional OSLTF Claim Form dated 7 June 2011.

⁴ Optional OSLTF Claim Form dated 7 June 2011.

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

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

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

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

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support this claim, Claimant submitted the following documentation:

- OSLTF optional claim form;
- Letter from claimant, dated 18 Nov. 2010, describing loss and government efforts to keep oil out of Louisiana wetlands;
- 2008 Form 1040, showing gross sales of \$8,861 in commercial fishing, and expenses totaling \$6,045 in “trailer tires, boat fuel and bait;”
- 2009 Business Profit or Loss Form, 1040 Schedule C, showing gross sales of \$17,754.00, and expenses totaling \$10,216 in “trailer tires, boat fuel and bait;”
- 2010 Business Profit or Loss Form, 1040 Schedule C, showing gross sales of \$5,261.00 and expenses totaling \$4,510.00 in “trailer tires, boat fuel and bait;”
- Commercial Fisherman's Trip Ticket, May 2008 (illegible totals);
- Commercial Fisherman's Trip Ticket, July 2008 (illegible totals);
- Commercial Fisherman's Trip Ticket, Sept. 2009 (illegible totals);
- Commercial Fisherman's Trip Ticket, June 2009, area fished 0105, value of \$1,925.00 fished over course of 6 days;
- Commercial Fisherman's Trip Ticket, June 2009, area fished 0105, value of \$2,273.00 fished over course of 6 days;
- Commercial Fisherman's Trip Ticket, Aug. 2009, area fished 0105, (illegible values);
- Commercial Fisherman's Trip Ticket, April 2010, area fished 0105, value of \$731.25 fished over course of three days;

- Commercial Fisherman's Trip Ticket, May 2010, area fished 0105, value of \$2,110.95 fished over 10 days;
- Commercial Fisherman's Trip Ticket, June 2010, area fished 0105, value of \$2,215.00 fished over 10 days;
- Commercial Fisherman's Trip Ticket, July 2008, area fished 0105, (values illegible);
- Commercial Fisherman's Trip Ticket, (information illegible);
- Commercial Fisherman's Trip Ticket, May 2009 (totals illegible);
- Commercial Fisherman's Trip Ticket, May 2009, area fished 0105, (values illegible, but totaling at least \$2,134.50;
- Fax Cover Sheet addressed from Claimant to NPFC, dated 7 June 2011;
- Response to request for additional information, including trip tickets and receipts, 12 July 2011.

Prior to presentation to the NPFC, Claimant presented an Emergency Advance Payment (EAP) Claim, to the RP/GCCF, and was issued Claimant ID [REDACTED] and Claim [REDACTED] seeking damages in the amount of \$15,000.00. EAP Claim [REDACTED] was denied on 10 December 2010. Subsequently, Claimant also presented a First Quarter 2011 Interim ([REDACTED]) Claim seeking \$15,900.00 in damages and was issued ICQ12011 Claim [REDACTED]. [REDACTED] Claim # [REDACTED] was denied on 17 May 2011.


On 7 June 2011, Claimant presented this claim to the OSLTF seeking \$15,900.00 for loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill. The NPFC deems both Claimant's GCCF EAP and ICQ12011 claims to have been properly presented to the GCCF. Since both claims were denied by the GCCF and since the subject matter of both GCCF claims is the same as the claim currently before the NPFC, this claim (N10036-0950) considers and addresses the earnings claimed in both prior GCCF denials for the sum certain of \$15,900.

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, 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.

This claim is denied because Claimant has failed to show that the alleged loss in the amount of \$15,900.00 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 evidence provided by the Claimant does not prove the causal connection between the Deepwater Horizon oil spill and the reduction he experienced in his crawfish catch in the areas where he fished.

Furthermore, Claimant has not presented evidence to show that any of the areas where he usually caught crawfish were closed for any particular length of time as a result of the Deepwater Horizon oil spill. Therefore, Claimant's has not demonstrated that any loss he incurred is a result of damage to natural resources caused by the oil spill.⁵

Claim Supervisor:	
Date of Supervisor's Review:	14 July 2011
Supervisor's Action:	Denied
Supervisor's Comments:	

⁵ Claimant's fishing trip tickets indicate that he fished in area 0105, which is not recorded as an area affected by closures following the Deepwater Horizon Spill., <http://www.wlf.louisiana.gov/>.

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim # N10036-0951
26 July 2011

Re: Claim Number: N10036-0951

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 N10036-0951 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 N10036-0951.

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

FOIA2011-3380-00003727

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-0951
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Real or Personal Property
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 2 June 2011, [REDACTED] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for "\$25,000 to \$30,000"¹ in damage to real or personal property resulting from the Deepwater Horizon oil spill. In a subsequent conversation with NPFC Staff, Mr. Cannon clarified that he specifically sought \$30,000.00 in damage to real or personal property.²

Claimant owns a camp/beach house in Chauvin, LA in the [REDACTED]³ During the oil spill response, BP leased properties in the [REDACTED] to use as a staging area. According to the Claimant, "BP ramped up personnel to 1500 and basically ran us out of the area."⁴

Claimant alleged that his property was used without his permission, and submitted a claim based on "lack of ability to use our leisure facility" as well as physical "damages incurred to date."⁵ Furthermore, the Claimant seeks compensation for having "had to continue to pay insurance, electricity, etc. during this ordeal" as well as depreciation in property value based on "1 year aging of the property" and a "lack of interest" in the property due to the oil spill.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 for uncompensated damages. One type of damages available pursuant to 33 U.S.C. § 2702(b)(2)(B) and the promulgating regulations under 33 C.F.R. § 136.213 is a claim for real or personal property damages for injury to, or economic losses resulting from destruction of, real or personal property, which shall be recoverable by a claimant who owns or leases that property.

¹ Optional OSLTF Claim Form, 30 May 2011.

² PHONECON: Claimant and NPFC Staff, 7 June 2011.

³ Email from Claimant to GCCF, 26 September 2010.

⁴ Email from Claimant to GCCF, 26 September 2010.

⁵ Email from Claimant to GCCF, 26 September 2010.

⁶ Email from Claimant to GCCF, 26 September 2010.

33 C.F.R. §136.213 states:

- (a) A claim for injury to, or economic losses resulting from the destruction of real or personal property may be presented only by a claimant either owning or leasing the property.
- (b) Any claim for loss of profits or impairment of earning capacity due to injury to, destruction of, or loss of real or personal property must be included as subpart of the claim under this section and must include the proof required under §136.233.

33 C.F.R. § 136.215 establishes additional proof requirements:

- (a) In addition to the requirements of subparts A and B of this part, a claimant must establish—
 - (1) An ownership or leasehold interest in the property;
 - (2) That the property was injured or destroyed;
 - (3) The cost of repair or replacement; and
 - (4) The value of the property both before and after injury occurred.
- (b) In addition, for each claim for economic loss resulting from destruction of real or personal property, the claimant must establish—
 - (1) That the property was not available for use and, if it had been, the value of that use;
 - (2) Whether or not substitute property was available and, if used, the costs thereof; and
 - (3) That the economic loss claimed was incurred as the result of the injury to or destruction of the property.

Under 33 C.F.R. § 136.217, the amount of compensation allowable for a claim involving real or personal property damage is limited to:

- (a) The amount of compensation allowable for damaged property is the lesser of—
 - (1) Actual or estimated net cost of repairs necessary to restore the property to substantially the same condition which existed immediately before the damage;
 - (2) The difference between value of the property before and after the damage; or
 - (3) The replacement value.
- (b) Compensation for economic loss resulting from the destruction of real or personal property may be allowed in an amount equal to the reasonable costs actually incurred for use of substitute commercial property or, if substitute commercial property was not reasonably available, in an amount equal to the net economic loss which resulted from not having use of the property. When substitute commercial property was reasonably available, but not used, allowable compensation for loss of use is limited to the cost of the substitute commercial property, or the property lost, whichever is less. Compensation for loss of use of noncommercial property is not allowable.

- (c) Compensation for a claim for loss of profits or impairment of earning capacity under §136.213(b) is limited to that allowable under §136.235.

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

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support this claim, Claimant submitted the following documentation:

Documentation Previously Provided:

- Optional OSLTF claim form;
- Copy of Claimant's Valerus business card;
- Records of e-mail communication between Claimant and RP/GCCF, regarding damages;
- 19 Photographs of various areas on Claimant's property;
- Copy of State Farm Payment Plan invoice, due 1 July 2010, with "boat owners" and "watercraft liability" amounts circled;
- Copy of State Farm Payment Plan boat owner's policy, valid through 16 May 2011, showing annual premium of \$1,686.00;
- Copy of State Farm Payment Plan invoice, due 1 June 2010, with "boat owners" and "watercraft liability" amounts circled;
- Copy of payment of \$109.99 for Directv Service, 8 June 2010;
- Copy of payment of \$219.89 for Directv Service, July 2010;
- Copy of State Farm Payment Plan, boat owner's policy, valid 21 May 2010, to 21 May 2011;
- Copy of State Farm Fire and Casualty coverage, valid from 17 July 2010 to 17 July 2011;
- Copy of State Farm Payment Plan invoice, due 1 April 2010, with "boat owners" and "watercraft liability" amounts circled;
- Copy of State Farm Boat Owner's Policy, valid 21 May 2009 to 21 May 2010;
- Copy of State Farm Boat Owner's Policy, valid 16 May 2009 to 16 May 2010;
- Copy of State Farm Payment Plan invoice, due 1 November 2010, with "boat owners" and "watercraft liability" amounts circled;
- Copy of Louisiana Property Insurance payment in amount of \$4,013.00, paid 17 January 2010;
- Copy of Louisiana Property Insurance invoice regarding 146 Pier 4 Court, Chauvin, LA, 4 January 2010;
- Copy of State Farm flood insurance coverage, valid 17 July 2009 to 17 July 2010;
- Copy of Louisiana Property Insurance payment in amount of \$2,780.25, paid 28 August 2010;
- Copy of Receipt showing payment of state sales tax regarding 146 Pier Court 4 Court, 20 October 2010;
- Copy of Entergy invoice, mailed to Claimant on 9 September 2010, and;
- Copy of Deficiency Letter on Interim/Final Payment Claim, dated 22 April 2011.
- Restrictive Covenant [REDACTED] Subdivision, 19 July 2011.

Prior to presentment to the NPFC, Claimant presented an Emergency Advance Payment (EAP) Claim for \$60,000.00 to the RP/GCCF on 5 September 2010. Claimant was assigned Claimant II [REDACTED] and EAP was assigned Claim [REDACTED]. On 26 March 2011, Claimant submitted a First Quarter Interim Claim (ICQ12011) to the RP/GCCF for damage to real or personal property in the amount of \$30,000.00, which was assigned Claim [REDACTED].

Claimant's EAP and ICQ12011 were denied by the RP/GCCF prior to presentment of this claim to the NPFC. On 2 June 2011, Claimant submitted a claim for damage to real or personal property in the amount of \$30,000.00. Because this claim is based on the same subject matter as claims presented to the RP/GCCF, this summary determination shall address Claimant's EAP and ICQ12011 in the amount of \$30,000.00 as presented to the NPFC on 2 June 2011.

NPFC Determination

Under the Oil Pollution Act of 1990 (OPA), at 33 U.S.C. § 2702(a), responsible parties are liable for removal costs and damages resulting from the discharge of oil into or upon the navigable waters or adjoining shorelines or the exclusive economic zone, as described in Section 2702(b) of OPA that result from such incident. One such damage is real or personal property damage pursuant to 33 U.S.C. § 2702(b)(2)(B) which includes "damages for injury to, or economic losses resulting from destruction of real or personal property, which shall be recoverable by a claimant who owns or leases that property.

Under 33 C.F.R. § 136.105(a) and § 136.105(e)(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 seeks compensation based on two property damage theories. First, the Claimant alleged that due to the heavy presence of BP personnel in the area, he lost the ability to use and enjoy his property. He seeks reimbursement for his alleged loss of use. Secondly, the Claimant alleged that his property was physically damaged by BP personnel due to (1) actual physical damage and (2) depreciation in property value.

I. Loss of Use and Enjoyment of Property

This claim portion is based in large part on the Claimant's loss of the ability to use and enjoy his property. However, loss of use of a non-commercial property is not compensable under OPA.⁸

Claimant has not alleged that he was actually blocked from using his property, rather he stated that he did not return to his camp during the oil spill response because BP personnel "basically ran [them] out of the area."⁹ Claimant further cited "concerns for [his] wife and daughter around the seedy looking characters who seem to be roaming freely and unsupervised,"¹⁰ as reasons for his decision not to use his camp.¹¹

⁷ Optional OSLTF Claim Form dated 13 May 2011.

⁸ 33 C.F.R. § 136.217(b)

⁹ Email from Claimant to GCCF, 26 September 2010.

¹⁰ Email from Claimant to GCCF, 26 September 2010.

¹¹ Email from Claimant to GCCF, 26 September 2010.

Claimant submitted copies of insurance payments and cable bills to indicate that he continued to pay these expenses, while not using the property. However, the Claimant's alleged loss of use of his "leisure facility"¹² is not compensable under OPA, which specifically states that, "[c]ompensation for loss of use of noncommercial property is not allowable."¹³

II. Physical Damage

(a) Actual damage

Claimant alleged that BP personnel caused actual damage to his property that should be compensated as it related to removal activities. He submitted photographs showing tire marks on a carport, BP vessels tied to a sea-wall, and muddy tire tracks in a grassy area, all purportedly on the Claimant's property.¹⁴

According to 33 C.F.R. § 136.215, a Claimant must present evidence to indicate (1) that the property was injured or destroyed, (3) the cost of repair or replacement; and, (4) the value of the property both before and after the injury occurred.

Although the Claimant has submitted photographs of purported damages, he did not present evidence to show the value of the property both before and after the injury occurred, or did he present evidence to show the cost of repairing the property. Furthermore, the mere presence of BP personnel on the Claimant's property, which does not result in physical harm to the property, does not constitute a type of property damage that would be compensable under OPA.

(b) Depreciation in property value

In order for the Claimant to prove damage to real property based on depreciation in property value, the Claimant has to have realized an actual loss resulting from damage caused by oil discharge or removal activities.

To show an actual loss, the Claimant would have to present evidence to demonstrate that he sold the property for less than he would have sold it before the injury occurred. The Claimant has not sold his property; therefore he has not realized a loss based on diminution in property value. Until the Claimant sells his property, damage based on property devaluation is speculative and prospective and not OPA compensable.

This claim is denied because (1) loss of non-commercial use of a property is not compensable under OPA, (2) Claimant has not provided sufficient evidence to indicate that his property actually sustained a quantifiable amount of physical damages due to removal activities; and, (3) Claimant has not sold his property at a loss which was caused by the oil spill.

¹² Email from Claimant to GCCF, 26 September 2010.

¹³ 33 C.F.R. § 136.217(b)

¹⁴ Photographs submitted by Claimant, 8 June 2011.

Therefore, Claimant has not sufficiently demonstrated that he sustained damage to real or personal property, or economic losses resulting from removal activities, or the discharge or substantial threat of discharge of oil.

Claim Supervisor: *NPI [REDACTED] Division*

Date of Supervisor's Review: *7/26/11*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

U.S. Department
of Homeland
Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim # N10036-0952
13 June 2011

Re: Claim Number: N10036-0952

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 N10036-0952 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 N10036-0952.

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	N10036-0952
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 certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On 31 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.

Claimant has been employed in various construction and welding jobs in Texas and Louisiana.¹ Claimant asserted that as a result of the Deepwater Horizon oil spill, he was unable to find work.² Claimant did not provide a calculation for his sum certain of \$15,000.00.

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 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 List of Previous Employment History.

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

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

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

- (a) 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 Oil Spill Liability Trust Fund Claim Form received 31 May 2011;
- Pay stubs from [REDACTED] 18 March 2010, 1 April 2010;
- Attachment to OSLTF Claim Form describing claim;
- Pay stubs from unnamed employer dated 21 October 2010-4 November 2010; 19 November 2009;
- Pay stubs from unnamed employer dated 8 October 2009-22 October 2009;
- Pay stub from [REDACTED]: 20 August-2010-10 September 2010;
- Pay stub from unnamed employer dated 25 March 2010;
- List of Previous Employment History.

Claimant's Full Review Final Claim to the GCCF was denied on 27 May 2011.³

NPFC Determination

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

³ GCCF Denial Letter dated 27 May 2011.

The claim is denied because the Claimant has not proven he suffered a loss in the amount of \$15,000.00 due to the injury, destruction, loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil. Claimant's supporting documentation consisted of a sampling of pay stubs regarding his 2009 and 2010 wages. Claimant's provided work history indicated he last worked on 11 April 2010.⁴ The Deepwater Horizon oil spill did not occur until 20 April 2010. Thus, the Claimant failed to present a connection between the Deepwater Horizon oil spill and his loss of employment.

Additionally, the Claimant did not provide evidence to support the allegation that he could not find gainful employment as a result of the Deepwater Horizon oil spill.

Because the Claimant has failed to demonstrate that he suffered a loss in the amount of \$15,000.00 due to the injury, destruction, loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil, this claim is denied.

Claim Supervisor:  *NPPC Claims Adjudication Division*

Date of Review: *6/13/11*

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

Fax: 202-493-6937
5890/DWHZ
Claim # N10036-0953
14 July 2011

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Number [REDACTED]

Re: Claim Number: N10036-0953

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 N10036-0953 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 N10036-0953.

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	N10036-0953
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$9,000.00

FACTS

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

CLAIM AND CLAIMANT

On 07 June 2011, [REDACTED] (Claimant) presented a claim to the National Pollution Funds Center (NPFC) seeking \$9,000.00 in loss of profits and impairment of earnings capacity that allegedly resulted from the Deepwater Horizon oil spill.

Claimant works for [REDACTED] (Talty) based in Navarre, FL.¹ Talty cleans condominiums and vacation rentals in the Navarre region.² Claimant asserts that due to the Deepwater Horizon oil spill, the tourism industry in the Navarre region collapsed, leading to vacancies at the vacation homes that typically utilize [REDACTED].³ As a result of the vacancies, Claimant asserts that she lost the opportunity to clean vacation homes, leading to a reduction of her income in 2010.⁴

Claimant did not provide a calculation regarding her sum certain of \$9,000.00. However, she did state that the sum certain is reflective of losses in 2010, 2011 and 2012.⁵

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 Letter from [REDACTED] dated 29 May 2011.

² PHONECON between NPFC and Claimant dated 11 June 2011.

³ Letter from Claimant dated 07 June 2011 describing claim with a sum certain of \$9,000.00.

⁴ *Id.*

⁵ Answer #1 to NPFC's Request for Additional Information.

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:

- Letter from Claimant describing claim with a sum certain of \$9,000.00, dated 07 June 2011;
- Letter from [REDACTED] dated 29 May 2011;
- Profit and Loss statements from 2009 and 2010 for [REDACTED];
- Summary of Losses from [REDACTED] totaling \$45,924.00;
- 2010 version of 1099 tax form with wages of \$900.00;
- 2009 version of 1099 tax form with wages of \$2,670.00;
- 2008 version of 1099 tax form with wages of \$4,943.00;
- Email from Claimant to NPFC, dated 07 June 2011;

- GoogleMaps printout highlighting locations of The [REDACTED], Beach [REDACTED] and [REDACTED];
- Letter from Carolina [REDACTED] dated 01 November 2010;
- Answers to NPFC's Request for Additional Information;
- Hand-written pay stubs from [REDACTED] dated: 30 April 2009-15 June 2009, 30 June (no year provided), 15 July 2009, 31 July (no year provided), 15 August-30 August 2009, 05 May 2010;
- Tax Return Transcript from the Internal Revenue Service for tax year ending 31 December 2010;
- 2009 1040 Federal tax return form;
- 2008 1040 Federal tax return form.

Prior to presenting this Claim to the NPFC, Claimant filed a Full Review Final Claim with the GCCF on 16 November 2010 in the amount of \$9,000.00 for loss of profits and impairment of earnings capacity.⁶ Claimant was assigned Claimant II [REDACTED] and Claim [REDACTED]. This claim was denied on 15 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 Claimant.

Claimant indicated that she included damages from all of 2011 and 2012 in her sum certain to the NPFC. However, under 33 CFR § 136.235, "the amount of compensation is limited to the actual net reduction or loss of earnings *suffered*." Therefore, much of Claimant's damages are not compensable because they are prospective damages that might accrue in the future.

The remainder of Claimant's damages is denied because Claimant has not provided sufficient evidence to establish a financial loss due to the Deepwater Horizon oil spill. Claimant provided Form 1099-MISC's from [REDACTED] that indicated Claimant's earnings dropped from \$2,670.00 in 2009 to \$900.00 in 2010.⁹ However, Claimant indicated that after the Deepwater Horizon oil spill she began selling baked goods to earn extra income in order to mitigate, or offset, her loss of cleaning fees.¹⁰ The additional earnings Claimant gained from baked goods were accounted for in Claimant's 2010 tax return.

A comparison of Claimant's complete Federal tax returns from 2008 through 2010, indicates that Claimant did not experience a decrease in earnings in 2010 as compared to either 2008 or 2009. In 2008, Claimant's gross business income was \$4,943.00 with a net profit of \$887.00.¹¹ In 2009, Claimant's gross business income was \$2,670.00 with a net profit of \$864.00.¹² In 2010, Claimant's gross business income was \$36,000.00 with a net profit of \$2,580.¹³ Claimant's profit increased by \$1,716.00 from 2009 to 2010, an increase of almost 100%. Thus, Claimant has failed to establish that the Deepwater Horizon oil spill resulted in a diminution of her income in 2010.

⁶ Report from the GCCF dated 05 July 2011.

⁷ Report from the GCCF dated 05 July 2011.

⁸ GCCF Denial Letter dated 15 April 2011.

⁹ 2009 and 2010 Form 1009-MISC


¹⁰ PHONECON between Claimant and the NPFC on 11 June 2011.

¹¹ 2008 1040 Federal tax return form.

¹² 2009 1040 Federal tax return form

¹³ Tax Return Transcript from the Internal Revenue Service for tax year ending 31 December 2010

Because the Claimant has failed to demonstrate she suffered a loss due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil, this claim is denied.

Claim Supervisor: 

Date of Supervisor's Review: 14th Sep 2011

Supervisor's Actions: DENIED

Supervisor's Comments:

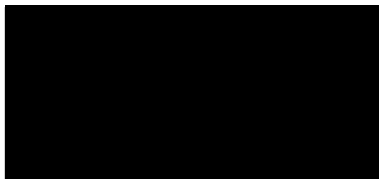
U.S. Department of
Homeland Security

**United States
Coast Guard**



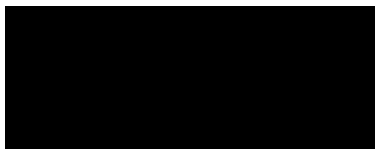
Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD



CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]



5890/DWHZ
Claim # N10036-0954
10 August 2011

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq. (OPA) and the associated regulations at 33 C.F.R. Part 136, denies payment on the claim number N10036-0954 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 N10036-0954.

Mail reconsideration requests to:

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

Sincerely,



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

Enclosure: Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00003743

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-0954
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$175,000.00

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 08 June 2011, [REDACTED] on behalf of [REDACTED] collectively (Claimant), presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$175,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

The Claimant is the Vice President of [REDACTED] an insurance agency located in Jacksonville, Florida. The agency brokers commercial and recreational marine insurance to boat owners in the Gulf and the Atlantic. Approximately 50% of its business is from recreational boat owners in the Gulf. The Claimant alleged that as a result of the Deepwater Horizon oil spill "clients called to cancel and reduce coverage immediately." The Claimant has cancelled and reduced employee pay and bonuses and let go of one employee.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 incident must be clearly indicated and any saved overhead and other normal expenses not incurred as a result of the incident must be established.

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

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

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

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

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

- OSLTF Claim Form signed by the Claimant, 08 June 2011;
- Claimant's letter to BP explaining the claim, 12 May 2011;
- Forms 1120 US Corporate Income Tax Return for 2007, 2008 and 2009;
- Income Statements from April 2010 to December 2010;
- Income Statements from April 2008 to March 2009;
- Income Statements from April 2009 to March 2010;
- Income Statements from April 2010 to March 2011;
- [REDACTED] Office Memo concerning suspension of pay increases and bonuses 05 May 2010;
- [REDACTED] Memo concerning suspension of pay increases and bonuses 01 July 2010;
- [REDACTED] Memo concerning suspension of pay increases and bonuses 01 May 2011;
- Book of Business Report. Listing of policy holders;
- Florida Department of State Division of Corporation Detail of Entity Name web site;
- Claimant's letter to NPFC in response to request for additional information 20 July 2011;
- Copies of broker agreements with [REDACTED]
[REDACTED]
[REDACTED]
- Claimant's worksheet for Direct Bill Commissions for 2008, 2009, 2010 and 2011;
- Income Statements from January 2009 through March 2011;

- Cancellation Request for [REDACTED] 21 May 2010; and
- E-mail between Claimant and [REDACTED], 04 May 2010.

On 24 June 2011, the NPFC sent the Claimant a letter requesting additional information in order to further evaluate the claim. On 20 July 2011, the Claimant responded to the request.

Before presenting a claim to the NPFC, the Claimant filed an Interim Claim with GCCF for \$175,000.00. The Interim was assigned Claimant II [REDACTED] and Claim [REDACTED]. The GCCF denied the Interim Claim on 22 April 2011.³

Based upon the evidence provided by the Claimant, it appears that the subject matter for the GCCF claim is the same as the subject matter of the claim before the NPFC, i.e., the Claimant lost earnings as result of clients cancelling and reducing insurance coverage due to the Deepwater Horizon oil spill. The NPFC deems the claim to GCCF properly presented to the responsible party and to the NPFC. Accordingly, the Claim Summary determination for NPFC Claim N10036-0954 considers and addresses the earnings claimed presented to the responsible party, specifically; GCCF Interim Claim [REDACTED].

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 provided its "Book of Business" which lists all current policy holders, the types of policies, and the dates of coverage. The [REDACTED] was not complete enough to conduct any analysis on a per customer basis. An analysis on a per-customer-basis would be logical in order to identify certain customers that may have cancelled or let their policies lapse; with the next step of receiving some confirmation explaining why that customer cancelled. The NPFC cannot do that with the current data provided.

In the most recent response, the Claimant explained the post-spill revenues and stated that, "[t]he post spill decrease of \$72,000.00 was due to the loss of a major client." The Claimant further stated "[t]his loss was not due to the economy, but the client switching agents. Despite this individual loss, our business did not rapidly decline until after the BP Gulf Oil Spill." If accurate, then the decrease in revenue as described would be attributable to a client's decision to change insurance agents, NOT because of conditions following the Deepwater Horizon incident.

One documented cancellation was provided, however it does not coincide with the assertions that the Claimant has made. The Claimant asserted that commissions declined because vessels were generally not being used following the Deepwater Horizon incident. They also stated that commissions related to commercial charter vessels declined, not because of reduced vessel usage, but rather the insurance that could be provided was not sufficient for those clients to perform oil spill cleanup work.⁴

² GCCF Claim Status site

³ GCCF Denial Letter dated 22 April 2011

⁴ E-mail between Claimant and [REDACTED] 04 May 2010

In review of the Claimant's financials, monthly Profit and Loss statements from January 2009 through March 2011 (except March 2009, missing) were evaluated. Based on these statements, revenue can be segregated between various types of income; "agency billed commissions" (clients pays [REDACTED] and "direct billed commissions" (client pays carrier).

When examining the "agency bill commissions" from May through December 2010 to the prior year, there is a difference of \$27,344.00⁵ (\$195,745.00 in 2009 compared to \$168,401.00 in 2010). Again, although revenue does decline for this category, we cannot identify the specific reasons. Also, we cannot confirm any lost profits without information to explain what may be driving those declines. The NPFC does not have the details to identify if this decline is attributable to one "major" client or a series of many clients. It may also be a normal variance in the business' commission revenue. Total revenue from the business fluctuated from \$628,460 in 2007, \$550,840 in 2008 and \$511,181 in 2009 (per Tax Return, year-ended March 31st). Per the amounts reported in the tax return filings, there is a consistent decline in revenue. The apparent decline in 2010 may be a normal continuation of the declining trends experienced in the prior years.

When reviewing the "direct bill commissions" there does not appear to be a decline in commissions. From May through December 2010, direct bill commissions total \$94,651.00. Direct bill commissions from the same period of the prior year totaled \$95,021.00, for a difference of only \$370.00. ⁶ There does not appear to be any impact to this form of commission.

This claim is denied because the Claimant failed to meet the burden to demonstrate (1) that there was an alleged loss in the amount of \$175,000.00, 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: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *8/10/11*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

⁵ Based on Income Statements 2009 revenue \$195,745 minus 2010 revenue \$168,401 = \$27,344

⁶ Based on Income Statements 2009 revenue \$95,021 minus 2010 revenue \$94,651 = \$370
09/14/11 701A2011-3380-00003747

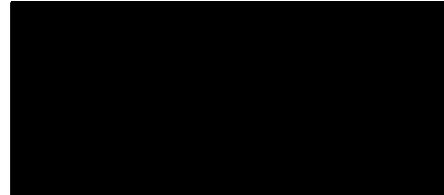
U.S. Department of
Homeland Security

**United States
Coast Guard**



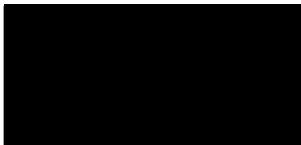
Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD



CERTIFIED MAIL - RETURN RECEIPT REQUESTED
Number: [REDACTED]

5890/DWHZ
Claim# N10036-0956
15 July 2011



RE: Claim Number: N10036-0956

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 N10036-0956 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 N10036-0956.

Mail reconsideration requests to:

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

Sincerely,



National Pollution Funds Center
Claims Manager

Enclosure: Claim Summary/Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	N10036-0956
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 08 June 2011, [REDACTED] Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form seeking \$10,000.00 in lost profits and earning capacity to the National Pollution Funds Center (NPFC) alleging damages resulting from the Deepwater Horizon oil spill.

Claimant works for [REDACTED] in Northport, AL. Claimant alleges that there were six to eight clients that had pre-approved loans and were ready to close on houses but due to the oil spill the customers withdrew from their closings out of fear.

APPLICABLE LAW

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

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

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

- (a) That real or personal property or natural resources have been injured, destroyed, or lost.
- (b) That the claimant's income was reduced as a consequence of injury to, destruction of, or loss of property or natural resources, and the amount of that reduction.
- (c) The amount of the claimant's profits or earnings in comparable periods and during the period when the claimed loss or impairment was suffered, as established by income tax returns, financial statements, and similar

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

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

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

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

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

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support her claim, Claimant submitted

- 1) OSLTF claim form undated
- 2) GCCF denial letter dated 22 April 2011 for the Interim/Final Payment Claim
- 3) 2010 Form 1040 U.S. Individual Income Tax Return
- 4) 2010 W-2 from [REDACTED]

Claimant is claiming lost earnings and wages in the amount of \$10,000.00

Claimant presented an Emergency Advance Payment claim to the GCCF and was issued GCCF Claimant II [REDACTED] and Claim [REDACTED]. On 09 December 2010 the GCCF denied her claim.¹

On 09 June 2011 NPFC sent a letter to Claimant 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 13 June 2011.

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)

¹ See GCCF Claimant's Status Page/Report

and § 136.105(e)(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 in the amount of \$10,000.00 is denied because the Claimant has not shown that her alleged damages are 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.

NPFC sent a certified letter to Claimant requesting additional information in order to further evaluate the claim. The Claimant did not respond to the request. The USPS Tracking site showed the certified letter was delivered. The letter requested among other things contact information for clients that were pre-approved and ready to close on houses for NPFC to ascertain the validity of the claim. Since the Claimant did not present sufficient evidence to prove that her alleged loss is due to the Deepwater Horizon incident, her claim is denied.

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:



Date of Supervisor's Review:

Supervisor's Actions:

Supervisor's Comments:

U.S. Department of
Homeland Security

United States
Coast Guard



Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim # N10036-0957
16 June 2011

Re: Claim Number: N10036-0957

Dear [REDACTED]

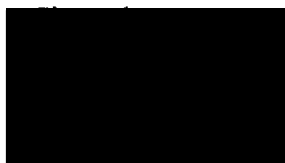
The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq. (OPA) and the associated regulations at 33 C.F.R. Part 136, denies payment on the claim number N10036-0957 involving the Deepwater Horizon oil spill. Please see the attached Claim Summary/Determination 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 N10036-0957.

Mail reconsideration requests to:

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



Division
National Pollution Funds Center
U.S. Coast Guard

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

FOIA2011-3380-00003752

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-0957
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$55,000.00

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 8 June 2011, [REDACTED] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$55,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.¹

Claimant, previously an offshore worker with [REDACTED] alleged that he was laid off following the oil spill. He seeks \$55,000.00 in reimbursement for lost profits and earnings capacity.² According to the Claimant, [REDACTED] "depends on permits being issued from the government . . . But since the oil spill, the lack of permits being issued has stopped the jobs."³

Prior to presentment to the NPFC, the Claimant presented an Emergency Advance Payment Claim as well as an Interim/Final Payment Claim to the RP/GCCF. He was assigned Claimant ID [REDACTED]. The EAP was denied by the RP/GCCF on 23 October 2010, and the Interim/Final Payment Claim was denied on 6 May 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:

¹ Optional OSLTF Claim Form dated 14 May 2011.

² *Id.*

³ Letter from Claimant to GCCF, explaining loss of profits and calculation of sum certain, 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 the OSLTF

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

- OSLTF optional claim form;
- Letter from Claimant to GCCF, explaining loss of profits and calculation of sum certain, undated;
- 2009 Form 1040EZ, showing wages of \$23,914.00;
- 2010 Form 1040EZ, showing wages of \$5,746.00;
- Letter from ██████████ regarding termination of Claimant's health coverage on 30 June 2010;
- 2009 W-2 Form, showing wages of \$23,763.00 paid by ██████████
- 2010 W-2 Form, showing wages of \$5,713.90 paid by ██████████
- Monetary Determination regarding unemployment benefits, provided by Louisiana Workforce Commission, processed on 18 Nov. 2009;
- Letter from ██████████ regarding temporary lay-off of all offshore employees, dated 31 May 2010;
- Letter from ██████████ regarding 10% reduction in pay rates for offshore workers, dated 2 Nov. 2010;
- Copy of check from ██████████ to Claimant for \$1,292.31, dated 12 June 2009;

- Copy of check from [REDACTED] to Claimant for \$1,292.32, dated 26 June 2009;
- Copy of check from [REDACTED] to Claimant for \$1,145.35, dated 4 Sept. 2009;
- Copy of check from [REDACTED] to Claimant for \$1,131.43, dated 11 Sept. 2009;
- Copy of check from [REDACTED] to Claimant for \$1,131.43, dated 2 Oct. 2009;
- Copy of check from [REDACTED] to Claimant for \$1,023.03, dated 30 Oct. 2009;
- Copy of check from [REDACTED] to Claimant for \$1,114.01, dated 6 Nov. 2009;
- Copy of check from [REDACTED] to Claimant for \$1,103.57, dated 24 Dec. 2009;
- Copy of check from [REDACTED] to Claimant for \$492.04, dated 5 Feb. 2010;
- Copy of check from [REDACTED] to Claimant for \$1,119.53, dated 26 Feb. 2010;
- Copy of check from [REDACTED] to Claimant for \$599.00, dated 5 March 2010, and;
- Copy of check from [REDACTED] to Claimant for \$348.38, dated 7 May 2010.

On 8 June 2011, Claimant presented this claim for \$55,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

NPFC Determination

According to 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 contacted the Claimant's employer, Bisso Marine, where the Claimant worked as an offshore "oiler/mechanic."⁴ A representative of the company indicated that the Claimant voluntarily resigned from his position on 22 June 2010, after receiving notice of a temporary lay-off for offshore workers at the company.⁵

Furthermore, the Claimant indicated that permitting problems affecting [REDACTED] lead to his reduction in hours following the Deepwater Horizon oil spill.⁶ In an undated letter to the GCCF, the Claimant stated that offshore work was no longer available due to a "lack of permits being issued from the government."⁷

This claim is denied because the Claimant has failed to show that the alleged loss in the amount of \$55,000.00 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.

Claim Supervisor: *Claims adjudication Division*

Date of Supervisor's review: *6/16/11*

Supervisor Action: *Denial approved*

⁴ Letter from Claimant to GCCF, explaining loss of profits and calculation of sum certain, undated.

⁵ PHONECON: Bisso Marine Co. Inc, and NPFC Staff. See Letter from [REDACTED], Inc. regarding temporary lay-off of all offshore employees, dated 31 May 2010.

⁶ See supra, note 4.

⁷ Id.

U.S. Department
of Homeland
Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim # N10036-0960
16 June 2011

Re: Claim Number: N10036-0960

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 N10036-0960 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 N10036-0960.

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

09/14/11

FOIA2011-3380-00003756

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-0960
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$16,000.00

FACTS

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

CLAIM AND CLAIMANT

On 9 June 2011, Xuan van Nguyen (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$16,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

Claimant was employed as a construction worker for two construction companies, [REDACTED], working specifically on off-shore oil facilities off the Louisiana coast.¹ Claimant stated he was laid-off on 6 April 2010.² Claimant stated that as a result of the Deepwater Horizon oil spill he was unable to obtain future employment.³

Claimant calculated his losses by estimating his 2009 weekly paychecks which were between \$500 to \$600 and extrapolated that out for one year, from April 2010 to April 2011, which made up his sum certain of \$16,000.00.⁴

APPLICABLE LAW

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

The OSLTF, which is administered by the NPFC, is available to pay claims for uncompensated damages pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136. With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person by payment within 90 days 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 dated 9 June 2011.

² *Id.*

³ *Id.*

⁴ PHONECON between Claimant and NPFC dated 6 June 2011.

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

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

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

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

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

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

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

- Optional Oil Spill Liability Trust Fund Claim Form, received 9 June 2011;
- GCCF Denial Letter dated 6 May 2011;
- 2010 version of IRS Form 8879;
- 2009 version of IRS Form 8879.

Prior to presentment to the NPFC, Claimant presented an Emergency Advance Payment (EAP) claim to the RP/GCCF for \$18,000.00 in lost profits and earnings. That claim was denied on 14 December 2010.⁵

Claimant seeks an alleged loss of \$16,000.00 in earnings resulting from the Deepwater Horizon oil spill from the OSLTF.

⁵ GCCF Denial Letter dated 14 December 2010.

NPFC Determination

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

The claim is denied because the Claimant has not proven that he suffered a loss due to the Deepwater Horizon oil spill. The Claimant's supporting documentation consisted of tax forms regarding his 2009 and 2010 wages. The Claimant, however, failed to present a connection between his documentation and the Deepwater Horizon oil spill. In fact, in a conversation with the NPFC, the Claimant admitted he was laid-off prior to the Deepwater Horizon oil spill.⁶ Although the Claimant asserted the aftermath of the oil spill prevented him from obtaining future employment,⁷ he provided no evidence to support this assertion.

Based on the foregoing, the Claimant has not proven that his alleged loss of \$16,000.00 is due to the injury, destruction, loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil. Accordingly, The Claimant has not met the evidentiary burden prescribed in 33 C.F.R. Part 136, and the claim is denied.

Claim Supervisor: NPFC [REDACTED] *ion*

Date of Review: 6/16/11

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

⁶ PHONECON between Claimant and NPFC dated 9 June 2011.

⁷ Claimant's loss calculation includes extrapolating an estimate of his 2009 salary from April 2010-April 2011 to determine his sum certain of \$16,000.00. To the extent that this loss calculation includes prospective or future losses, it is non-compensable under OPA. Under OPA, only actual net reductions or loss of earnings or profits are compensable. Claimant's inclusion of future earnings for wage earnings after he was laid-off is entirely prospective in nature. There is no indication that Claimant would generate wages after he was laid-off to substantiate the multiplied amount irrespective of the Deepwater Horizon incident.

U.S. Department
of Homeland
Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim # N10036-0962
10 August 2011

Re: Claim Number: N10036-0962

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 N10036-0962 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 N10036-0962.

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: (1) Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00003760

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-0962
Claimant	[REDACTED]
Type of Claimant	Business
Type of Claim	Loss of Profits and Impairment of Earnings Capacity and Real or Personal Property Damages
Amount Requested	\$324,000.00

FACTS

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

CLAIM AND CLAIMANT

On 09 June 2011 [REDACTED] on behalf of [REDACTED] (collectively Claimant) presented an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) seeking \$235,000.00 in loss of profits and impairment of earnings capacity, as well as \$89,000.00 for real or personal property damages, that allegedly resulted from the Deepwater Horizon oil spill. The Claimant's combined loss is \$324,000.00.

With respect to the alleged loss of \$235,000.00 in loss of profits and earnings capacity, the Claimant is a franchise UPS retail store located in Gulf Breeze, Florida.¹ The Claimant provides shipping and printing services to local individuals and businesses, as well as tourists in the area.² The Claimant asserted that, as a result of the Deepwater Horizon oil spill, the tourism industry in the Gulf Breeze area plummeted.³ The Claimant lost income since there were fewer tourists to purchase the Claimant's services, such as tourists shipping products back to their residential homes.⁴ Additionally, the collapse of the tourism industry reduced the demand for professional printing and other services from local businesses and residents.⁵

With respect to the alleged loss of \$89,000.00 in real or personal property damages, the Claimant asserted that the Deepwater Horizon oil spill caused the business itself to experience a loss in value, which the Claimant asserted has kept the business from being resold.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).

² Letter from Claimant to GCCF dated 25 April 2011.

³ Letter from Claimant to NPFC dated 2 July 2011.

⁴ Id.

⁵ Id.

⁶ Optional OSLTF Claim Form, dated 4 June 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.

Pursuant to the claims regulations, 33 C.F.R. 136.315, a claimant must establish the following to prove damage to real or personal property:

- (a) An ownership or leasehold interest in the property;
- (b) That the property was injured or destroyed;
- (c) The cost or repair or replacement;
- (d) The value of the property both before and after injury occurred.

In addition, for each claim for economic loss resulting from destruction of real or personal property, the claimant must establish:

- (a) That the property was not available for use and, if it had been, the value of that use;
- (b) Whether or not substitute property was available and, if used, the costs thereof;
- (c) That the economic loss claimed was incurred as the result of the injury to or destruction of the property.

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

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

- (a) 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:

- Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form, dated 4 June 2011;
- [REDACTED] Profit and Loss statement for May 2010-December 2010;
- [REDACTED] Monthly Profit and Loss statements for January 2008 – December of 2010;
- Letter from Claimant to GCCF dated 25 April 2011;
- Letter from Sal Lacognata to GCCF dated 3 May 2011;
- Undated letter from [REDACTED];
- Undated letter from [REDACTED];
- GoogleMaps printout of [REDACTED];
- Monthly Combined Sales Report dated 25 April 2011 listing customer count;
- Monthly Combined Sales Report dated 25 April 2011 listing total gross sales;
- GoogleMaps printout of Ft. Walton Beach, Florida;
- GCCF Document-Attachment A, Establishing Evidence of a Connection to the Spill;
- Customer list beginning with [REDACTED] and ending with [REDACTED];
- GCCF Document-Supporting Documentation for a Claim;
- Same Store Sales (All Products) printout dated 23 November 2010;
- Monthly Combined Sales Report dated 23 November 2010 listing subject to royalty;
- 2009 version of 1040 federal tax return;
- GCCF Claim Form;
- 2008 version of 1040 federal tax return.
- Letter from Claimant to NPFC dated 24 June 2011;
- Attachment A titled 'The [REDACTED] Box Holder Master Report' (118 pages);
- Attachment B titled 'The [REDACTED] Box Holder Master Report' (17 pages);
- Attachment C titled 'The [REDACTED] Box Holder Master Report' (8 pages);
- Attachment D titled 'Monthly Combined Sales Report' with Product/Service listed as 'Subject To Royalty' dated 23 November 2010;
- Attachment E, document from [REDACTED] website listing for sale Owner's business, updated listing;
- 2010 1040 Federal tax return form; and
- Profit and Loss spreadsheet for the period January 2010-April 2010,

Prior to presenting this Claim to the NPFC, the Claimant filed an Emergency Advance Payment (EAP) claim with the GCCF on 12 September 2010 in the amount of \$37,900.00 for lost profits and earnings capacity.⁷ He was assigned Claimant ID [REDACTED] and Claim [REDACTED]. This claim was denied on 2 November 2010.⁸ Additionally, the Claimant filed a Full Review Final Payment claim with the GCCF on 27 November 2010 in the amount of \$197,900.00 for lost profits and earning capacity; he was assigned Claim [REDACTED]. This Final claim was denied on 21 April 2011.¹⁰

Based upon the evidence provided by the Claimant, it appears that the subject matter for each of the GCCF claims is the same as the subject matter of the Claimant's lost profits and earning capacity claim

⁷ Report from the GCCF dated 23 June 2011.

⁸ GCCF Denial Letter dated 2 November 2010.

⁹ Report from the GCCF dated 23 June 2011.

¹⁰ GCCF Denial Letter dated 21 April 2011.

before the NPFC, i.e., that the Claimant, a UPS retail store, lost earnings from both tourists and resident patrons due to the Deepwater Horizon oil spill. The NPFC deems that both of the Claimant's loss of profits and earning claims to be properly presented to the RP and properly presented to NPFC up to the amount of \$197,900.00. Accordingly, this Claim Summary Determination for NPFC Claim N10036-0962 considers and addresses the earnings claimed in both of the claims presented to the RP, specifically; GCCF Claim #'s [REDACTED] (EAP) and [REDACTED] (FRF).

NPFC Determination

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

LOSS OF PROFITS OR IMPAIRMENT OF EARNING CAPACITY

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 a Final Claim in the amount of \$197,900.00 for loss of profits or impairment of earning capacity to the GCCF. The Claimant then presented a claim for loss of profits or impairment of earning capacity in the amount of \$235,000.00 to the NPFC. Any claimed amount of damages exceeding \$197,900.00 was not properly presented to the RP/GCCF pursuant to 33 C.F.R. § 136.103(a) and therefore, \$37,100.00 is denied.

The remainder of the claim is denied because the Claimant has not proven that they suffered a loss in the amount of \$197,900.00 due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil. The Claimant's calculation of loss included multiplying a nine month loss of \$39,000.00 by five, representing a five year period from the date of the Deepwater Horizon oil spill.¹¹ However, under 33 CFR § 136.235, "the amount of compensation is limited to the actual net reduction or loss of earnings *suffered*." Therefore, the Claimant cannot be compensated for any prospective damages that might accrue in the future. After nullifying the Claimant's future damages, the Claimant's asserted business losses were limited to the time from the commencement of the Deepwater Horizon oil spill to the end of 2010.¹²

The Claimant asserted that the oil spill caused a reduction in tourism in the Gulf Breeze, Florida region resulting in a decrease in income from both tourists and residents businesses and individuals. However, the Claimant's submitted financial information indicates the business was already struggling prior to the Deepwater Horizon oil spill. The business went from gross earnings of \$374,345.00¹³ and a net profit of (\$7,110.00) in 2008 to gross earnings of \$326,297.00¹⁴ and a net profit of (\$23,151.00) in 2009. The Claimant asserted that the company's losses from 2008 and 2009 occurred because of a carryover from a startup of the company, as well as a bad economy in 2009.¹⁵ Furthermore, the Claimant asserted that the negative trending in earnings from the prior two years should be discounted by a strong showing of the company in February and March of 2011.¹⁶ Yet, the Claimant's financials from 2010 indicate that the Claimant's gross earnings in January – April were still slightly lower than the same period in 2009, and net profits were significantly reduced going from \$277.67 in 2009 to (\$15,338.77) in 2010.¹⁷

¹¹ Letter from Claimant to NPFC dated 24 June 2011, answer one.

¹² Letter from Claimant to NPFC dated 24 June 2011, answer two. Claimant states, "I'm claiming the losses of 2010. However, 2011 continues to see deterioration in sales."

¹³ 2008 version of 1040 federal tax return

¹⁴ 2009 version of 1040 federal tax return

¹⁵ Letter from Claimant to NPFC dated 24 June 2011, answer four.

¹⁶ Letter from Claimant to NPFC dated 24 June 2011, answer four.

¹⁷ [REDACTED] Monthly Profit and Loss statements for January 2008 – December of 2010.

This pattern of earnings, marginal decrease in gross earnings vs. substantial decrease in net profits, continued throughout 2010. Gross earnings for all of 2010 were only slightly lower at 321,251.00¹⁸, compared to the \$326,297.00 earned in 2009. The Claimant's net profits decreased heavily from 2009 to 2010, dropping from (\$23,151.00)¹⁹ to (\$71,350.00)²⁰. Considering that the Claimant's cost of goods sold was lower in 2010²¹ than 2009²², the Claimant's decreased net profits in 2010 is largely explained by the Claimant's increased business expenses, which the Claimant did not connect to the Deepwater Horizon oil spill. Thus the Claimant fails to isolate a reduction in earnings due to the Deepwater Horizon oil spill.

Furthermore, the Claimant cites the Deepwater Horizon oil spill as the cause of a reduction in the income from his potential clients by damaging the tourism industry in the Pensacola, FL region. By extension, the Claimant cites the reduced income of his potential clients as reducing their patronage of his business. The Claimant is unable to provide any contracts that were cancelled due to the Deepwater Horizon oil spill, indicating that this type of retail business was such that it could not track cancellations.²³ He did provide correspondence from three potential clients and the Claimant established that these particular clients decided to forgo the use of his UPS services in light of their own reduced income.²⁴ However, the Claimant has not sufficiently established that the oil spill was the cause of any particular reduction in income to any particular prospective client. Accordingly, the Claimant has not shown that any alleged losses are due to the Deepwater Horizon oil spill as opposed to other factors, such as cost-cutting decisions by clients to reduce business expenses or the generally declining market conditions.

This claim is denied because the Claimant has failed to (1) make presentment of \$37,100.00 claimed to the NPFC pursuant to 33 C.F.R. § 136.103(a), (2) demonstrate that there was an alleged loss in the amount of \$197,900.00, and (3) demonstrate that its alleged loss is due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil, this claim is denied.

DAMAGE TO REAL OR PERSONAL PROPERTY

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 has not presented any claims for damage to real or personal property to the GCCF.²⁵ Therefore, any claimed amount of damages for damage to real or personal property was not properly presented to the RP/GCCF pursuant to 33 C.F.R. § 136.103(a) and is therefore denied.

Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *8/10/11*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

¹⁸ 2010 version of 1040 federal tax return

¹⁹ 2009 version of 1040 federal tax return

²⁰ 2010 version of 1040 federal tax return

²¹ 2010 version of 1040 federal tax return

²² 2009 version of 1040 federal tax return

²³ Letter from Claimant to NPFC dated 24 June 2011, response to document request number four.

²⁴ Letter from [REDACTED] dated 3 May 2011, undated letter from [REDACTED] and undated letter from Jill Teston.

²⁵ Report from the GCCF dated 23 June 2011.

U.S. Department
of Homeland
Security

United States
Coast Guard



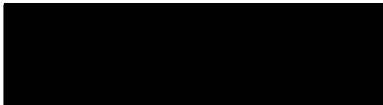
Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD



CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Number: [REDACTED]



5890/DWHZ
Claim # N10036-0963
10 August 2011

Re: Claim Number: N10036-0963

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 N10036-0963 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 N10036-0963.

Mail reconsideration requests to:

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

Sincerely,



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

Enclosures: (1) Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00003766

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-0963
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$34,600.00

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 certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On 08 June 2011, [REDACTED] (Claimant) presented an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) seeking \$34,600.00 in loss of profits and impairment of earnings capacity that allegedly resulted from the Deepwater Horizon oil spill.

The Claimant is a partner in [REDACTED] Salon in New Orleans, Louisiana.¹ The Claimant also acts as an independent contractor in her capacity as a hairdresser with Divine Appointment Salon.² The Claimant asserted that as a result of the Deepwater Horizon oil spill, the tourism industry in New Orleans collapsed, reducing the number of potential tourist/clients to patronize [REDACTED] Salon.³ Additionally, the Claimant asserted that the downturn in the tourism industry reduced the income of the local population, rendering them unable to frequent the salon as well.⁴ As a result of the drop in tourists and residential clients at [REDACTED] the Claimant asserted she lost income.⁵

Claimant did not provide a calculation regarding her sum certain of \$34,600.00.

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,

¹ PHONECON between NPFC and Claimant dated 28 July 2011.

² Id.

³ Letter from Claimant dated 17 May 2011 (1).

⁴ Id.

⁵ Id.

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

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

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

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

Pursuant to the claims regulations, 33 C.F.R. 136.315, a claimant must establish the following to prove damage to real or personal property:

- (a) An ownership or leasehold interest in the property;
- (b) That the property was injured or destroyed;
- (c) The cost or repair or replacement;
- (d) The value of the property both before and after injury occurred.

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

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

- (a) 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:

- OSLTF Claim Form received 08 June 2011;
- Document titled 'Documents Show Loss of Earnings Or Profits';
- News article titled 'Mayor Landrieu threatens litigation over BP tourism money request';
- News article titled 'BP is starting to make it right for Louisiana's seafood and tourism: An editorial';
- Letter from Claimant dated 17 May 2011 (1);
- OSLTF Claim Form dated 12 July 2011;⁶
- GCCF Notice of Determination for Emergency Advance Payment;
- GCCF Denial Letter dated 29 March 2011;
- GCCF Letter dated 16 October 2010;
- Letter from Claimant dated 17 May 2011 (2);
- Photocopy of Louisiana State Board of [REDACTED] Inspection Sheet;
- 2009 Form 1040-ES Payment Voucher 1;
- 2009 Form 1040-ES Payment Voucher 2;
- 2009 Form 1040-ES Payment Voucher 3;
- 2009 Form 1040-ES Payment Voucher 4;
- 2008 Form 1040-V Payment Voucher ;
- 2008 1040 Federal tax return form;
- Letter from [REDACTED] to Claimant dated 24 June 2011;
- 2009 1040 Federal tax return form;
- Email from Claimant to NPFC dated 17 July 2011;
- Email from Claimant to NPFC dated 17 July 2011;
- List of Clients with dates from 9 January 2009-31 December 2009;
- Letter from [REDACTED] to NPFC dated 25 June 2011;
- Letter from [REDACTED] to NPFC dated 25 June 2011;
- Letter from [REDACTED] to NPFC dated 25 June 2011;
- Letter from [REDACTED] to NPFC dated 25 June 2011;
- Photocopy of Louisiana State Board of Cosmetology, Cosmetologist-Renewal dated 24 January 2011;
- Photocopy of Louisiana State Board of Cosmetology, Cosmetologist Instructor Renewal dated 25 January 2011;
- Photocopy of Louisiana Board of Barber Examiners Department of Labor Certificate; and
- GCCF Denial Letter dated 29 March 2011.

⁶ On 28 July 2011, Claimant requested the NPFC to disregard this second submitted OSLTF Claim Form in lieu of Claimant's initial submission.

Prior to presenting this Claim to the NPFC, the Claimant filed an Emergency Advance Payment (EAP) Claim with the GCCF on 07 October 2010 in the amount of \$9,600.00.⁷ The Claimant was assigned Claimant Identification [REDACTED] and Claim Identification [REDACTED]. The Claimant's EAP Claim was granted on 05 November 2010 in the amount of \$9,600.00.⁸ Additionally, the Claimant filed a Quick Pay Claim with the GCCF on 28 December 2010.⁹ Claimant was assigned Claim Identification [REDACTED]. The Claimant's Quick Pay Claim was denied on 29 March 2011.¹⁰

Based upon the evidence provided by the Claimant, it appears that the subject matter for the GCCF claim is the same as the subject matter of Claimant's claim before the NPFC, i.e., that due to the Deepwater Horizon oil spill, the tourism industry in New Orleans collapsed, reducing the demand for the Claimant's salon for both tourists and local residents whose incomes are dependent on the tourism industry. The NPFC deems Claimant's GCCF claim to be properly presented to the RP and properly presented to the NPFC. Accordingly, this Claim Summary Determination for NPFC Claim N10036-0963 considers and addresses the earnings claimed in the claim presented to the responsible party, specifically; GCCF Claim [REDACTED] (Quick Pay Claim).

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, acting in her capacity as a partner with Divine Appointment Salon, presented an Emergency Advance Payment in the amount of \$9,600.00 for loss of profits and impairment of earnings capacity to the GCCF. The GCCF acknowledged the claim as presented by a business and subsequently granted the Emergency Advance Payment in the amount of \$9,600.00. Additionally, the Claimant, acting as a business, presented a Quick Pay claim to the GCCF. The Claimant then presented a claim for loss of profits and impairment of earnings capacity as a private individual in the amount of \$34,600.00 to the NPFC. Due to the Claimant's failure to present a claim as a private individual to the GCCF, there are no properly presented damages to the RP/GCCF pursuant to 33 C.F.R. § 136.103(a) and any amount of damages presented to the NPFC are therefore denied.

Furthermore, the Claimant indicated that her business partner filed for, and received, a Quick Pay payment on behalf of [REDACTED]. This Quick Pay payment contains a release to future liability from Divine Appointment to the RP. The Claimant, a partner in Divine Appointment Salon, has not provided the full release for the NPFC's review. Accordingly, the Claimant fails to produce evidence to enable the NPFC to determine the release's applicability to the Claimant's ability to file a claim against the OSLTF.

Moreover, even if the Claimant did provide proper presentment of her claim to the NPFC, the Claimant fails to prove she suffered a financial loss due to the Deepwater Horizon oil spill. The

⁷ Report from the GCCF dated 29 July 2011.

⁸ GCCF Notice of Determination, Emergency Advance Payment, dated 05 November 2010.

⁹ Report from the GCCF dated 29 July 2011.

¹⁰ GCCF Denial Letter dated 29 March 2011.

Claimant's submitted tax returns do not indicate any individual earnings from the Claimant in 2009.¹¹ As well, the Claimant did not submit any financial documentation from 2010 period.

It should be noted, in reference to the Claimant's assertion that tourism in New Orleans, LA was down in 2010, that the New Orleans Convention and Visitor's Bureau released a report on 14 April 2011 stating that, "New Orleans' tourism industry has achieved a major milestone, welcoming 8.3 million visitors in 2010, a 10.7 percent increase over 2009, and the first time to reach 8 million visitors since Katrina. Those 8.3 million visitors spent \$5.3 billion, a \$1.1 billion increase over 2009 and the highest spending in the city's history."


This claim is denied because the Claimant has failed to (1) make presentment of some of the costs claimed to the NPFC pursuant to 33 C.F.R. § 136.103(a), (2) demonstrate that there was an alleged loss in the amount \$34,600.00, and (3) demonstrate that its alleged loss is due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil, and (4) provide the NPFC a full copy of the executed release by the Claimant's business partner associated with their joint interests, therefore this claim is denied.


Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *8/10/11*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

¹¹ In Claimant's 2008 tax return, Claimant reported K-1 earnings as a partner of  as well as Schedule C earnings as a contractor. In 2009, Claimant did not have Schedule C earnings; only her earnings as a partner of Divine Appointment.

U.S. Department
of Homeland
Security

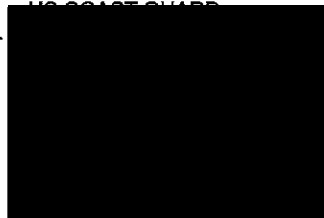
United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100

US COAST GUARD

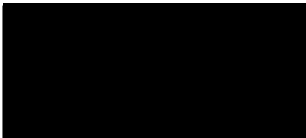


Fax: 202-493-6937

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim # N10036-0964
22 June 2011



Re: Claim Number: N10036-0964

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 N10036-0964 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 N10036-0964.

Mail reconsideration requests to:

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

Sincerely,



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

Enclosures: (1) Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00003772

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-0964
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 certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On 9 June 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.¹

Claimant was employed in the janitorial industry cleaning hotels in Destin, FL with [REDACTED]. The Claimant asserted he left this job and became employed as a beach cleaner with [REDACTED].³ Claimant stated that he was promised three to five years employment cleaning beaches as a result of the Deepwater Horizon oil spill.⁴ In August 2010, however, the Claimant was laid-off from this job.⁵ Claimant stated that he filed a claim with the NPFC because he was lied to regarding the length of time he would be employed in oil spill cleanup.⁶

Claimant's sum certain of \$10,000.00 was calculated by making an estimate of what he was to be paid in 2010.⁷

APPLICABLE LAW

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

¹ In a conversation with the NPFC on 15 June 2011, Claimant stated he did not prepare the OSLTF Claim Form nor any of the documents included as part of his claim. He does not speak English and thus had to depend on others for the filing of his claim. Additionally, Claimant stated he was not aware of the assertions made in the submitted claim on his behalf. Claimant, however, did indicate the sum certain of \$10,000.00 was accurate and that he did sign the completed OSLTF Claim Form. During its conversation with Claimant, the NPFC obtained information from Claimant constituting his assertions for filing a claim with the NPFC.

² Affidavit dated 28 March 2011 notarized by [REDACTED].

³ PHONECON between Claimant and NPFC dated 15 June 2011.

⁴ Id.

⁵ Id.

⁶ Id.

⁷ Id.

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

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

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

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

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

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

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

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

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

- Optional OSLTF Claim Form, dated 9 June 2011;
- 2010 W-2 Federal tax form from [REDACTED];
- Notice to Claimant regarding unemployment;
- Affidavit dated 28 March 2011 notarized by [REDACTED]

- Document labeled, 'Record of Paid', dated 30 November 2010 notarized by [REDACTED] Nunez;
- 2010 1040 Federal tax return form;
- 2010 W-2 Federal tax form from [REDACTED];
- 2010 W-2 Federal tax form from [REDACTED];
- 2009 W-2 Federal tax form from [REDACTED];
- 2009 2040 Federal tax return form;
- 2008 W-2 Federal tax form from [REDACTED];
- 2008 W-2 Federal tax form from [REDACTED];
- Photocopies of 1) Social Security Card, 2) Florida Driver's License, 3) Employment Authorization Card;
- Personnel Action Report dated 11 January 2010;
- Pay stubs from [REDACTED] dated 28 September 2010, 16 October 2010;
- Pay stubs from [REDACTED] dated 24 December 2010-7 January 2010;
- Pay stub from [REDACTED] dated 7 May 2010-14 May 2010;
- Pay stub from [REDACTED] dated 25 June 2010;
- Pay stub from [REDACTED] dated 15 October 2010 ;
- Pay stub from B.L. [REDACTED] pay period 12/28/09-01/03/10;
- Pay stubs from [REDACTED] dated 18 June 2010, 2 July 2010-13 August 2010.

Prior to presenting this claim to the NPFC, Claimant filed an Emergency Advance Payment (EAP) claim with the GCCF for \$25,528.00 on 22 September 2010.⁸ He was assigned Claimant ID [REDACTED] and Claim [REDACTED]. This claim was denied by the GCCF on 14 December 2010.⁹ Additionally, Claimant filed an Interim Payment claim on 11 January 2011 and was assigned Claim ID [REDACTED].¹⁰ This claim was denied by the GCCF on 16 April 2011.¹¹

On 9 June 2011, Claimant presented this claim to the OSLTF for an alleged loss in earnings of \$10,000.00 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 the Claimant.

Claimant has failed to establish his alleged loss of earnings of \$10,000.00 due to the Deepwater Horizon oil spill. Claimant's supporting documents, including federal tax forms and pay stubs, indicated that the Claimant was generally employed at non-permanent positions. Although the Claimant provided a notarized letter¹² describing the impact the Deepwater Horizon oil spill had on his janitorial employment, the Claimant later admitted he voluntarily left this job to obtain gainful employment cleaning up the beaches affected by the oil spill.¹³

⁸ Report from the GCCF dated 13 June 2011.

⁹ GCCF Denial Letter dated 14 December 2010.

¹⁰ Report from the GCCF dated 13 June 2011.

¹¹ GCCF Denial Letter Dated 16 April 2011.

¹² Claimant stated he did not prepare the letter nor understand the information in it. Claimant stated the letter was drafted by the notary that notarized the letter, Sobeyda Nunez, and in a conversation with the NPFC refuted the letter's information describing his employment history.

¹³ PHONECON between Claimant and NPFC dated 15 June 2011.

Although the Claimant indicated that he was promised employment for 3-5 years on oil spill clean-up, he has not provided documentation indicating that he was employed under guaranteed terms.

Because the Claimant has failed to demonstrate (1) the alleged loss in the amount of \$10,000.00 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, this claim is denied.



Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Review: *6/22/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

U.S. Department of
Homeland Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937

CERTIFIED MAIL - RETURN RECEIPT REQUESTED
Number: [REDACTED]

5890/DWHZ
Claim# N10036-0965
14 July 2011

[REDACTED]

RE: Claim Number: N10036-0965

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 N10036-0965 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 N10036-0965.

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

FOIA2011-3380-00003777

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	N10036-0965
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$22,771.54

FACTS

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

CLAIM AND CLAIMANT

On 09 June 2011, [REDACTED] (Claimant) presented a letter seeking \$22,771.54 in lost profits and earning capacity to the National Pollution Funds Center (NPFC) alleging damages resulting from the Deepwater Horizon oil spill.

Claimant took a seasonal job with [REDACTED] in Key West, Florida from December 2008 to March 2009. The Claimant returned to a prior commitment in Michigan for the remainder of 2009. Claimant then took a permanent position with [REDACTED] in Key West, FL starting 08 March 2010. Claimant continued working with [REDACTED] until April 2011. Claimant asserts that she received less money and hours over the course of 2010 as the Deepwater Horizon oil spill reduced the number of banquets and guests staying at the resort where Claimant was employed.

APPLICABLE LAW

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

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

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

- (a) That real or personal property or natural resources have been injured, destroyed, or lost.
- (b) That the claimant's income was reduced as a consequence of injury to, destruction of, or loss of property or natural resources, and the amount of that reduction.

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

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

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

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

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support her claim, Claimant submitted

- Letter from Claimant explaining claim
- GCCF denial of Interim/Final Payment
- Article from Time titled "Florida Hopes for best but braces for oil spill"
- 2008 W-2 from [REDACTED] ([REDACTED])
- 2009 W-2 from [REDACTED]
- 2009 W-2 from [REDACTED]
- 2010 W-2 from [REDACTED]
- 2010 W-2 from St. Petersburg Yacht Club
- 2010 W-2 from [REDACTED]
- 2010 W-2 from [REDACTED]
- 2010 Form 1040EZ Income Tax Return for Single and Joint Filers with No Dependents
- Paystubs from [REDACTED]
- Pay History from [REDACTED]
- Letter from Claimant addressing the request for additional information letter from the NPFC dated 13 June 2011
- Article from the SunSentinel titled "Summer hotel bookings in Florida slow as oil flows in Gulf"

Claimant is claiming lost earnings and wages in the amount of \$22,771.54

Claimant presented an Interim claim to the GCCF and was issued GCCF Claimant ID [REDACTED] and Claim [REDACTED]. On 19 May 2010 the GCCF denied her claim.¹

NPFC Determination

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

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.

Claimant worked in Key West, Florida for [REDACTED]. Claimant's submission of W-2 forms and tax information shows that in 2010 she earned \$27,447.25 and in 2009 Claimant earned \$11,907.98. In 2010 Claimant earned \$15,539.27. This is more than her 2009 earnings and shows no economic loss due to the Deepwater Horizon oil spill.

Bed taxes collected in Key West for 2010 exceeded 2009 totals according to Monroe County Tax Collector's Office.² According to data collected by the Florida Department of Revenue, Office of Research & Analysis, Monroe County tax collection stayed constant with previous years or increased post oil spill for Retail Taxable Sales and Tourism & Recreation Taxable Sales.³ Furthermore according to Key West International Airport passenger arrivals after the oil spill increased.⁴ Loss of business due to the oil spill in Key West, Florida is unsubstantiated in lieu of the data provided.

Claim Supervisor:	[REDACTED] National Education Fund Division
Date of Supervisor's Review:	14 July 2011
Supervisor's Actions:	Claim is Denied
Supervisor's Comments:	

¹ See GCCF Claimant's Status Page/Report

² See Monroe County Tax Collector's Office: Bed Tax Collected from 1996 to 2011

³ See Florida Department of Revenue, Office of Research & Analysis: Monroe County Sales Tax Data 2004 to 2011

⁴ See Key West International Airport: Passenger Counts 1997 to 2010

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim # N10036-0967
15 June 2011

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq. (OPA) and the associated regulations at 33 C.F.R. Part 136, denies payment on the claim number N10036-0967 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 N10036-0967.

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

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-0967
Claimant	██████████
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$12,000.00

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 08 June 2011, ██████████ (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$12,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

The Claimant is self-employed. He had a furniture and appliance business in Mobile, Alabama that bought used furniture and appliances at auctions and the Salvation Army for re-sale. He also started a lawn cutting business. Due to the Deepwater Horizon oil spill, he stated that he could not buy furniture and appliances at a price to make a profit and he lost his business. Also due to the oil spill, he stated that he lost income because his lawn cutting customers started cutting their own grass.¹

In 2010, the Claimant stated he received a \$10,000.00 payment from the Alabama Crime Victim Campaign. Since he could not pay his rent, he and his family moved into his grandmother's house. He further stated that he spent the \$10,000 to fix up his grandmother's house since he and his family were staying there. Also, the Claimant receives Security Supplemental Income (SSI).²

The Claimant presented an Emergency Advance Payment (EAP) Claim to the GCCF and was issued GCCF Claimant ID ██████████ and Claim ██████████. On 15 December 2011, the GCCF denied the claim because the Claimant did not provide supporting documentation.³

¹Hand-written letter from Claimant dated 10 November 2010 explaining claim

²Hand-written letter from Claimant dated 25 November 2010 explaining claim

³GCCF Claim Status site

The Claimant then filed Interim Payment and Final Payment Claims with the GCCF. On 22 April 2011, the GCCF denied the claims because the Claimant did not provide documents sufficient to establish his financial loss.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:

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

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

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

- (a) 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;

⁴GCCF Claim Status site

- (d) Any saved overhead or normal expenses not incurred as a result of the incident;
and
- (e) State, local, and Federal taxes.

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

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

- OSLTF Claim Form signed by Claimant 01 May 2011
- Hand-written letter to NPFC from Claimant dated 10 November 2010 explaining claim
- Hand-written letter to NPFC from Claimant dated 25 November 2010 explaining claim
- Schedule C Profit or Loss From Business for 2009 and 2010
- Forms 1040 US Individual Income Tax Return for 2009 and 2010 with supporting schedules
- Letters from customers to whom he sold appliances
- Copy of Alabama drivers license
- Copy of Social Security card

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 \$12,000.00, as claimed, or (2) the correlation, if any, between this alleged loss and the Deepwater Horizon oil spill. The Claimant stated that due to the Deepwater Horizon oil spill, he could not buy furniture and appliances at a price in order to make a profit and he lost his business. Also due to the oil spill, he stated he lost income because his lawn cutting customers started cutting their own grass. Based on the documentation the Claimant submitted, the Claimant has not proven that his losses were a consequence of the Deepwater Horizon oil spill. The Claimant provided hand-written letters from alleged clients for his appliance sales and lawn service but he provided no financial documentation as established by financial statements or bank statements which would demonstrate deposits made by Claimant from his alleged clients that would also support his earnings as reported on his income tax return.

The claim is denied because the Claimant has failed to demonstrate (1) the alleged loss of profits in the amount of \$12,000.00, 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.

0 1
Claim Supervisor:



Date of Supervisor's review: *6/15/11*

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

5890/DWHZ
Claim # N10036-0968
11 August 2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: [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 N10036-0968 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 N10036-0968.

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

FOIA2011-3380-00003786

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-0968
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 claims for certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On 09 June 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.

The Claimant is an employee of [REDACTED] is located in Jacksonville, Florida and sells commercial and recreation marine insurance to boat owners in the Gulf of Mexico and the Atlantic Ocean. The Claimant alleged that as a result of the Deepwater Horizon oil spill, "stopped marine business in the Gulf immediately which caused our clients to reduce or cancel policies."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

¹ OSLTF Claim Form signed by Claimant 08 June 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 undertaken, but reasonably available;
- (d) Any saved overhead or normal expenses not incurred as a result of the incident; and
- (e) State, local, and Federal taxes.

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

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

- OSLTF Claim Form signed by Claimant, 08 June 2011;
- [REDACTED] letter to GCCF explaining its claim 12 May 2011;
- Form 1040 US Individual Income Tax Returns for 2008, 2009 and 2010;
- Form W-2 Wage and Tax Statement for 2008 from [REDACTED];
- Form 1099-Misc for 2008 from Law Offices [REDACTED] PA;
- Form 1099-Misc for 2009 from [REDACTED];
- Form W-2 Wage and Tax Statement for 2010 from [REDACTED];
- Form 1099-Misc for 2010 from [REDACTED];
- Form 1099-Misc for 2010 from [REDACTED];
- Letter from [REDACTED] to GCCF concerning reduction of bonuses and pay 20 April 2011;
- [REDACTED] memo to Office Staff concerning pay increases and bonuses 01 and 05 May 2010;
- [REDACTED] memo to Office Staff concerning pay increases and bonuses 01 July 2010; and
- GCCF Denial Letter on Interim Payments/Final Payment Claim 15 April 2011.

Before presenting the claim to the NPFC, the Claimant filed an Interim/Final Claim with the GCCF on 17 February 2011 in the amount of \$10,000.00. The Claim was assigned Claimant ID

██████████ and claim ██████████ for the Interim Claim and ██████████ for the Final Claim.² This claim was denied on 15 April 2011.³

Based upon the evidence provided by the Claimant, it appears that the subject matter for the GCCF claim is the same as the subject matter of the claim before the NPFC, i.e., that the Deepwater Horizon oil spill caused her employer to lose sales on marine insurance therefore causing her to lose her bonus and yearly raise. The NPFC deems the denied GCCF claims to be properly presented to the responsible party and properly presented to the NPFC. Accordingly, this Claim Summary determination for NPFC Claim N10036-0968 considers and addresses the earnings claimed in all of the claims presented to the responsible party, specifically; GCCF Claim ██████████ for an Interim Payment and ██████████ for the Final Claim.

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 an Interim and Final claim in the amount of \$10,000.00 for loss of profits and impairment of earnings capacity to the GCCF. The Claimant then presented a claim for loss of profits and impairment of earnings capacity in the amount of \$20,000.00 to the NPFC. Any claimed amount of damages exceeding \$10,000.00 was not properly presented to the RP/GCCF pursuant to 33 C.F.R. § 136.103(a) and is therefore denied.

The remainder of this claim is denied because the Claimant has not provided sufficient evidence to demonstrate that the alleged loss is due to the Deepwater Horizon oil spill. The NPFC denied the Claimant's employer's claim for lost profits and earnings. The Claimant was employed by ██████████ who did not provide sufficient documentation to demonstrate that the alleged loss was caused by the Deepwater Horizon oil spill. Furthermore, the Claimant has not provided any additional documentation to show her loss of earnings was due to the Deepwater Horizon oil spill rather than other business decisions by her employer and their clients.

This claim is denied because the Claimant failed to meet the 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 and the Claimant failed to properly present costs in excess of \$10,000.00 first to the RP/GCCF pursuant to 33 CFR 136.103(a).

Claim Supervisor: ██████████ *Claimant Division*

Date of Supervisor's Review: *11 August 2011*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

² Report from the GCCF dated 26 July 2011

³ GCCF Denial Letter dated 15 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

Fax: 202-493-6937

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim # N10036-0969
07 July 2011

Re: Claim Number: N10036-0969

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 N10036-0969 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 N10036-0969.

Mail reconsideration requests to:

Director (ca)
NPFC CA MS 7100
US COAST GUARD

National Pollution Funds Center
U.S. Coast Guard

Enclosures: (1) Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00003790

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	: N10036-0969
Claimant	██████████
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: \$16,000.00

FACTS

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

CLAIM AND CLAIMANT

On 09 June 2011, ██████████ (Claimant), presented an Optional Oil Spill Liability Trust Fund ('OSLTF') Claim Form to the National Pollution Funds Center ('NPFC') seeking \$16,000.00 in loss of profits and impairment of earnings capacity that allegedly resulted from the Deepwater Horizon oil spill.

Claimant works as an independent sales contractor for a power-washing business, A.L.C. Powerwash, based in Mobile, AL.¹ Claimant stated that he works at A.L.C. Powerwash with his brother ██████████ the Owner, and the company services both residential and business clients seeking power-wash cleaning services.² These services include residential house cleaning, vehicular cleaning, and boat cleaning.³ Claimant asserted that as a result of the Deepwater Horizon oil spill, the company lost the patronage of businesses in the Semmes region.⁴ As a result, the Claimant lost sales and income in 2010.⁵

Claimant did not provide an explanation regarding the calculation of his sum certain in the amount of \$16,000.00.

Prior to presenting this claim to the NPFC, Claimant filed an Emergency Advance Payment ('EAP') Claim with the GCCF on 12 September 2010 in the amount of \$16,000.00 for lost profits and impairment of earnings capacity. He was assigned Claimant ID ██████████ and Claim ██████████. This claim was denied on 28 January 2011.⁷ Additionally, on 1 March 2011, Claimant filed an Interim Payment Claim with the GCCF in the amount of \$16,000.00 for lost

¹ Letter from ██████████ dated 5 February 2011.

² PHONECON between NPFC and Claimant dated 14 June 2011.

³ Id.

⁴ Id.

⁵ OSLTF Claim Form.

⁶ Report from the GCCF dated 23 June 2011.

⁷ GCCF Denial Letter dated 28 January 2011.

profits and impairment of earnings capacity and assigned Claim [REDACTED] This Interim Payment Claim was denied on 4 June 2011.⁹

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;

⁸ Report from the GCCF dated 23 June 2011.

⁹ GCCF Denial Letter dated 4 June 2011.

- (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;
- Attachment labeled 'Record of Changes';
- Undated letter from Claimant describing lost accounts due to the oil spill;
- 2010 version of 1099-MISC federal tax form in the amount of \$22,204.00;
- 2010 version of 1040 federal tax return;
- 2009 version of 1040 federal tax return;
- Letter from [REDACTED] dated 5 February 2011;
- 2009 version of 1099-MISC federal tax form in the amount of \$35,308.00;
- Undated letter from [REDACTED]
- List of accounts lost to oil spill;
- 2008 1040 Federal tax return form;
- 2008 version of 1099 Federal tax form from [REDACTED] d/b/a [REDACTED]
- 2008 version of Alabama Form 40 tax return;
- Internal Revenue Service Tax Return Transcript for tax period ending 31 December 2007;
- Internal Revenue Service Tax Return Transcript for tax period ending 31 December 2009;
- Internal Revenue Service Tax Return Transcript for tax period ending 31 December 2010;
- [REDACTED] statement for period 24 January 2009-24 February 2009;
- [REDACTED] statement for period 22 November 2008-24 December 2008;
- [REDACTED] statement for statement period 24 March 2008;
- Email from Claimant to NPFC dated 29 June 2011.

NPFC Determination

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

This claim is denied because the Claimant's evidence does not demonstrate (1) the alleged loss of profits in the amount of \$16,000.00, as claimed, or (2) the correlation, if any, between this alleged loss and the Deepwater Horizon oil spill.

The Claimant has not provided sufficient evidence to establish a financial loss due to the Deepwater Horizon oil spill. Claimant provided tax returns which indicated the Claimant's earnings at [REDACTED] decreased from \$35,308.00¹⁰ in 2009 to \$22,204.00¹¹ in 2010. On 17 June 2011, the NPFC requested additional information from the Claimant to further evaluate his claim. The NPFC requested, among other things, a list of customer orders from the Claimant's business from 2008-2010, monthly profit and loss figures for the Claimant's business from 2008-2010, cancelled contracts for the Claimant's business from 2010, and asked that the Claimant answer several questions regarding the business. Rather than provide the NPFC with additional information, the Claimant instead expressed an unwillingness to provide the NPFC with any further documentation.¹²

Should the Claimant choose to come back on reconsideration, he will have to provide the requested documentation and answer all questions in writing in order to enable the NPFC in determining the nexus between the Claimant's income and the oil spill. If the alleged losses are solely related to the spill, the Claimant must describe in detail the rationale and source(s) of documentation for the position.

This claim is denied because the Claimant has failed to demonstrate (1) the alleged loss of profits in the amount of \$16,000.00, 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 [REDACTED] *Division*

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

Supervisor Action: *Denial approved*

Supervisor's Comments:

¹⁰ 2009 1099-MISC

¹¹ 2010 1099-MISC

¹² Email from Claimant to NPFC dated 29 June 2011.

U.S. Department of
Homeland Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Number [REDACTED]

5890/DWHZ
Claim # N10036-0970
23 June 2011

Re: Claim Number: N10036-0970

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 N10036-0970 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 N10036-0970.

Mail reconsideration requests to:

Director (ca)
NPFC CA MS 7100
US COAST GUARD

Sincerely,

[REDACTED]
U.S. Coast Guard

Enclosures: Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00003795

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-0970
Claimant	[REDACTED]
Type of Claimant	Business
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$23,846.43

FACTS

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

CLAIM AND CLAIMANT

On 9 June 2011, [REDACTED] (Owner) on behalf of [REDACTED] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$23,846.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

The Owner runs an optometry business, providing eye care and retail eyewear for customers in Panama City, FL.¹ The Claimant's clients are comprised of both local residents and tourists in the Florida Panhandle region.² The Owner asserted that as a result of the Deepwater Horizon oil spill, residential customers lost their income and have been unable to patronize her store.³ Additionally, the Deepwater Horizon oil spill caused the tourism industry to collapse, eliminating business income from tourists as well.⁴

The Owner calculated her sum certain by determining the difference between the Claimant's 2009 and 2010 total income.⁵ This final number totaled \$23,846.43.⁶

APPLICABLE LAW

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

¹ Attachment to Owner's submission describing nature of Claimant's business model.

² Id.

³ Id.

⁴ Id.

⁵ Profit and Loss Prev Year Comparison, 1 January through 21 December 2010.

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 Owner presented the following documentation listed in Enclosure (2).

Prior to presenting this Claim to the NPFC, Claimant filed an Emergency Advance Payment (EAP) Claim on 26 October 2010 with the RP/GCCF for \$18,615.79. Claimant was assigned

Claimant ID [REDACTED] and Claim ID [REDACTED]⁷ This claim was denied on 18 November 2010.⁸ Additionally, on 23 November 2010, Claimant filed a Final Payment Claim with the GCCF for \$18,000.00 and was assigned Claim ID [REDACTED]⁹ This claim was denied by the GCCF on 27 May 2011.¹⁰

On 9 June 2011, Claimant presented the subject claim to the OSLTF for \$23,846.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

NPFC Determination

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

The Claimant has not proven that her business 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 Owner asserted that her business earnings took a "sharp decline" due to the Deepwater Horizon oil spill.¹¹ However, the Claimant's tax returns indicated that business earnings had already been steadily declining for several years. The Claimant's gross earnings dropped from \$209,939.00 in 2007 to \$177,246.00 in 2008, then \$134,509.00 in 2009.¹² Further, when looking at the Claimant's net profits in 2008 and 2009, the Claimant's business suffered losses of \$8,664.00 and \$18,619.00, respectively.¹³ In 2010, the purported year the Claimant was negatively affected by the Deepwater Horizon oil spill, the Claimant turned a profit of \$1,915.00.¹⁴

With its initial submission to the NPFC, the Owner submitted monthly profit and loss statements for all of 2009 and from January through November of 2010. After the NPFC reviewed these documents and informed the Claimant that there was difficulty in determining a loss due to the Deepwater Horizon oil spill,¹⁵ the Owner sent in revised year-end profit and loss statements with significantly different numbers.¹⁶ These changes were purportedly made to correct several earlier miscalculations and omissions.¹⁷ The Owner also contended that the 2010 tax return she submitted contains incorrect earnings information that is not reflective of the actual earnings of the business in that year.¹⁸

However, with the conflicting records of income submitted by the Claimant, there is nothing provided that is persuasive to dismiss the income indicated in the original 2010 tax return

⁷ Report from the GCCF dated 13 June 2011.

⁸ GCCF Denial Letter dated 18 November 2010.

⁹ Report from the GCCF dated 13 June 2010.

¹⁰ GCCF Denial Letter Dated 27 May 2011.

¹¹ Attachment to Owner's submission describing nature of Claimant's business model.

¹² 2007-2009 Federal income tax returns.

¹³ 2008-2009 Federal income tax return.

¹⁴ 2010 Federal income tax return.

¹⁵ PHONECON between Owner and NPFC Representative, 14 June 2011.

¹⁶ Revised Profit and Loss YTD Comparisons, January through December 2009 and 2010.

¹⁷ Undated letter from Claimant to NPFC describing additional submitted materials.

¹⁸ Id.

submitted to the IRS. Furthermore, when considering the significant losses sustained by the Claimant during previous years, the numerous explanations and accounting revisions offered by the Owner to explain her loss are insufficient to determine that any losses sustained by the Claimant are a direct result of the Deepwater Horizon oil spill. Specifically in regards to cost-cutting measures cited by the Claimant, there is nothing determinative that would show that any of these steps undertaken by the Claimant were in response to the Deepwater Horizon oil spill versus efforts to improve the efficiency of the business that had suffered sizable losses during the prior two years.

Additionally, it is important to note that the Claimant only presented claims to the RP/GCCF in the total amount of \$18,615.79 but presented a claim to the NPFC in the amount of \$23,846.00 therefore the NPFC denies any amount in excess of \$18,615.79 as not being properly presented to the RP/GCCF pursuant to 33 C.F.R. § 136.103(a), all claims for removal costs or damages must be presented first to the responsible party (RP).

Because the Claimant has failed to demonstrate an 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 the Claimant failed to properly present all costs in excess of \$18,615.79, this claim is denied.

Claim Supervisor

Date of Review: *6/23/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

Claimant Documentation Submitted to the NPFC:

- OSLTF Claim Form received 9 June 2011;
- Attachment to Owner's submission describing nature of Claimant's business model;
- Attachment to Owner's submission listing effects of Deepwater Horizon oil spill;
- Profit and Loss Prev Year Comparison, 1 January through 31 December 2010;
- Letter from GCCF listing proper supporting documentation for claim;
- GCCF Claim form;
- Letter dated 23 October 2006 notifying Claimant of S Corporation status;
- Statement filed 16 March 2007 with Florida Secretary of State listing business information for Claimant;
- Statement filed 17 April 2008 with Florida Secretary of State listing business information for Claimant;
- 2008 For Profit Corporation Amended Annual Report;
- Statement filed 11 April 2009 with Florida Secretary of State listing business information;
- Statement filed 11 March 2010 with Florida Secretary of State listing business information;
- Profit and loss statement from 1 January 2007-31 December 2007;
- 2007 Federal tax return;
- Profit and loss statement from 1 January 2008-31 December 2008;
- 2008 Federal tax return;
- Profit and loss statement from 1 January 2009-31 December 2009;
- 2009 Federal tax return;
- Estimate of Record for '2002 Toyo Rav4';
- 2009 version of 1099 from [REDACTED]
- 2009 version of 1099 from [REDACTED]
- 2009 version of 1099 from [REDACTED]
- 2009 version of 1099 from [REDACTED]
- Profit and loss statement from 1 January 2010-30 November 2010;
- Undated letter from Claimant to NPFC describing additional submitted materials;
- Profit and loss statement for December 2010;
- Revised Profit and Loss YTD Comparisons, January through December 2009 and 2010;
- 2010 Federal tax return;
- 2010 version of 1099 from [REDACTED]
- 2010 version of 1099 from [REDACTED]
- 2010 version of 1099 from [REDACTED]
- 2010 version of 1099 from [REDACTED]
- 2010 version of 1099 from [REDACTED]

U.S. Department of
Homeland Security

United States
Coast Guard



Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim# N10036-0971
07 July 2011

[REDACTED]

RE: Claim Number: N10036-0971

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with 33 C.F.R. Part 136, denies payment on your claim, #N10036-0971. 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 N10036-0971.

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 Division

Enclosure: Claim Summary/Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-0971
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: \$3,200.00

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 8 June 2011, [REDACTED] (Claimant) presented an Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Fund Center (NPFC) seeking \$3,200.00 for loss of profits and impairment of earnings capacity damages that allegedly resulted from the Deepwater Horizon oil-spill.

With respect to the Claimant's alleged losses, the Claimant asserted that his "hours were cut" with an oil spill contractor who had "promised a two year contract" but that he was laid off after only one month." and "I was forced to relocate to another job [as an oil spill cleanup worker with another contractor]...that was farther away."¹

Claimant alleged that he filed a claim with the GCCF on 26 November 2010, which the claim was ultimately 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 OSLTF Claim Form Sections 9 and 10 dated 16 May 2011 and dated letter from Claimant to the NPFC

² The NPFC has not independently verified presentation to the RP/GCCF.

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 this claim, Claimant submitted the following documentation:

- Optional OSLTF Claim Form dated 16 May 2011;
- Letter to the NPFC (undated); and
- 2010 W-2 Wage and Earnings Statements.

Claimant seeks \$3,200.00 for loss of profits and earnings capacity allegedly resulting from the Deepwater Horizon incident.

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 because the Claimant's evidence does not demonstrate (1) the alleged loss of profits in the amount of \$3,200.00, as claimed, or (2) the correlation, if any, between this alleged loss and the Deepwater Horizon oil spill.

The Claimant has provided no information which would indicate that his losses are 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 his independent decision to apply to an oil-spill response related job of indefinite term.

This claim is denied because the Claimant has failed to demonstrate (1) the alleged loss of profits in the amount of \$3,200.00, as claimed, or (2) that this alleged loss is due to injury or destruction or loss of real or personal property or a natural resource as a result of a discharge or substantial threat of a discharge of oil.

Claim Supervisor:

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

Supervisor Action: *Denial approved*

Supervisor's Comments:

U.S. Department
of Homeland
Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ

Claim # N10036-0972

26 July 2011

Re: Claim Number: N10036-0972

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 N10036-0972 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 N10036-0972.

Mail reconsideration requests to:

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

Sincerely,

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

Enclosures: (1) Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00003805

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-0972
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$1,200.00

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 certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On 09 June 2011, [REDACTED] (Claimant) presented an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) seeking \$1,200.00 in loss of profits and impairment of earnings capacity that allegedly resulted from the Deepwater Horizon oil spill.

The Claimant is employed at [REDACTED], a seafood restaurant in Houma, LA.¹ The Claimant asserted that as a result of the Deepwater Horizon oil spill, the restaurant was unable to serve seafood.² The Claimant further asserted that the lack of seafood resulted in a loss of both regular and tourism customers.³ Due to the lack of customers, the Claimant alleged that her income was reduced in the form of lower customer tips.⁴

The Claimant did not provide a calculation for her sum certain of \$1,200.00.

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 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 24 May 2011.

² Id.

³ Id.

⁴ 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 the claim, the Claimant presented the following documentation:

- OSLTF Claim Form received 10 June 2011;
- Internal Revenue Service Tax Return Transcript dated for tax period ending December 2009;
- 2010 version of W-2 federal tax form from [REDACTED]
- 2008 version of W-2 federal tax form from [REDACTED] and
- GCCF letter dated 30 September 2010 requesting additional information.

Prior to presenting her claim to the NPFC, the Claimant filed an Emergency Advance Payment (EAP) claim with the GCCF on 07 September 2010.⁵ She was assigned Claimant ID [REDACTED] and claim [REDACTED]. This claim was denied on 04 December 2010.⁶ Additionally, the

⁵ Report from the GCCF dated 15 July 2011.

⁶ GCCF Denial Letter dated 04 December 2010.

Claimant filed a Full Review Final (FRF) Claim on 01 January 2011 in the amount of \$925.61.⁷ She was assigned claim [REDACTED]. This claim was denied on 15 April 2011.⁸

Based upon the evidence provided by the Claimant, it appears that the subject matter for her two GCCF claims is the same as the subject matter of her claim before the NPFC, i.e., that the restaurant the Claimant works at was unable to serve seafood due to the Deepwater Horizon oil spill, reducing the number of customers and by extension the amount of tips the Claimant collected. The NPFC deems the Claimant's denied GCCF claims to be properly presented to the RP and properly presented to the NPFC. Accordingly, this Claim Summary Determination for NPFC Claim N10036-0972 considers and addresses the earnings claimed in her two claims presented to the responsible party, specifically; GCCF Claim #'s [REDACTED] and [REDACTED].

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 a Full Review Final claim in the amount of \$925.91 for loss of profits and impairment of earnings capacity to the GCCF. The Claimant then presented a claim for loss of profits and impairment of earnings capacity in the amount of \$1,200.00 to the NPFC. Any claimed amount of damages exceeding \$925.91 was not properly presented to the RP/GCCF pursuant to 33 C.F.R. § 136.103(a) and is therefore denied.

The remainder of this claim is denied because the Claimant has not demonstrated that she suffered a loss in the amount of \$925.91 due to the injury, destruction, loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil. Specifically, the Claimant's loss calculation included losses based on lost potential tips from potential customers. Under 33 C.F.R. § 136.235, the amount of compensation allowable for a claim involving loss of profits or impairment of earning capacity is limited to the actual net reduction or loss of earnings or profits suffered. The Claimant's submission for losses labeled as potential is entirely speculative in nature and not OPA compensable.

Furthermore, the Claimant asserted that [REDACTED] was unable to serve seafood, reducing the number of patrons and by extension the amount of tips that the Claimant could receive. The NPFC contracted [REDACTED] to confirm the events as alleged by the Claimant. The Claimant's employer informed the NPFC that the restaurant has sittings for both day and night shifts.⁹ The day shift's patrons are made up of local residents that primarily order take-out lunch meals.¹⁰ This contrasts with the tourists that make up the dine-in night shift.¹¹

The Claimant's employer informed the NPFC that the day-shift workers were unaffected by the Deepwater Horizon oil spill because the local patrons continued to order take-out lunches despite the oil spill.¹² The Claimant's employer verified that the Claimant worked the restaurant's day shift and was not subject to a reduction in earnings due to the Deepwater Horizon oil spill.¹³ Thus, the Claimant has not demonstrated a loss in profits or reduced earnings capacity due to the Deepwater Horizon oil spill.

⁷ Report from the GCCF dated 15 July 2011.

⁸ GCCF Denial Letter dated 15 April 2011.

⁹ PHONECON between [REDACTED] and NPFC dated 20 June 2011.


¹⁰ Id.

¹¹ Id.

¹² Id.

¹³ Id.

This claim is denied because the Claimant has failed to demonstrate (1) the alleged loss of profits in the amount of \$1,200.00, as claimed, (2) that this alleged loss is due to injury or destruction or loss of real or personal property or a natural resource as a result of a discharge or substantial threat of a discharge of oil, and (3) any amount claimed in excess of \$\$925.91 was not properly presented to the RP/GCCF pursuant to 33 C.F.R. § 136.103(a).

Claim Supervisor: 

Date of Supervisor's review: *7/26/11*

Supervisor Action: *Denial approved*

Supervisor's Comments:

U.S. Department of
Homeland Security

United States
Coast Guard



Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim # N10036-0973
21 June 2011

[REDACTED] ell

Re: Claim Number: N10036-0973

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 N10036-0973 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 N10036-0973.

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

FOIA2011-3380-00003810

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-0973
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
Amount Requested	\$2,392.74

FACTS

On or about 20 April 2010, the Mobile Offshore Drilling 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 9 June 2011, [REDACTED] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$2,392.74 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

Claimant asserted that she owns 633 shares of common stock in British Petroleum (BP) as of 8 June 2011. According to claimant "BP did not pay or reduced its dividend payments on 4/27/10, 7/27/10, 11/2/10, 2/1/11, and 4/27/11."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 8 June 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 undertaken, but reasonably available;
- (d) Any saved overhead or normal expenses not incurred as a result of the incident; and
- (e) State, local, and Federal taxes.

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support this claim, Claimant submitted the following documentation:

- Optional OSLTF Claim Form dated 08 June 2011; and
- Merrill Lynch 401-K account statement dated 08 June 2011.

Prior to presentment to the NPFC, Claimant presented a Final payment Claim to the RP/GCCF and was assigned Claimant Identification Number [REDACTED]. The Final Payment claim was denied in a letter dated 26 May 2011.²

On 9 June 2011, the NPFC received this claim for \$2,392.74 in loss of profits and impairment of earnings capacity allegedly 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 from BP; thus, she alleged that she has suffered a loss of profits or impairment of earnings capacity as a result of the Deepwater Horizon incident. The Claimant, however, has failed to show that the cessation of payments of stock dividends by BP is a compensable loss of profits or impairment of earnings capacity due to the injury, destruction, or loss of real property or personal property or natural resources as

² GCCF denial letter Re: Claimant's Interim Payment/Final Payment Claim, dated 29 April 2011.

opposed to other independent factors, such as, a business determination by BP to forego payment of quarterly dividends to stock holders. The ultimate payment of dividends, even if previously announced or regularly scheduled, is within the sole discretion of the BP directors.³

This claim is denied because the Claimant has failed to show that her alleged loss in the amount of \$2,392.74 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 Claims Adjudication Division*

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

Supervisor's Action: *Denial approved*

Supervisor's Comments:

³ 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>

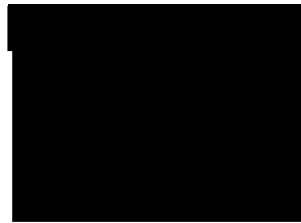
U.S. Department of
Homeland Security

United States
Coast Guard



Director
National Pollution Funds Center
United States Coast Guard

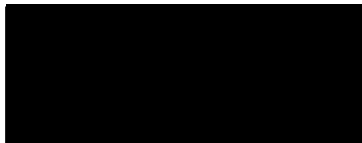
NPFC CA MS 7100
US COAST GUARD



CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim# N10036-0974
21 June 2011



RE: Claim Number: N10036-0974

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with 33 C.F.R. Part 136, denies payment on your claim, #N10036-0974. 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 N10036-0974.

Mail reconsideration requests to:

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

Sincerely



NPFC Claims Adjudication Division

Enclosure: Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00003814

CLAIM SUMMARY / DETERMINATION FORM

Date	15 June 2011
Claim Number	N10036-0974
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$9,600.00

FACTS:

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

CLAIM AND CLAIMANT

On 3 June 2011, [REDACTED] (Claimant) presented an Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Fund Center (NPFC) seeking \$9,600.00 for loss of profits and impairment of earnings capacity damages that allegedly resulted from the Deepwater Horizon oil-spill.

With respect to his alleged losses, the Claimant asserted that his job as a construction worker for [REDACTED] "got shutdown for a week because of the oil spill" and that his hours were reduced "from 40 plus (+) hours to 25-30 hours a week" and that he decided to respond to an advertisement by Cabildo Staffing seeking oil spill response workers.¹ The Claimant completed a required three day course from 30 April 2010 to 02 May 2010, but alleged that he did not commence working on the oil spill clean-up until 24 August 2010.² Claimant further alleged that he only worked until 13 September 2010, and that he could not return to his prior construction job which has caused him to fall behind on his bills and child support obligations.

Claimant alleged that he filed a claim with the GCCF on 24 September 2010, which was ultimately denied.

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).

¹ Undated OSLTF Claim Form Section 10 and undated letter from Claimant to the NPFC

² Undated letter from Claimant to the NPFC

Under 33 C.F.R. § 136.105(a) and § 136.105(e)(6), the 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 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 undertaken, 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 submitted the following documentation:

- Optional OSLTF Claim Form;
- Undated letter to the NPFC;
- Copies of Cabildo Staffing paycheck stubs for the pay periods from 29 August 2010 to 12 September 2010 and from Phylway Construction from 11 April 2010 to 01 May 2010.

Claimant seeks \$9,600.00 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.

This claim is denied because the Claimant's evidence does not demonstrate (1) the alleged loss of profits in the amount of \$9,600.00, 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." For example, beyond his April 2010 pay stubs, the Claimant has provided absolutely no information as to his prior employment and wages, and has provided insufficient evidence which might substantiate his alleged losses.

Also, the Claimant has not shown that his decrease in April 2010 hours was as a result of the subject discharge of oil. Furthermore, the Claimant has provided no information which would indicate that his losses are 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 his independent decision to apply to an oil-spill response related job of an indefinite term.

Because the Claimant has failed to demonstrate (1) the alleged loss of profits in the amount of \$9,600.00, as claimed, or (2) that this alleged loss is due to injury or destruction or loss of real or personal property or a natural resource as a result of a discharge or substantial threat of a discharge of oil, this claim is DENIED.


Claim Supervisor: *Claims Adjudication Division*

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

Supervisor Action: *Denial approved*

Supervisor's Comments:

U.S. Department of
Homeland Security

United States
Coast Guard

Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937

CERTIFIED MAIL - RETURN RECEIPT REQUESTED
Number: [REDACTED]

5890/DWHZ
Claim# N10036-0975
16 Jun 2011

RE: Claim Number: N10036-0975

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with 33 C.F.R. Part 136, denies payment on your claim, N10036-0975. 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 N10036-0975.

Mail reconsideration requests to:

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

Sincerely,

Enclosure: Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00003818

CLAIM SUMMARY / DETERMINATION FORM

Date	15 June 2011
Claim Number	N10036-0975
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 8 June 2011, [REDACTED] (Claimant) presented an Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Fund Center (NPFC) seeking \$15,000.00 for loss of profits and impairment of earnings capacity damages that allegedly resulted from the Deepwater Horizon oil-spill.

With respect to his alleged losses, the Claimant asserted that he was a self-employed lawn care professional but left his job to work for an oil-spill cleanup contractor to “help his city” and also “due to better pay.”¹ The Claimant was laid off from the oil-spill cleanup job on 12 July 2010, and unfortunately lost a number of his prior lawn service clients who had contracted with other services.²

Claimant alleged that he filed a claim with the GCCF on 24 September 2010, which the claim was ultimately denied.

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 OSLTF Claim Form Section 10 dated 1 May 2011 and letter from Claimant to the NPFC

² Id.

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

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

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

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

- (a) All income resulting from the incident;
- (b) All income from alternative employment or business undertaken;
- (c) Potential income from alternative employment or business not undertaken, 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 submitted the following documentation:

- Optional OSLTF Claim Form dated 01 May 2011;
- Letter to the NPFC dated 27 May 2011;
- 2010 IRS Form 1040 Tax Return;
- 2010 Monthly Income Statement;
- GCCF claim receipt;
- GCCF letter re: supporting documentation for a claim;
- Copies of Claimant's Alabama Driver License and Social Security Card;
- Unaddressed letter by Claimant dated 06 October 2010;
- Three undated letters from lawn care service clients;
- GCCF Interim Payment/Final payment Claim Denial Letter dated 1 April 2011;
- 2008 IRS Tax Return Transcript;

Claimant seeks \$15,000.00 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 of the documentation submitted 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 \$15,000.00, as claimed, or (2) the correlation, if any, between this alleged loss and the Deepwater Horizon oil spill.

It is also important to note that the Claimant has provided NO comparable financial documentation pursuant to the governing claims regulations at 33 CFR 136.233 (c) which states "The amount of the claimant's profits or earnings in comparable periods and during the period when the claimed loss or impairment was suffered, as established by income tax returns, financial statements, and similar documents. In addition, comparative figures for profits or earnings for the same or similar activities outside of the area affected by the incident also must be established." For example, the Claimant provided no detailed financial documents in the form of monthly profit and loss statements to back up the income shown on his income tax statements.

Furthermore, the Claimant has provided no information which would indicate that his losses are 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 his independent decision to apply to an oil-spill response related job for an indefinite duration. Based on the Claimant's own admission, he left his position to work for an oil-spill cleanup contractor to "help his city" and "due to better pay."³

Because the Claimant has failed to demonstrate (1) the alleged loss of profits in the amount of \$15,000.00, as claimed, or (2) that this alleged loss is due to injury or destruction or loss of real or personal property or a natural resource as a result of a discharge or substantial threat of a discharge of oil, this claim is DENIED.

Claim Supervisor: 

Date of Supervisor's review: *6/16/11*

Supervisor Action: *Denial approved*

Supervisor's Comments:

³ OSLTF Claim Form Section 10 dated 1 May 2011 and letter from Claimant to the NPFC

U.S. Department of
Homeland Security

United States
Coast Guard



Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number [REDACTED]

5890/DWHZ
Claim # N10036-0976
21 June 2011

Re: Claim Number: N10036-0976

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 N10036-0976 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 N10036-0976.

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

FOIA2011-3380-00003822

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-0976
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 9 June 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 alleged that he worked as a fisherman for [REDACTED] and as a result of closures to fishing areas following the oil spill, he lost his job.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 7 May 2011.

² Letter from Claimant, dated 9 June 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 undertaken, but reasonably available;
- (d) Any saved overhead or normal expenses not incurred as a result of the incident; and
- (e) State, local, and Federal taxes.

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support this claim, Claimant submitted the following documentation:

- Optional OSLTF Claim Form;
- Letter written by Claimant, describing losses, dated 9 June 2011;
- Pay stubs from 2008;
- 2008 W-2, showing employment with [REDACTED] and earnings of \$17261.28;
- GCCF Denial Letter on Interim Payment/Final Payment Claim, 7 May 2011;
- Copy of GCCF Claim Form.

Prior to presentation to the NPFC, Claimant presented an Emergency Advance Payment Claim as well as an Interim Payment/Final Payment Claim to the RP/GCCF. Claimant's Interim/Final Payment Claim was denied by the GCCF on 7 May 2011.³

On 9 June 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.

The NPFC reviewed all information and documentation provided by the Claimant, including contacting the Claimant's former employer to confirm dates of employment.⁴ A representative

³ GCCF denial letter, dated 7 May 2011.
09/14/11

of the Claimant's former employer stated that the Claimant was last employed in 2008 and had not worked with the company in either 2009 or 2010.⁵ Therefore, the Claimant's assertion that he was not able to go back to work as a result of the oil spill is not supported by the record since the Claimant hadn't worked for his employer in two years at the time the oil spill occurred.

This claim is denied because the Claimant has failed to show that he has suffered a loss due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil.

Claim Supervisor 

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

Supervisor's Action: *Denial approved*

Supervisor's Comments:

⁴ PHONECON: Claimant's employer and NPFC Staff, 17 June 2011.

⁵ Id.

U.S. Department of
Homeland Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim # N10036-0977
15 June 2011



Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq. (OPA) and the associated regulations at 33 C.F.R. Part 136, denies payment on the claim number N10036-0977 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 N10036-0977.

Mail reconsideration requests to:

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



Division
National Pollution Funds Center
U.S. Coast Guard

Enclosure: Claim Summary/Determination Form

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-0977
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$46,541.95

FACTS

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

CLAIM AND CLAIMANT

On 09 June 2010, [REDACTED] (Claimant), presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$46,541.95 in loss of profits resulting from the Deepwater Horizon oil spill.

The Claimant is a self-storage warehouse and storage facility in Avondale, Louisiana, which began business 12 January 2007.¹ The company has 544 storage units for rent. On 31 March 2010, 27.4% of the units were occupied compared to 31 October 2010, the date of the last report provided, where 38.7% of the units were occupied.² The Claimant provided profit and loss statements for January 2010 through July 2010. With the exception of March 2010, the gross monthly rental income increased every month.³

The Claimant stated that for the period 01 May 2009 to 31 January 2010 the number of storage units increased by 86 units. For the period 01 May 2010 to 31 January 2011, the number of storage units increased only by 36 units for a loss of 50 storage units. The 50 units represent 455 months of rentals at an average rate of \$102.29 month for a loss of \$46,541.95.⁴

The Claimant stated that before the Deepwater Horizon oil spill, the business was growing as anticipated. After the spill, customers stopped coming to the facility and stopped renting storage space.⁵

¹ Forms 1065 US Partnership Returns for 2008 and 2009 with supporting schedules

² Management Summaries January 2009 through October 2010

³ Profit and Loss Statements for [REDACTED] January 2010 through July 2010

⁴ Letter to GCCF from Claimant dated 04 February 2011 explaining the claim

⁵ OSLTF Claim Form dated 09 June 2011 and signed by the Claimant

The Claimant presented a Final Payment Claim to the GCCF and was issued GCCF Claimant ID [REDACTED] and Claim [REDACTED].⁶ On 22 April 2011 the GCCF denied the claim because the Claimant had not provided documents sufficient to establish a financial loss.⁷

APPLICABLE LAW

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

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;

⁶ GCCF Claim Status site

⁷ GCCF Denial Letter dated 22 April 2011

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

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

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

- OSLTF Claim Form dated 09 June 2011 and signed by the Claimant
- GCCF Denial Letter dated 22 April 2011
- Letter to GCCF from Claimant dated 18 November 2010 explaining the claim
- Letter to GCCF from Claimant dated 04 February 2011 explaining the claim
- GCCF Claim Form 2000-F dated 03 February 2011 for Final Payment
- Rental Activity Report for [REDACTED] for 01 May 2009 through 31 January 2010
- Rental Activity Report for [REDACTED] for 01 May 2009 through 31 January 2010
- Rental Activity Report for [REDACTED] for 01 May 2010 through 31 January 2011
- Marketing History for [REDACTED] for 31 January 2011
- Occupancy History for [REDACTED] for 31 January 2011
- GCCF Claim Form 2000-C for Final Payment 18 November 2010
- Map of location of [REDACTED]
- Rental Activity Report for [REDACTED] for 01 May 2010 through 31 October 2010
- Marketing History for [REDACTED] for 31 October 2010
- Occupancy History for [REDACTED] for 31 October 2010
- Profit and Loss Statements for [REDACTED] January 2010 through July 2010
- Forms 1065 US Partnership Returns for 2008 and 2009 with supporting schedules
- Management Summaries January 2009 through October 2010
- Occupation License from [REDACTED] for 2009 and 2010

NPFC Determination

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

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

The Claimant stated that for the periods May 2010 to January 2011, the increase of storage units rented were 50 less than the comparable time period in 2009. He stated that after the Deepwater Horizon oil spill, customers stopped coming to the facility and stopped renting storage space. The Claimant has not shown that the loss of additional storage units occupied was due to the oil spill.

Documentation provided shows that there is no loss of occupancy rates and rental revenues after the oil spill. The storage units occupied on 31 March 2010 were 27.4%. On 31 October 2010 the units occupied reached 38.7%, an increase of 11.3% since the oil spill. For March 2010, the monthly rental was \$13,716 and for July 2010 the monthly rental was \$17,126, an increase of \$3,410 a month since the oil spill.

Since the Claimant has not provided documentation to show the loss of storage units occupied was the result of the Deepwater Horizon oil spill and since the occupancy rates and rental income continued to increase after the spill, the claim is denied.

Because the Claimant has failed to demonstrate (1) the alleged loss of profits in the amount of \$46,541.95, 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:  Division

Date of Supervisor's review: 6/15/11

Supervisor Action: *Denial approved*

Supervisor's Comments:

U.S. Department
of Homeland
Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

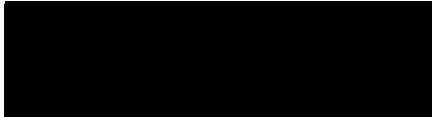
NPFC CA MS 7100

Fax: 202-493-6937

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim # N10036-0978
21 June 2011



Re: Claim Number: N10036-0978

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 N10036-0978 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination Form for further explanation.

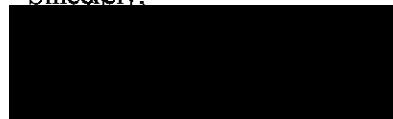
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. If, however you 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 N10036-0978.

Mail reconsideration requests to:

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

Sincerely,



National Pollution Funds Center
U.S. Coast Guard

Enclosures: Claim Summary/Determination Form

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-0978
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 certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On 10 June 2011, [REDACTED] (Claimant) presented an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) for \$15,000.00 in lost profits and earnings that allegedly resulted from the Deepwater Horizon oil spill.

Claimant was employed as a front desk associate at the [REDACTED] Gulfport¹ hotel in Gulfport, Mississippi.² Claimant asserted that as a result of the Deepwater Horizon oil spill, she was laid-off from the hotel.³

Claimant did not provide a calculation for her sum certain of \$15,000.00.

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

¹ The Sun Suites Gulfport is part of the larger [REDACTED]

² PHONECON between Claimant and NPFC dated 13 June 2011.

³ OSLTF Claim Form, dated 9 June 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 her claim, Claimant presented the following documentation to the NPFC:

- Optional Oil Spill Liability Trust Fund Claim Form dated 10 June 11;
- 2009 version of 1040 federal tax return;
- Mississippi Department of Employment Security Unemployment Verification;
- 2010 version of 1040 federal tax return;
- 2010 version of W-2 federal tax form from [REDACTED];
- Pay stubs from [REDACTED] dated 2 July 2010-27 August 2010;

- Internal Revenue Service W-2 Tax Statement for tax period ending December 2008;
- Email dated 23 August 2010 from [REDACTED];
- Email dated 28 August 2010 from [REDACTED];
- Email dated 30 August 2010 from [REDACTED];
- Email dated 28 October 2010 from [REDACTED];
- Email dated 2 November 2010 from [REDACTED] Access;
- Email dated 5 November 2010 from [REDACTED];
- Email dated 8 November 2010 from [REDACTED];
- Pay stubs from MS HUD Boyington [REDACTED] 3 May 2011-31 May 2011;
- PMG payroll history;
- Letter dated 13 May 2011 from [REDACTED] and [REDACTED];
- Letter dated 10 May 2010 from [REDACTED];

Prior to presenting her claim the NPFC, Claimant filed two claims with the GCCF and was given Claimant Identification [REDACTED]. Claimant's Emergency Advance Payment claim was denied on 2 November 2010.⁴ Claimant's Final Payment Claim was denied on 13 May 2011.⁵

The Claimant seeks an alleged loss of \$15,000.00 in earnings resulting from the Deepwater Horizon oil spill to the OSLTF.

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.

As part of the claim, the Claimant provided the NPFC with two letters, one dated 10 May 2010 and another 13 May 2011, both of which were purportedly provided by the Claimant's former employer, [REDACTED]. The 10 May 2010 letter stated that the Claimant would be laid-off, "[d]ue to this tragic incident in the Gulf which has caused a decreased in business [sic] we as a company have to cut back on the staff at our coastal properties."⁶ Additionally, the 13 May 2011 letter concerned the Claimant's separation notice from her employer and listed her employment dates as 03/12/2010-06/01/2010.⁷

The NPFC attempted to verify both letters by contacting [REDACTED]. On 14 June 2011, the NPFC received correspondence from [REDACTED] stating, "[REDACTED] wants to verify that [REDACTED] did not write the letter [purported 10 May 2010 letter]."⁸ [REDACTED] denied the authenticity of the 10 May 2010 letter and asserted that the Claimant was dismissed from employment for reasons unrelated to the Deepwater Horizon oil spill. Additionally, the NPFC received correspondence from [REDACTED] with an attached letter that was similar to, but not an accurate production of, the 13 May 2011 letter

⁴ GCCF Denial Letter dated 2 November 2010.

⁵ GCCF Denial Letter dated 13 May 2011.

⁶ Letter dated 10 May 2010 allegedly from PMG.

⁷ Letter dated 13 May 2011 allegedly from PMG.

⁸ Correspondence from PMG dated 14 June 2011.

from [REDACTED] The letter provided by [REDACTED] was dated 2 June 2010 and listed the Claimant's employment dates as 03/12/2010-05/31/2010.

Accordingly, the NPFC has sufficient reason to believe that the letters in question were falsified by the Claimant. Under 33 C.R.C. 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 because the evidence presented in the claim vice the information provided by the employer as outlined above demonstrates evidence of false statements in connection with this claim.

Claim Supervisor: [REDACTED] *Division*

Date of Review: *6/21/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

U.S. Department of
Homeland Security

United States
Coast Guard



Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD



CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]



5890/DWHZ
Claim # N10036-0979
25 July 2011

Re: Claim Number: N10036-0979

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 N10036-0979 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 N10036-0979.

Mail reconsideration requests to:

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

Sincerely,



National Pollution Funds Center
U.S. Coast Guard

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-0979
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits & Earnings Capacity
Amount Requested	\$80,000.00

FACTS

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

CLAIM AND CLAIMANT

On 30 June 2011, [REDACTED] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$80,000.00 in damage to real or personal property resulting from the Deepwater Horizon oil spill.¹

Claimant owns a waterfront property in Navarre, FL, which was on the market from 2005 to 2008.² As of 2008, Claimant has not listed the property for sale. Claimant alleged that she suffered a loss based on the “devaluation of [her] property and the difficulty of selling at a fair price.”

Because the Claimant has not alleged any physical damage to her property and because the Claimant has not sold this property at a loss, this claim has been reclassified as a claim for lost profits and earnings capacity in the amount of \$80,000.00 as further discussed under the heading, “NPFC 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.

¹ Optional OSLTF Claim Form dated 30 June 2011.

² Timeline, showing property listings 2005 – 2010.

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

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

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

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

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support this claim, Claimant submitted the following documentation:

- Optional OSLTF Claim Form;
- Letter to NPFC Staff, describing losses, undated;
- Copy of sales listings and real estate agents' information, 2005 – 2008;
- Photographs of Claimant's property
- Tax liability documentation;
- Timeline, showing property first listed for sale, October 2005, and last listed for sale July 2008;
- Survey, showing location of property

Prior to presentation to the NPFC, Claimant submitted a First Quarter Interim Claim (ICQ12011) to the RP/GCCF for \$80,000.00 in damage to real or personal property. This claim was submitted on 20 January 2011, and assigned Claimant [REDACTED] and Claimant ID [REDACTED]

On 10 June 2011, Claimant submitted a claim to the NPFC for \$80,000.00 in damage to real or personal property. Because the claim submitted to the RP/GCCF is based on the same subject matter as the claim currently before the NPFC, and was first presented to and denied by the RP/GCCF, this summary determination shall address the entirety of Claimant's ICQ12011 claim now before the NPFC in the amount of \$80,000.00.

NPFC Determination

On 10 June 2011, Claimant presented this claim for \$80,000.00 in damage to real or personal property. Under 32 U.S.C. § 2712(b)(2)(B), a Claimant may recover damages for injury to, or economic loss resulting from the destruction of real or personal property, which shall be recoverable by a Claimant who owns or leases the property. In this case, Claimant has not alleged that her property has been physically damaged by the oil spill. Rather, she claims a diminution in the property's value.³ As the property itself was not damaged, Claimant's alleged losses cannot be classified as real or personal property damage. Accordingly, as discussed below, this claim has been reclassified by the NPFC as a claim for loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

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

An economic loss to real property is only realized under OPA if the property has been sold at a loss and if the Claimant has shown that this loss was due to the injury, destruction or loss of the real property or the natural resource as a result of the discharge or substantial threat of discharge of oil. Claimant has not provided evidence to show that the property was sold at a loss. In fact, according to the Claimant's submission, her property has not been on the market since July of 2008.⁴ Because the Claimant has not sold the property, any loss is both prospective and speculative and is not compensable under OPA.

This claim is denied because the Claimant failed to meet her 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 

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

Supervisor's Action: *Denial approved*

Supervisor's Comments:

³ Optional OSLTF Claim Form, 3 June 2011.

⁴ Timeline showing property listings 2005 – 2010.

U.S. Department of
Homeland Security

United States
Coast Guard



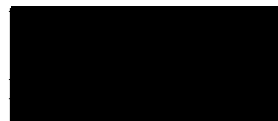
Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100

5890
6/22/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number [REDACTED]



RE: Claim Number: N10036-0980

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 N10036-0980 involving Deepwater Horizon. Please see the attached Claim Summary/Determination Form for further explanation.

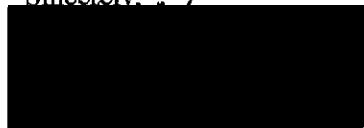
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-0980.

Mail reconsideration requests to:

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

Sincerely,



U.S. Coast Guard

Encl: (1) Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00003840

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-0980
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 June 10, 2011, [REDACTED] (Claimant) presented a lost profits & earnings capacity claim in the amount of \$50,000.00 to the National Pollution Funds Center (NPFC) for reimbursement. The Claimant asserted that he specializes in upper end residential renovations and "as a result of the spill, there was no construction nor was there any renovations being done on the coastal areas of the panhandle."¹ The Claimant further stated that his employer, CAT Construction, has "closed its doors as a result of no work and [he] is now unemployed."²

The Claimant provided a copy of his GCCF denial letter for his final claim. The claim was denied on 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).

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 Letter from Claimant to NPFC dated June 2, 2011

² Id

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

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

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

- (a) 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 June 2, 2011;
- Letter from Claimant to NPFC, dated June 2, 2011;
- First page of 2008, 2009, and 2010 Individual Income Tax Returns;
- Copy of GCCF denial letter, dated May 6, 2011

NPFC Determination

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

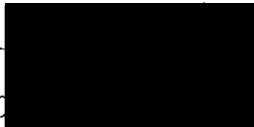
This claim is denied because the Claimant's evidence does not demonstrate (1) the alleged loss of profits in the amount of \$50,000.00, as claimed, or (2) the correlation, if any, between this alleged loss and the Deepwater Horizon oil spill.

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

“The amount of the claimant’s profits or earnings in comparable periods and during the period when the claimed loss or impairment was suffered, as established by income tax returns, financial statements, and similar documents. In addition, comparative figures for profits or earnings for the same or similar activities outside of the area affected by the incident also must be established.” The Claimant’s only financial documentation provided was the first page of his taxes for the past three (3) years.

Should the Claimant choose to come back on reconsideration, he will have to provide financial data from his employer to assist in determining the nexus between the Claimant’s income and the oil spill. If the alleged losses are solely related to the spill, the Claimant must describe in detail the rationale and source(s) of documentation for the position.

This claim is denied because the Claimant has failed to demonstrate (1) the alleged loss of profits in the amount of \$50,000.00, 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:  *Division*

Date of Supervisor’s review: *6/22/11*

Supervisor Action: *Denial approved*

Supervisor’s Comments:

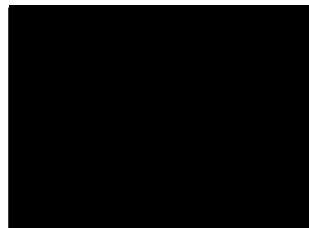
U.S. Department of
Homeland Security

United States
Coast Guard



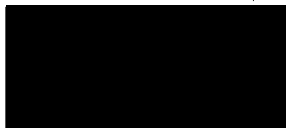
Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD



CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]



5890/DWHZ
Claim # N10036-0981
21 June 2011

Re: Claim Number: N10036-0981

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 N10036-0981 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 N10036-0981.

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

FOIA2011-3380-00003844

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-0981
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 10 June 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 alleged loss of income in her position as a hairdresser in Mobile, AL, in the months following the oil spill. According to the Claimant, she lost clients when they could no longer afford her services.² Claimant seeks \$10,000.00 in lost profits and earnings capacity.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 NPFCA, is available, pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136, to pay claims for uncompensated damages. One type of damages available pursuant to 33 C.F.R. § 136.231 is a claim for loss of profits or impairment of earning capacity due to injury to or destruction of natural resources.

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

- (a) That real or personal property or natural resources have been injured, destroyed, or lost.
- (b) That the claimant's income was reduced as a consequence of injury to, destruction of, or loss of property or natural resources, and the amount of that reduction.
- (c) The amount of the claimant's profits or earnings in comparable periods and during the period when the claimed loss or impairment was suffered, as established by income tax returns, financial statements, and similar documents. In addition, comparative figures for

¹ Optional OSLTF Claim Form dated 17 May 2011.

² *Id.*

³ *Id.*

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

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

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

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

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

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

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

Prior to presentment to the NPFC, the Claimant presented an Emergency Advance Payment Claim as well as an Interim/Final Payment Claim to the RP/GCCF. Both claims were denied by the GCCF.

On 17 May 2011, Claimant presented this claim to the NPFC 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 her loss of income was due to injury, destruction or loss of real or personal property or of a natural resource as a result of a discharge or substantial threat of a discharge of oil. Under 33 C.F.R. § 136.105(a) and § 136.105(e)(6), the Claimant bears the burden of providing to the NPFC all evidence, information, and documentation deemed necessary by the Director, NPFC, to support her claim.

The NPFC reviewed all the information and documentation provided by the Claimant. Claimant's amended income tax returns indicated that she earned \$6,189.00 as a hairdresser in 2010.⁴ Claimant did not provide any indication that she earned profits as a hairdresser in 2009.⁵ Furthermore, records of the Claimant's daily income earned throughout 2010 do not indicate that the oil spill caused a decrease in the Claimant's business.

⁴ Form 1040X, Rev. Dec. 2010, provided to NPFC by Claimant.

⁵ PHONECON: Claimant and NPFC Staff, 16 June, 11. Claimant stated that her primary source of income was from her position as a school bus driver in Mobile, AL.

Based on the documentation provided by the Claimant, this claim for \$10,000.00 in lost profits and earnings capacity is denied as the Claimant has failed to show that she has suffered a loss as a result of a discharge or substantial threat of discharge of oil.

Claim Supervisor: *NPF*  *ation Division*

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

Supervisor's Action: *Denial approved*

Supervisor's Comments:

Documentation Submitted by the Claimant:

- Optional OSLTF claim form;
- Copy of GCCF Document, "Supporting Documentation For A Claim;"
- Letter from Claimant, dated 20 March 2011, describing losses;
- Copy of Claimant's social security card;
- 2008 W-2, showing earnings from [REDACTED] and [REDACTED], showing total earnings of \$18,426.97;
- 2008 Form 1040, showing total earnings of \$18,426.97;
- Copy of Claimant's driver's license;
- Copy of certificate for completion of course in Cosmetology, awarded to Claimant, January 2011;
- Letter signed by Claimant's employer, April Tucker, noting Claimant's decrease in business following the oil spill;
- 2010 Form 1040X, showing gross income of \$15,756.00;
- 2010 Form 8863, "Education Credits (American Opportunity and Lifetime Learning Credits);"
- 2010 Schedule C, Form 1040, showing gross income of \$14,439.00;
- 2010 Schedule SE, Form 1040;
- Copy of GCCF Full Review Final Payment Claim Form, received by GCCF on 3 January 2011;
- Letter from Claimant to GCCF, replying to denial of Emergency Advancement Payment, dated 21 December 2010;
- Letter from Claimant to GCCF, stating that Claimant took a job with Mobile County Schools because her "net is very small" after expenses are deducted;
- List of expenses, including cell, gas, booth rental;
- Client list for 15 and 16 January, 2010, totaling \$645.00 in gross sales;
- Client list for 14 January 2010, totaling \$350.00 in gross sales;
- Client list for 23 January 2010, totaling \$385.00 in gross sales;
- Client list for 28, 29, 30 January 2010, totaling \$1,110.00 in gross sales;
- Client list for 16, 17 March 2010, totaling \$275.00 in gross sales;
- Client list for 12, 13 March 2010, totaling \$315.00 in gross sales;
- Client list for 6, 9 March 2010, totaling \$330.00 in gross sales;
- Client list for 10, 11 March 2010, totaling \$335.00 in gross sales;
- Client list for 28 February 2010, totaling \$150.00 in gross sales;
- Client list for 10, 11 March 2010, totaling \$335.00 in gross sales;
- Client list for 18, 19 February 2010, totaling \$355.00 in gross sales;
- Client list for 20 February 2010, totaling \$150.00 in gross sales;
- Client list for 4, 5 February 2010, totaling \$420.00 in gross sales;
- Client list for 3 February 2010, totaling \$255.00 in gross sales;
- Client list for 6, 9 February 2010, totaling \$440.00 in gross sales;
- Client list for 10, 11 February 2010, totaling \$345.00 in gross sales;
- Client list for 12, 13 February 2010, totaling 390.00 in gross sales;
- Client list for 3 April 2010, totaling \$275.00 in gross sales;
- Client list for 9, 10 April 2010, totaling \$435.00 in gross sales;
- Client list for 2 April 2010, totaling \$205.00 in gross sales;
- Client list for 24, 25 March 2010, totaling \$325.00 in gross sales;
- Client list for 26 March 2010, totaling \$165.00 in gross sales;

- Client list for 18, 19 March 2010, totaling \$295.00 in gross sales;
- Client list for 20, 23 March 2010, totaling \$305.00 in gross sales;
- Client list for 30 April, 1 May 2010, totaling 335.00 in gross sales;
- Client list for 6, 7 May 2010, totaling \$118.00 in gross sales;
- Client list for 23, 24 April 2010, totaling \$360.00 in gross sales;
- Client list for 29 April 2010, totaling \$223.00 in gross sales;
- Client list for 17 April 2010, totaling \$185.00 in gross sales;
- Client list for 24 April 2010, totaling \$160.00 in gross sales;
- Client list for 15, 16 April 2010, totaling \$365.00 in gross sales;
- Client list for 8 August 2010, totaling \$120.00 in gross sales;
- Client list for 13, 15 May 2010, totaling \$265.00 in gross sales;
- Client list for 15, 20, 21 May 2010, totaling \$258.00 in gross sales;
- Client list for 22 May 2010, totaling \$115.00 in gross sales;
- Client list for 27, 28 May 2010, totaling \$225.00 in gross sales;
- Client list for 29 May, 6 June 2010, totaling \$200.00 in gross sales;
- Client list for 6, 7 May, totaling \$195.00 in gross sales;
- Client list for 8 May 2010, totaling \$200.00 in gross sales;
- Client list for 4, 5 June 2010, totaling \$290.00 in gross sales;
- Client list for 10 June 11, totaling \$95.00 in gross sales;
- Client list for 1 July 2010, totaling \$80.00 in gross sales;
- Client list for 2, 3 July 2010, totaling \$150.00 in gross sales;
- Client list for 18, 19 June 2010, totaling \$220.00 in gross sales;
- Client list for 25 June 2010, totaling \$80.00 in gross sales;
- Client list for 17 June 2010, totaling \$105.00 in gross sales;
- Client list for 11, 12 June 2010, totaling \$220.00 in gross sales;
- Client list for 29, 30 July 2010, totaling \$140.00 in gross sales;
- Client list for 16, 17 July 2010, totaling \$165.00 in gross sales;
- Client list for 22, 23, 24 July 2010, totaling \$270.00 in gross sales;
- Client list for 8, 9 July 2010, totaling \$165.00 in gross sales;
- Client list for 18, 19 July 2010, totaling \$160.00 in gross sales;
- Client list for 26, 27 July 2010, totaling \$295.00 in gross sales;
- Client list for 28 August, 2, 3 September 2010, totaling \$180.00 in gross sales;
- Client list for 7, 12, 13 August 2010, totaling \$225.00 in gross sales;
- Client list for 25 September 2010, totaling \$475.00 in gross sales;
- Client list for 2 October 2010, totaling \$55.00 in gross sales;
- Client list for 4, 10 September 2010, totaling \$155.00 in gross sales;
- Client list for 11, 17 September 2010, totaling \$105.00 in gross sales;
- Client list for 23 October 2010, totaling \$75.00 in gross sales;
- Client list for 30 October 2010, totaling \$95.00 in gross sales;
- Client list for 9 October 2010, totaling \$90.00 in gross sales;
- Client list for 16 October 2010, totaling \$70.00 in gross sales;
- Client list for 20 November 2010, totaling \$110.00 in gross sales;
- Client list for 13 November 2010, totaling \$80.00 in gross sales;
- Client list for 6 November 2010, totaling \$60.00 in gross sales;
- Client list for 23 December 2010, totaling \$75.00 in gross sales;
- Client list for 24 December 2010, totaling \$135.00 in gross sales;
- List of gross earnings minus expenses for January – December 2010, showing losses from August – December of 2010.

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100



CERTIFIED MAIL - RETURN RECEIPT REQUESTED
Number: [REDACTED]

5890/DWHZ
Claim# N10036-0982
13 July 2011



RE: Claim Number: N10036-0982

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 N10036-0982 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination Form for further explanation.

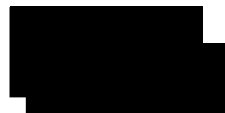
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-0982.

Mail reconsideration requests to:

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

Sincerely,



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

Enclosure: Claim Summary/Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	N10036-0982
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$110,000.00

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 June 2011, [REDACTED] (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form seeking \$110,000.00 in lost profits and earning capacity to the National Pollution Funds Center (NPFC) alleging damages resulting from the Deepwater Horizon oil spill.

Claimant owns a [REDACTED] located in Brooksville, Florida, about ten miles from the Gulf Coast.¹ Claimant alleges lost revenue due to the Deepwater Horizon oil spill which he alleges was the result of a decrease in tourists visiting the area of Brooksville, Florida.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

¹ See OSLTF claim form dated 03 June 2011

² Id.
09/14/11

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

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

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

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

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

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support his claim, Claimant submitted

- 1) OSLTF claim form dated 03 June 2011
- 2) Claimant letter explaining GCCF denial
- 3) Occupancy Revenue and Rates by month for 2008, 2009, and 2010
- 4) State of Florida Tax Return by Month for 2008, 2009, and 2010
- 5) Balance Sheet for 2008, 2009, and 2010
- 6) Income Statement for 2008, 2009, and 2010

Claimant is claiming lost earnings and wages in the amount of \$110,000.00

Claimant presented a Final claim to the GCCF in the amount of \$110,000.00 and was issued GCCF Claimant ID [REDACTED] and Claim [REDACTED]. The GCCF denied his claim.³

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.

³ See GCCF Filing Report (Karen Report)
09/14/11

The claim is denied because the Claimant has not provided sufficient evidence that his alleged loss in the amount of \$110,000.00 is due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil.

Claimant asserts lost revenue for his hotel in Brooksville, Florida due to the Deepwater Horizon oil spill.⁴ Claimant submitted monthly documentation of rental rates and rental revenue for the years 2008, 2009, and 2010.⁵ From April 2008 to March 2009 Claimant collected \$1,647,553.92 in revenue, from April 2009 to March 2010 Claimant collected \$1,386,418.59 in revenue.⁶ For the twelve months preceding the oil spill Claimant's business revenue decreased 16%.⁷ From April 2009 to December 2009 Claimant collected \$1,016,594.90 in revenue, from April 2010 to December 2010 Claimant collected \$913,105.29 in revenue.⁸ For the nine month period after the oil spill Claimant's business revenue decreased 10%.⁹ Though Claimant's post oil spill revenue declined, the decline was substantially less than during the twelve months immediately preceding the oil spill. Based upon the information provided, the NPFC is unable to distinguish what, if any, portion of the decline in the Claimant's business is the result of the oil spill as opposed to other factors such as generally declining market conditions.

Turning to the occupancy rates provided by the Claimant, in 2008 the average monthly occupancy rate was 70.083%. In 2009 the rate was 60.083%, equating to a 10% decrease in occupancy before the spill occurred.¹⁰ Post oil spill monthly occupancy averages for 2010 only decreased 0.75% from 2009 rates.¹¹ The Claimant has failed to show that decreased occupancy rates, and related loss of revenue, are the result of the oil spill.

This claim is denied because the Claimant failed to meet his burden to demonstrate (1) that he has an alleged loss in the amount claimed, and (2) that his alleged loss is due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil.

Claim Supervisor:



Date of Supervisor's Review: 7/15/11

Supervisor's Actions: DENIAL APPROVED

Supervisor's Comments:

⁴ See OSLTF claim form dated 03 June 2011

⁵ See report titled [REDACTED] - Brooksville - Occupancy and Adr report

⁶ See monthly revenue submitted by Claimant for 2008, 2009, and 2010

⁷ \$1,386,418.59 divided by \$1,647,553.92 minus 1 equals 16%

⁸ See monthly revenue submitted by Claimant for 2008, 2009, and 2010

⁹ \$1,016,594.90 divided by \$913,105.29 minus 1 equals 10%

¹⁰ See Occupancy Report

¹¹ Ibid.

U.S. Department of
Homeland Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD



CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim# N10036-0983
16 June 2011



RE: Claim Number: N10036-0983

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 N10036-0983 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination Form for further explanation.

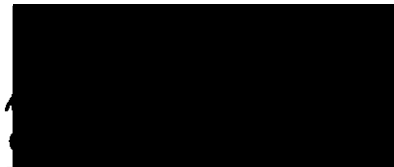
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-0983.

Mail reconsideration requests to:

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

Sincerely,



National Pollution Funds Center
Claims Manager

Enclosure: Claim Summary/Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	N10036-0983
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 08 June 2010, [REDACTED] (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form seeking \$5,000.00 in lost profits and earning capacity to the National Pollution Funds Center (NPFC) alleging damages resulting from the Deepwater Horizon oil spill.

Claimant works for Career Systems Development Corporation (CSDC) as a food service aid.¹ Claimant has been employed since 10 March 2008 in the New Orleans area.² The Claimant stated on the Optional OSLTF Claim Form that the incident caused him to be "out of work."³

Claimant presented an Emergency Advance Payment Claim to the GCCF and was issued GCCF Claimant II [REDACTED] and Claim [REDACTED]. On 10 December 2010 the GCCF denied his claim.⁴ Claimant presented a Full Review Final Claim to the GCCF and was issued Claim [REDACTED] on 28 April 2011 the GCCF denied his claim.⁵

APPLICABLE LAW

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

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

¹ See employment letter from CSDC signed by [REDACTED] (Human Resource Supervisor) dated 02 December 2010

² Ibid.

³ See OSLTF claim form dated 30 May 2011

⁴ See GCCF Claimant's Status Page/Report

⁵ Ibid

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

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

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

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

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

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

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

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

- 1) OSLTF claim form, dated 30 May 2011;
- 2) 2010 W-2 from Career Systems Development Corporation;
- 3) 2009 Paystubs from Career Systems Development Corporation;
- 4) Employment Letter from Career Systems Development Corporation;
- 5) GCCF requesting more documentation letter to Claimant dated 30 September 2010

Claimant is claiming lost earnings and wages in the amount of \$5,000.00

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 \$5,000.00, as claimed, or (2) the correlation, if any, between this alleged loss and the Deepwater Horizon oil spill. The Claimant's alleged loss of hours and employment due to the Deepwater Horizon oil spill was unsubstantiated. The Claimant's 2010 W-2 when compared to the Claimant's 2009 latest paystub showing year to date earnings showed a mere marginal difference in pay.

Furthermore, on 14 June 2011, the NPFC staff called [REDACTED] (Human Recourses Supervisor) for CSDC. [REDACTED] stated that the Claimant has "worked continuously without any disruption in hours or time off."⁶ The Claimant's 2009 paystubs and 2010 W-2 Statement from [REDACTED] corroborate the Human Recourses Supervisor's statements, since the Claimant did not get a reduction in hours or pay.

As per 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. If any payment is made on the claim, the claimant may also be subject to an assessment of up to twice the amount claimed. These civil sanctions may be imposed under the Program Fraud Civil Remedies Act, 31 U.S.C. 3801-3812, as implemented in 49 CFR part 31.

Because the Claimant has failed to demonstrate (1) the alleged loss of profits in the amount of \$5,000.00, as claimed, or (2) that this alleged loss is due to injury or destruction or loss of real or personal property or a natural resource as a result of a discharge or substantial threat of a discharge of oil, this claim is DENIED.

Claim Supervisor: *Claims Reproduction Division*

Date of Supervisor's review: *6/16/11*

Supervisor Action: *Denial approved*

Supervisor's Comments:

⁶ NPFC phone conversation with [REDACTED] on 14 June 2011
09/14/11

U.S. Department of
Homeland Security

United States
Coast Guard



Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD



CERTIFIED MAIL - RETURN RECEIPT REQUESTED
Number [REDACTED]

5890/DWHZ
Claim# N10036-0984
23 June 2011



RE: Claim Number: N10036-0984

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 N10036-0984 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination Form for further explanation.

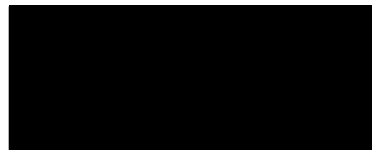
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-0984.

Mail reconsideration requests to:

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

Sincerely,



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

Enclosure: Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00003858

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	N10036-0984
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
Amount Requested	\$10,000.00

FACTS

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

CLAIM AND CLAIMANT

On 11 June 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.

Claimant submitted two notarized letters signed by her and two unlabeled checks purportedly signed by a [REDACTED]. The letters indicated that the Claimant provided services to clients in their homes and that as a result of the oil spill, she lost clients and has been unable to earn a living. Claimant alleged that there is no substitute work for her and she consequently has grown depressed and sees a "shrink."¹

The two checks appear to demonstrate the Claimant's earned wages for services rendered from 2008-09 and January through December 2010.

APPLICABLE LAW

Under the Oil Pollution Act of 1990 (OPA), at 33 U.S.C. § 2702(a), responsible parties are liable for removal costs and damages resulting from the discharge of oil into or upon the navigable waters or adjoining shorelines or the exclusive economic zone, as described in 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 Claimant handwritten letters, dated 21 December 2010.

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

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

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

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

- (a) 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 submitted the following documentation to the NPFC:

- OSLTF claim form, signed by Claimant and dated 11 June 2011;
- (2) Handwritten Letters from Claimant, dtd 21 December 2010;
- Copy of Personal Check dtd 31 December 2010;
- Copy of Personal Check dtd 31 December 2009.

Prior to presentment to the NPFC, Claimant presented multiple claims to the RP/GCCF, including an Emergency Advance Payment and Final Payment Claim. Those claims were denied.

Claimant seeks \$10,000.00 from the OSLTF 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.

Upon review of the documentation presented by the Claimant, it is important to note that the Claimant provided copies of two checks allegedly written and signed by a Mrs. McCalloney. One of the checks is for \$10,000.00 with a note in the memo section of the check at the bottom left that read "Earnings 08 – 09" and interestingly enough, the date the check was purportedly written shows "1-1-08 – 12-31-09". The second check had a note in the memo section at the bottom left that read "sitter services" and again the date the check was purportedly written showed "01-4-10" and that check is in the amount of \$20,000.00. The checks are counter checks and bear no contact information for the account holder, allegedly Mrs. McCalloney.

Additionally, the handwriting on the checks appears to be that of the Claimant when compared to the Claimant's handwriting on her OSLTF Claim Form. On 14 June 2011, the NPFC contacted the Claimant and requested that she provide contact information for the account holder of the checks. To date, the Claimant has not responded to this request.

Furthermore, the second check dated 1-4-10 for \$20,000.00 has not been explained by the Claimant. The NPFC is unable to determine what period of time the second check allegedly covers. 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." For example, beyond the two check copies which cannot be validated, the Claimant has provided absolutely no information as to her prior employment and wages, and has provided insufficient evidence which might substantiate her alleged losses.

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

This claim is denied because the Claimant (1) has failed to provide sufficient documentation to support her alleged loss, (2) has failed to provide the contact information for the account holder of the two checks produced as alleged income as requested by the NPFC pursuant to 33 C.F.R. § 136.105(a) and 136.105(e)(6), and (3) the evidence presented in this claim submission appears to be misrepresentation of material facts.

This claim is DENIED

Claim Supervisor: NP  on

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

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

Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim # N10036-0985
26 July 2011

Re: Claim Number: N10036-0985

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 N10036-0985 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 N10036-0985.

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

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-0985
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$3,365.07

FACTS

On or about 20 April 2010, the Mobile Offshore Drilling 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 June 2011, [REDACTED] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$3,356.07 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.¹

The Claimant owns and collects rental income from a beachfront condominium in [REDACTED] Beach, FL. The Claimant alleged that the "oil spill resulted in tourists making alternate vacation plans and going elsewhere."² The Claimant seeks 3,356.07 in lost rental income for the months of July 2010, August 2010, January 2011 and February 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.
- (c) The amount of the claimant's profits or earnings in comparable periods and during the period 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 1 June 2011.

² Id.

³ Letter from Claimant to NPFC, 1 June 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 undertaken, but reasonably available;
- (d) Any saved overhead or normal expenses not incurred as a result of the incident; and
- (e) State, local, and Federal taxes.

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

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

- Optional OSLTF claim form;
- Letter from Claimant to NPFC Director, 1 June 2011;
- Letter from Claimant to NPFC Director, 7 May 2011;
- [REDACTED] Owner Statement, July 2010, showing rental income of \$1,419.37;
- [REDACTED] Owner Statement, July 2009, showing rental income of \$1,126.33;
- [REDACTED] Owner Statement, July 2008, showing rental income of \$2,195.24;
- [REDACTED] Owner Statement, July 2007, showing rental income of \$3,351.47; and
- Response to Request for Additional Information, 7 July 2011.

Prior to presentation to the NPFC, the Claimant presented a Full Review Final (FRF) Claim to the RP/GCCF on 14 September 2010, for \$671.10 in lost rental income for the month of August of 2010.⁴ This claim was assigned Claimant ID [REDACTED] and Claim [REDACTED]. The RP/GCCF offered the Claimant a final payment in the amount of \$400.00 on 2 April 2011. The Claimant also received payment of \$1,025.00 from BP in July of 2010.⁵

⁴ Optional OSLTF Claim Form dated 13 May 2011

⁵ PHONECON: Confirming presentation, NPFC Staff and GCCF Staff, 25 July 2011.

On 13 June 2011, the Claimant presented this claim for \$3,356.07 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill. The Claimant stated that this amount represents lost rental income from July and August 2010, as well as January and February 2011.⁶ However, the Claimant's FRF only addressed August 2010 losses in the amount of \$671.10, for which GCCF offered the Claimant \$400.00.

Because OPA requires that a claim be first presented to the RP/GCCF prior to presentment to the NPFC, this summary determination will only address the Claimant's loss for August 2010, in the amount of \$671.10. Any other losses alleged by Claimant are denied as having not been first presented to the RP/GCCF.

NPFC Determination

Under 33 U.S.C. § 2702(b)(2)(E) and 33 C.F.R. Part 136, a Claimant must prove that 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 previously mentioned, this claim is denied to the extent that it has not first been presented to the RP/GCCF as required by OPA.⁷ Therefore, the following analysis only addresses the Claimant's alleged lost rental income for the month of August 2010.

In terms of the Claimant's alleged August 2010 losses, the Claimant must demonstrate that (1) she suffered an economic loss, and (2) that the economic loss was due to the discharge or substantial threat of discharge of oil.

In order to ascertain whether or not the Claimant sustained a financial loss in August of 2010, the NPFC requested that the Claimant provide rental income records for August 2008 - 2010.⁸ However, the Claimant only submitted rental income for August 2007 - 2009.⁹ In her submission, Claimant states,

"Enclosed are the statements for August 2007, 2008 and 2009. Please see the e-mail from the rental manager indicating no statement was available for August 2010. There were no rentals."¹⁰

The NPFC contacted the rental manager to inquire about the lack of August rentals and to ask why the Claimant did not have a record of August expenses in spite of the alleged lack of rentals. The NPFC was informed that the Claimant stopped using the rental manager's services on 19 July 2010, which is why there were no rental records from Garrett Realty for August 2010.¹¹

The Claimant has not presented any other documentation that would indicate her rental income and expenses in August of 2010, so it is not possible to determine if the Claimant sustained a financial loss as alleged. Furthermore, the Claimant has not provided documentation of any

⁶ Letter from Claimant to NPFC, 1 June 2011.

⁷ 33 C.F.R. § 136.103(a)

⁸ Request for Additional Information, 27 June 2011.

⁹ Response to NPFC request for additional information, 7 July 2011.

¹⁰ Response to NPFC request for additional information, 7 July 2011.

¹¹ PHONECON: NPFC Staff and Garrett Realty Staff, 25 July 2011.

cancellations of rental agreements, which would show that her alleged loss income was due to the Deepwater Horizon oil spill.¹²

The remaining claimed amount of \$2,704.97 is denied because the Claimant has failed to present the alleged loss of profits to the RP/GCCF as per 33 C.F.R. § 136.103(a). The rest of the claim is denied because the Claimant has failed to demonstrate (1) the alleged loss of profits in the amount of \$671.10, 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.

Should the Claimant decide to request reconsideration, she will need to provide all financial records, history of rental for the periods in question, a copy of all BP/GCCF claim submissions and an itemization of each payment received identifying which rental period the payments cover.

Claim Supervisor:  *n Division*

Date of Supervisor's review: *7/26/11*

Supervisor Action: *Denial approved*

Supervisor's Comments:

¹² Cancellation records requested in NPFC Request for Additional Information, 27 June 2011.
09/14/11

U.S. Department of
Homeland Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD

5890/DWHZ
Claim # N10036-0986
21 July 2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [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 N10036-0986 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 N10036-0986.

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	N10036-0986
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$8,880.00

FACTS

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

CLAIM AND CLAIMANT

On 14 June 2011, [REDACTED] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$8,880.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

Claimant was a business banker for [REDACTED] out of Tampa Bay, Florida.¹ His territory was the Gulf Coast in the Tampa Bay area. He was paid a salary plus incentive bonuses.² The Claimant worked with [REDACTED] from December 2009 to October 2010.³ The Claimant stated, "Over 80% of them [his clients] were affected negatively by the Spill." "Incentive for my production was eventually null and void..."⁴ Claimant subsequently left [REDACTED] and began work with [REDACTED] out of Jacksonville, Florida.⁵

APPLICABLE LAW

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

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

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

¹ Claimant's Statement to GCCF explaining the claim

² Id.

³ Pay stubs from [REDACTED] December 2009 to October 2010

⁴ Claimant's Statement to GCCF explaining the claim

⁵ Earnings Statements from Everbank for January 2011

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

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

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

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

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support this claim, Claimant submitted the following documentation:

1. NPFC OSLTF Claim Form dated 14 June 2011
2. Summary of Witness's Knowledge
3. GCCF Denial Letter on Interim Payment/Final Payment Claim 14 May 2011
4. To Whom It May Concern letter from [REDACTED] concerning the claim 18 May 2011. Writer not identified and letter is unsigned.
5. Claimant's Statement to GCCF explaining the claim
6. W-2's Wage and Tax Statements for 2008 from [REDACTED] and [REDACTED] of Tampa Bay
7. W-2's Wage and Tax Statements for 2009 from [REDACTED] and [REDACTED]
8. W-2's Wage and Tax Statements for 2010 from [REDACTED] and [REDACTED]
9. Earnings Statements from Freshbank for January 2011
10. Pay stubs from [REDACTED] December 2009 to October 2010

On 15 June 2011, NPFC sent the Claimant a letter requesting additional information in order to further evaluate the claim. The letter was sent First-Class Certified Return Receipt Requested.

USPS Tracking shows the letter arrived in Palm Harbor, Florida, 25 June 2011 and was unclaimed until 11 July 2011.⁶

The letter was returned to NPFC 19 July 2011. On 20 June 2011, the Claimant called the NPFC and stated that he had not received the letter. The NPFC e-mailed the signed copy of the letter requesting additional information to the Claimant 20 June 2011. To date, Claimant has not responded to the letter requesting additional information.

Claimant seeks lost earnings and wages in the amount of \$8,880.00.

Prior to presenting a claim to the NPFC, the Claimant filed a Full Review Final Claim (FRF) with the GCCF on 09 May 2011 in the amount of \$8,880.00.⁷ The Full Review Final Claim was assigned Claimant ID [REDACTED] and claim [REDACTED]. This claim was denied on 14 May 2011.⁸

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.

NPFC sent the Claimant a letter requesting additional information in order to further evaluate the claim. Claimant has not responded to the letter requesting additional information. The NPFC's request for additional information asked for among other items, the Claimant's 2008, 2009, and 2010 tax forms and a signed letter from Fifth Third Bank stating the reason for the Claimant's loss of income. Claimant did not respond to the letter, and he has not otherwise provided sufficient documentation to show he lost earnings due to the Deepwater Horizon oil spill.

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: *Claims Rejection Division*

Date of Supervisor's Review: *21 July 2011*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

⁶ USPS Tracking Number [REDACTED]

⁷ Report from the GCCF dated 15 July 2011

⁸ GCCF Denial Letter dated 14 May 2011

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim # N10036-0988
30 June 2011

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq. (OPA) and the associated regulations at 33 C.F.R. Part 136, denies payment on the claim number N10036-0988 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 N10036-0988.

Mail reconsideration requests to:

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

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

Enclosure: Claim Summary/Determination Form

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-0988
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$75,000.00

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 14 June 2011, [REDACTED] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$75,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

The Claimant is a self-employed real estate appraiser. He performs appraisals for banks in the Bay, Gulf, Walton and Okaloosa counties in Florida.¹ He stated that as a result of the Deepwater Horizon oil spill, the demand for his appraisal services declined and he lost earnings. He made calls to the banks to get some work, but the banks were “not doing anything until they know the effect of the oil spill.”

Claimant presented a Final Payment Claim to the GCCF and GCCF issued Claimant ID [REDACTED] and Claim [REDACTED]. On 30 April 2011 the GCCF denied the claim.

APPLICABLE LAW

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

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

¹ Copy of GCCF Form 2000-F Full Review Final Payment Claim dated 24 January 2011

² GCCF Claim Status site

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

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

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

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

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

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

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

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

- OSLTF Claim form dated 07 June 2011;
- Copy of GCCF Form 2000-F Full Review Final Payment Claim dated 24 January 2011;
- Copy of Florida drivers license;
- Copy of Social Security Card;

- Form 1040 US Individual Income Tax Return for 2008, 2009 and 2010;
- Letter from various bank clients concerning the oil spill;
- Schedule of wages from April 2008 through June 2011;
- Listing of appraisals made for 2008, 2009 and 2011;
- Copy of client list;
- Letter from Claimant dated 21 June 2011 in response to NPFC letter requesting additional information;
- Wages Received and Taxes Withheld Statement for 2008;
- Forms 1099 for 2008 and 2009 from [REDACTED] to Claimant.

On 16 June 2011 NPFC sent the Claimant a letter requesting additional information in order to evaluate the claim. On 29 June 2011 the Claimant responded to the request.

NPFC Determination

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

This claim is denied because the Claimant's evidence does not demonstrate (1) the alleged loss of profits in the amount of \$75,000.00, as claimed, or (2) the correlation, if any, between this alleged loss and the Deepwater Horizon oil spill.

The Claimant stated that as a result of the Deepwater Horizon oil spill, the demand for his appraisal services declined and he lost earnings. He made calls to the banks to mitigate his loss but the banks were "not doing anything until they know the effect of the oil spill." The decision by the banks to hold off until they knew the effects of the oil spill is a business decision made by the banks and therefore the alleged loss is not the direct result of the oil spill. Since the Claimant has not demonstrated that his loss of earnings was due to the oil spill, his claim is denied.

Should the Claimant choose to come back on reconsideration, he will have to provide cancelled contracts stating its relation to the oil spill to assist in determining the nexus between the Claimant's income and the oil spill. If the alleged losses are solely related to the spill, the Claimant must describe in detail the rationale and source(s) of documentation for the position.

This claim is denied because the Claimant has failed to demonstrate (1) the alleged loss of profits in the amount of \$75,000.00, 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: *Claims Administration Division*

Date of Supervisor's Review: *30 June 2011*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

U.S. Department of
Homeland Security

United States
Coast Guard



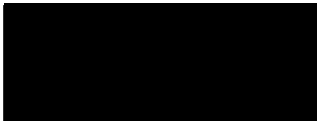
Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD

5890
7/20/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number [REDACTED]



RE: Claim Number: N10036-0989

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 N10036-0989 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 N10036-0989.

Mail reconsideration requests to:

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

Sincerely,



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

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

FOIA2011-3380-00003876

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-0989
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: \$25,000.00

FACTS:

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

CLAIM AND CLAIMANT

On June 15, 2011, [REDACTED] (Claimant) presented a lost profits & earnings capacity claim in the amount of \$25,000.00 to the National Pollution Funds Center (NPFC) for reimbursement. The Claimant asserted that she is a rod-and-reel fisherman but works off of a fishing vessel. The Claimant stated that due to the oil spill "our fishing grounds for commercial fishermen and women were closed for fishing."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 June 2, 2011
09/14/11

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

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

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

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

- (a) 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 June 2, 2011;
- 2008, 2009, and 2010 W-2;
- Photocopy of Driver's License, Social Security Card, and Commercial Fishing License;
- Copy of GCCF deficiency letter, dated May 26, 2011;
- Various articles and maps of the Deepwater Horizon oil spill;
- Two (2) trip tickets and a 2010 summary for [REDACTED];
- 2007, 2008, and 2009 Tax Return Transcripts
- Chart of [REDACTED] and
- Answers to questions posed by the NPFC.

The Claimant did not provide a copy of her GCCF denial letter for the claim but stated that 90 days had passed since the submission.² The Claimant filed a Full Review Final Claim with the RP/GCCF on or about January 14, 2011 via Claimant ID [REDACTED] and claim [REDACTED]

NPFC Determination

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

² Optional OSLTF Claim Form dated June 2, 2011
09/14/11

This claim is denied because the Claimant's evidence does not demonstrate the alleged loss of profits in the amount of \$25,000.00. Under 33 C.F.R. § 136.235, the amount of compensation allowable for a claim involving loss of profits or impairment of earning capacity is limited to the actual net reduction or loss of earnings or profits suffered. Based on the financial documentation provided by the Claimant, she has never made more than \$12,888.00 in a year as a fisherman as evidenced by the documentation presented to the NPFC.

Furthermore, the Claimant has provided no factual evidence that the [REDACTED] area she fishes was closed as a result of the oil spill. Also, the Claimant provided no information on the vessel she worked on and whether or not it was directly affected by the oil spill.

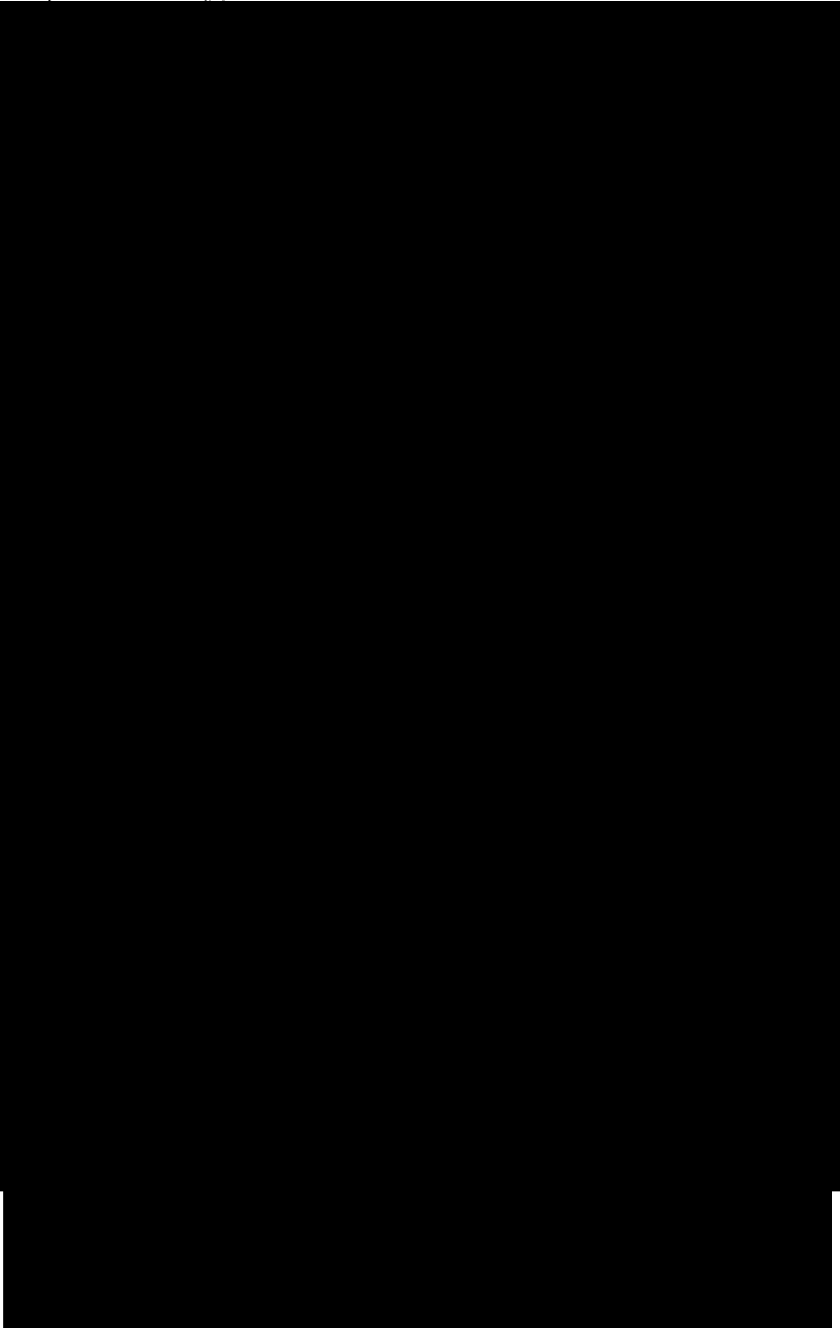
This claim is denied because the Claimant has failed to demonstrate (1) the alleged loss of profits in the amount of \$25,000.00, as claimed, or (2) that this alleged loss is due to injury or destruction or loss of real or personal property or a natural resource as a result of a discharge or substantial threat of a discharge of oil.

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

Date of Supervisor's review: *7/20/11*

Supervisor Action: *Denial approved*

Supervisor's Comments:



2011 AUG -1 PM 1:38

RECEIVED
NPLC CLERK

U.S. Department of
Homeland Security

United States
Coast Guard



Director
National Pollution Funds Center
United States Coast Guard

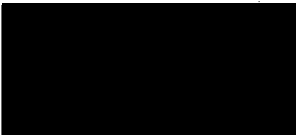
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd. Suite 1000
Arlington, VA 20598-7100
Staff Symbol: (CA)
Phone: 800-280-7118



CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Number: 

5890/DWHZ
Claim# N10036-0990
21 June 2011



RE: Claim Number: N10036-0990

Dear 

The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq. (OPA) and the associated regulations at 33 C.F.R. Part 136, denies payment on your claim, # N10036-0990, involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination Form for further explanation.

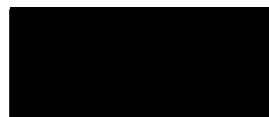
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-0990.

Mail reconsideration requests to:

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

Sincerely,



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

Enclosure: Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00003881

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	N10036-0990
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$12,000.00

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 8 June 2011, [REDACTED] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$12,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil-spill.¹

The Claimant did not complete her OSLTF claim form so there is no indication that she submitted or plans to submit her loss to an insurer, a description of the nature and extent of her claimed damages, or a description of how the alleged incident caused her damages and what actions she took to mitigate her alleged damages.² The Claimant did provide two printouts of articles related to efforts by the [REDACTED] to assist its employees with claims to the GCCF.

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 The Claimant did not indicate a loss type on her OSLTF form, or state who her employer is or was at the time of the subject oil spill. However, based on the totality of her submission, the NPFC infers that she was employed in some capacity by the [REDACTED] in Biloxi, Mississippi.

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

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

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

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

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support this claim, Claimant submitted the following documentation:

- Optional OSLTF Claim Form dated 01 May 2011;
- [REDACTED] daily news article dated 18 February 2011;
- [REDACTED] E-Newsletter dated 9 February 2011.

Claimant seeks \$12,000.00 for loss of profits and earnings capacity allegedly resulting from the Deepwater Horizon incident.

Claimant alleged that she filed a claim with the GCCF on 17 December 2010, but that no action was taken by the GCCF.³

NPFC Determination

Under 33 C.F.R. § 136.105(a) and § 136.105(e)(6), the Claimant bears the burden of providing to the NPFC, all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim. The NPFC considered all of the documentation submitted 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, the Claimant has provided no information as to her prior or current employment, no evidence of her current or prior earnings, and no evidence which would indicate that her alleged losses are due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil.

Accordingly, the Claimant's request for compensation in the amount of \$12,000.00 is denied.


Claim Supervisor: *NFPC Claims Adjudication Division*

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

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

U.S. Department of
Homeland Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim # N10036-0991
19 August 2011

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq. (OPA) and the associated regulations at 33 C.F.R. Part 136, denies payment on the claim number N10036-0991 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 N10036-0991.

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

FOIA2011-3380-00003885

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-0991
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings 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 15 June 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.

The Claimant was an insurance agent for [REDACTED] in Jacksonville, Florida. [REDACTED] sells commercial and recreation marine insurance to boat owners sailing the waters of the Gulf of Mexico and the Atlantic Ocean. The Claimant alleged that as a result of the Deepwater Horizon oil spill, "[t]he employer issued a memo advising the agency staff that annual pay increases and bonuses were suspended due to the increase in cancellations of insurance policies as well as lack of business."¹ [REDACTED] terminated the Claimant's employment in November 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.

¹ OSLTF Claim Form signed by Claimant 14 June 2011

² Based on discussion between the Claimant and NPFC Claims Adjuster 18 August 2011 FOIA2011-3380-00003886

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

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

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

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

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

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

- OSLTF Claim Form signed by Claimant, 14 June 2011
- Letter from [REDACTED] to GCCF concerning reduction of bonuses and pay 20 April 2011
- W-2s Wage and Tax Statements for 2005 through 2010
- W-2s Wage and Tax Statements for 2005 for [REDACTED]
- Memo to employer concerning off work for maternity leave December 2006 to January 2007 dated 16 April 2007
- Letter from Claimant to GCCF setting forth time-line leading to loss of earnings dated 18 May 2011
- [REDACTED] memos to Office Staff concerning pay increases and bonuses 05 May 2010 and 01 July 2010
- Claimant's letter dated 17 August 2011 in response to NPFC's letter of 30 June 2011 requesting additional information

On 30 June 2011, the NPFC sent the Claimant a letter requesting additional information in order to further evaluate the claim. On 17 August 2011, the Claimant responded to the request.

Before presenting the claim to the NPFC, the Claimant filed a Full Review Final (FRF) Claim with the GCCF on 16 January 2011 in the amount of \$30,000.00. The Claim was assigned Claimant ID [REDACTED] and claim [REDACTED]. The claim was denied on 15 April 2011.⁴

Based upon the evidence provided by the Claimant, it appears that the subject matter for the GCCF claim is the same as the subject matter of the claim before the NPFC, i.e., that the Deepwater Horizon oil spill caused her employer to lose sales of marine insurance, therefore causing her to lose her employment. The NPFC deems the denied GCCF claim to be properly presented to the responsible party and properly presented to the NPFC. Accordingly, this Claim Summary determination for NPFC Claim N10036-0991 considers and addresses the earnings claimed in all of the claims presented to the responsible party, specifically; GCCF FRF Claim [REDACTED]

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 NPFC notes that the Claimant's employer submitted a claim to the NPFC for lost profits and earnings (Claim # N10036-0954). The NPFC denied [REDACTED] claim because it did not provide sufficient documentation to demonstrate that its alleged loss was caused by the Deepwater Horizon oil spill. Beyond information identical to what was provided by her employer, the Claimant has not provided any new or additional documentation to show that the loss of earnings was due to the Deepwater Horizon oil spill rather than business decisions by the employer and/or its clients.

This claim is denied because the Claimant failed to meet the burden to demonstrate (1) that there was an alleged loss in the amount of \$30,000.00, 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.

Claim Supervisor:	<i>Claims Adjudication Division</i>
Date of Supervisor's Review:	<i>19 August 2011</i>
Supervisor's Action:	<i>Denial approved</i>
Supervisor's Comments:	[REDACTED]

³ Report from the GCCF dated 29 July 2011
~~09/07/11~~ Denial Letter dated 15 April 2011

U.S. Department of
Homeland Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

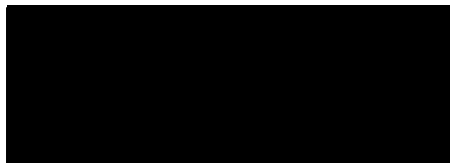
NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim# N10036-0992
19 July 2011



RE: Claim Number: N10036-0992

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 N10036-0992 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination Form for further explanation.

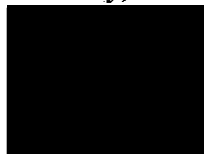
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-0992.

Mail reconsideration requests to:

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

Sincerely,



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

Enclosure: Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00003889

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	N10036-0992
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$250,000.00

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 15 June 2011, [REDACTED] Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form seeking \$250,000.00 in lost profits and earning capacity to the National Pollution Funds Center (NPFC) alleging damages resulting from the Deepwater Horizon oil spill.

Claimant owned a cleaning business that serviced the Destin Florida area. Claimant had an alleged agreement with [REDACTED] to service the club for \$9,500.00 a month. The Claimant stated that [REDACTED] had to shut down due to the Deepwater Horizon oil spill and that the Claimant lost fourteen months of income of \$9,500.00 per month.

APPLICABLE LAW

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

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

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

- (a) That real or personal property or natural resources have been injured, destroyed, or lost.
- (b) That the claimant's income was reduced as a consequence of injury to, destruction of, or loss of property or natural resources, and the amount of that reduction.
- (c) The amount of the claimant's profits or earnings in comparable periods and during the period when the claimed loss or impairment was suffered, as established by income tax returns, financial statements, and similar

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

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

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

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

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

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support his claim, Claimant submitted the following:

- 1) OSLTF claim form dated 14 June 2011
- 2) Handwritten letter explaining claim
- 3) Handwritten income statements for 2008, 2009, 2010, and 2011
- 4) Schedule C Form 1040 for 2008, 2009, and 2010
- 5) Typed answers to NPFC's request for additional information
- 6) 2010 form 1099 MISC from [REDACTED]
- 7) 2008 form 1099 MISC from [REDACTED]
- 8) 2008 form 1099 MISC from [REDACTED]
- 9) 2008 form 1099 MISC from [REDACTED]
- 10) 2008 form 1099 MISC from [REDACTED]
- 11) 2008 form 1099 MISC from [REDACTED]
- 12) 2008 form 1099 MISC from [REDACTED]
- 13) 2009 form 1099 MISC from [REDACTED]
- 14) 2009 form 1099 MISC from [REDACTED]
- 15) Proposal/Acceptance letter for [REDACTED] (unsigned by [REDACTED])
- 16) Proposal /Acceptance letter for [REDACTED]
- 17) [REDACTED] letter stating 2009 pay to [REDACTED]
- 18) 2008 W-2 from [REDACTED]

Claimant is seeking lost earnings and wages in the amount of \$250,000.00.

Prior to presenting his claim to the NPFC, the Claimant filed an Emergency Advance Payment (EAP) with the GCCF on 22 November 2010 in the amount of \$38,640.00.¹ He was assigned Claimant ID [REDACTED] and claim [REDACTED]. This claim was denied on 15 December 2010.² Additionally, the Claimant filed an Interim 1 claim with the GCCF (GCCF [REDACTED]) on 04 January 2011 for \$80,000.00; this claim was also denied.³ The two claims filed with the RP/GCCF total a combined sum certain of \$118,640.00 although the Claimant has requested \$250,000.00 from the NPFC. A Claimant must make proper presentment of ALL costs to the RP prior to presenting any claim to the NPFC therefore any amount in excess of \$118,640.00 has not been properly presented to the RP and is therefore deemed denied.

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

Claimant alleged that he suffered lost profits and impairment of earnings capacity due to the Deepwater Horizon oil spill as, according to the Claimant, the spill caused him to lose the benefit of a "handshake" agreement with [REDACTED]. The Claimant further asserted that the agreement was to provide him with income of \$9,500.00 a month in return for his cleaning services. The Claimant provided a document titled Proposal/Acceptance for [REDACTED] but the signature line for [REDACTED] representative was left blank.⁴ The NPFC requested contact information for [REDACTED] to verify the Claimant's allegation, but the Claimant responded that he is unable to find anything other than a phone number that is no longer in service.⁵ Accordingly, the NPFC is unable to determine the veracity of the alleged loss without corroborating evidence from Club Overboard.

Furthermore, the NPFC cannot consider any amount in excess of \$118,640.00 for alleged loss of profits because the Claimant has not made proper presentment of such costs to the RP as required by the Oil Pollution Act of 1990 at 33 U.S.C. § 2713(a) and the claims regulations at 33 C.F.R. § 136.103(a), which state that all claims for removal costs and damages must be presented first to the Responsible Party or guarantor. If the claim is not settled by payment by any person within 90 days the Claimant may present the claim to the NPFC.

¹ Report from the GCCF dated 15 July 2011

² GCCF Denial Letter dated 15 December 2010

³ GCCF Denial Letter

⁴ See proposal/acceptance letter unsigned

⁵ Telephone conversation with Claimant 14 July 2011

The claim is denied because the Claimant's evidence does not demonstrate (1) the alleged loss of profits in the amount of \$250,000.00, as claimed, (2) that this alleged loss is due to injury or destruction or loss of real or personal property or a natural resource as a result of a discharge or substantial threat of a discharge of oil, and (3) that presentment requirements were met as stated in 33 C.F.R. § 136.103(a).

Claim Supervisor: **NPFC**  **Judication Division**

Date of Supervisor's Review: **7/19/11**

Supervisor's Actions: **Denial approved**

Supervisor's Comments:

U.S. Department of
Homeland Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937

5890
8/2/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number [REDACTED]

RE: Claim Number: N10036-0993

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 N10036-0993 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 SIGNATURE]
Chief, Claims Adjudication Division
U.S. Coast Guard

ENCL: Claim Summary / Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-0993
Claimant	[REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: \$2,200.00

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 15 June 2011, [REDACTED] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$2,200.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

From 28 May 2010 to 03 June 2010, the Claimant reportedly worked for the Vessels of Opportunity (VOO) Program under Captain Chester Trabrica.¹ Claimant alleged that [REDACTED] was laid off and refused to pay her.² Claimant seeks \$2,200.00 in lost wages from the OSLTF.

Prior to presentment to the NPFC, Claimant presented multiple claims to the RP/GCCF, including an Emergency Advance Payment (EAP) and Final Payment Claim. Both claims were denied by the GCCF.³

REQUEST FOR RECONSIDERATION:

On July 30, 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 22, 2011 because the alleged loss in the amount of \$2,200.00 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, this claim is denied.

On reconsideration, the Claimant provided two one page letters requesting reconsideration. The Claimant has not produced any new information but rather reiterated her scenario by stating that she worked for Capt. Hester Trabrica under the BP VOO program as a deckhand. She asserted that during her safety class, a BP representative by the name of Jeremy Jermaine told them they

¹ PHONECON with Claimant on 16 June 2011.

² Id.

³ GCCF denial letter, dated 18 November 2010 & 27 May 2011.

would make \$200.00 a day. She stated that she signed in daily from May 28, 2010 to June 3, 2010 and then her boat Captain was fired for smoking pot on the job. In closing, the Claimant advised she had no other proof to provide.

RECONSIDERATION CLAIM ANALYSIS:

The claimant requested reconsideration which was received by the NPFC on July 30, 2011 via regular mail. The Claimant provided two one page letters 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).

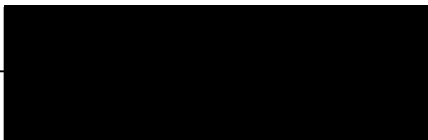
The NPFC performed a *de novo* review of the entire claim submission upon reconsideration.

The NPFC performed a complete review of the documentation presented by the Claimant. The Claimant provided two one page letters stating she has nothing new to provide in support of her request for reconsideration other than her reiteration of the circumstance surrounding her employment.

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.

This claim is denied upon reconsideration.

Claim Supervisor:



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

Supervisor Action: *Denial on reconsideration approved*

Supervisor's Comments:

U.S. Department
of Homeland Security

United States
Coast Guard



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

U.S. Coast Guard Stop 7100

16480

9 August 2011

CERTIFIED MAIL Number: [REDACTED]

RE: Claim Number: N10036- 0995

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

On 14 June 2011, the NPFC received your claim following the Deepwater Horizon spill for \$1,385 for lost subsistence use of natural resources that you indicate you would have caught and eaten if not for the spill. You assert in your claim to the NPFC that you submitted a claim on 10 May 2011 to the GCCF for lost subsistence use of natural resources, which was denied on 17 November 2010.

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 14 June 2011, included the Optional OSLTF Claim Form, proof of your social security benefit, a copy of your social security card and what appears to be a state identification card, a letter from you describing your pattern of

fishing from the waterfront three days a week, and note from you stating that you spend \$9.00 for bait and \$7.00 for transportation three days a week.

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:

- 1) 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
- 2) explained how you determined your claimed loss of \$1,385 (i.e., the period for which you are claiming a loss and 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 (N10036-0995) to:

Chief (Cn)
National Pollution Funds Center
U.S. Coast Guard, Stop 7100

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

Sincerely,

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

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100

Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim # N10036-0996
21 June 2011

Re: Claim Number: N10036-0996

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

FOIA2011-3380-00003900

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-0996
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 June 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, a former cook at [REDACTED] alleged that she was laid off "due to a decrease in patrons" as a result of 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 5 June 2011.

² Id.

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

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

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

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

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support this claim, Claimant submitted the following documentation:

- Optional OSLTF Claim Form;
- Letter from GCCF to Claimant requesting financial information, 31 January 2011;
- Denial Letter on Interim Payment/Final Payment Claim from GCCF to Claimant, 22 April 2011;
- Letter from GCCF to Claimant, denying Emergency Advance Payment request, 27 October 2010; and
- Claimant's pay stubs from [REDACTED] 8 January 2010 - 25 June 2010.

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, and was assigned Claimant ID [REDACTED]. Both claims were denied by the GCCF.³

On 15 June 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 the claim.

³ Denial letter on Claimant's EAP claim, dated 27 October 2010; Denial Letter on Interim Payment/Final Payment Claim from GCCF to Claimant, dated 22 April 2011.

The NPFC reviewed all information and documentation provided by the Claimant, including contacting the Claimant's former employer, [REDACTED] A representative of the business indicated that the Claimant was let go on 22 June 2010 for reasons unrelated to the Deepwater Horizon oil spill.⁴

This claim is therefore denied because the Claimant has failed to show that the alleged loss in the amount of \$10,000.00 is due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil.

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

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

Supervisor's Action: *Denial approved*

Supervisor's Comments:

⁴ Fax from [REDACTED] to NPFC Staff, 16 June 2011.

09/14/11

FOIA2011-3380-00003903

U.S. Department of
Homeland Security

United States
Coast Guard



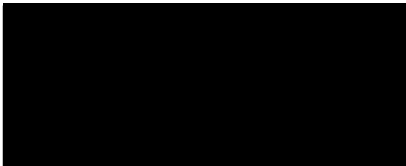
Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937

CERTIFIED MAIL - RETURN RECEIPT REQUESTED
Number [REDACTED]

5890/DWHZ
Claim# N10036-0997
22 Jun 2011



RE: Claim Number: N10036-0997

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with 33 C.F.R. Part 136, denies payment on your claim, #N10036-0997. 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 N10036-0997.

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

FOIA2011-3380-00003904

CLAIM SUMMARY / DETERMINATION FORM

Date	21 June 2011
Claim Number	N10036-0997
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$15,600.00

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 8 June 2011, [REDACTED] (Claimant) presented an Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Fund Center (NPFC) seeking \$15,600.00, for loss of profits and impairment of earnings capacity damages that allegedly resulted from the Deepwater Horizon oil-spill.

Claimant did not provide any information as to the nature of the business that he was (or is) employed in.¹ He does allege that he earned or earns \$300.00 weekly. He does state within Section 11 of the Optional OSLTF Claim Form that he submitted that he “tried catching and selling...fish” to minimize his damages but “people are afraid to buy [fish]...”²

Claimant alleged on the Optional OSLTF Claim Form that he filed a claim with the GCCF, but that no action was taken by the GCCF.³

APPLICABLE LAW:

Under OPA 90, at 33 USC § 2702(a), responsible parties are liable for removal costs and damages resulting from the discharge of oil into navigable waters and adjoining shorelines, as described in Section 2702(b) of OPA 90. 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 6 June 2011. The Claimant did not state who his employer is or was at the time of the subject oil spill.

² Id.

³ The NPFC has not verified the Claimant’s presentment of a claim to the GCCF as of a date even herewith.

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

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

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

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

- (a) All income resulting from the incident;
- (b) All income from alternative employment or business undertaken;
- (c) Potential income from alternative employment or business not undertaken, 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 submitted the following documentation:

- Optional OSLTF Claim Form dated 01 May 2011

Claimant seeks \$15,600.00 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 Claimant.

This claim is denied because the Claimant's evidence does not demonstrate (1) the alleged loss of profits in the amount of \$15,600.00, as claimed, or (2) the correlation, if any, between this

alleged loss and the Deepwater Horizon oil spill. For example, the Claimant has provided no information as to his prior or current employment, no evidence of his current or prior earnings, and no evidence which would indicate that his alleged losses are due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil.

It is also important to note that the Claimant has provided NO comparable financial documentation pursuant to the governing claims regulations at 33 CFR 136.233 (c) which states "The amount of the claimant's profits or earnings in comparable periods and during the period when the claimed loss or impairment was suffered, as established by income tax returns, financial statements, and similar documents. In addition, comparative figures for profits or earnings for the same or similar activities outside of the area affected by the incident also must be established."

This claim is denied because the Claimant has failed to demonstrate (1) the alleged loss of profits in the amount of \$15,600.00, 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: *Claim [REDACTED] Division*

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

Supervisor Action: *Denial approved*

Supervisor's Comments:

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937

CERTIFIED MAIL - RETURN RECEIPT REQUESTED
Number: [REDACTED]

5890/DWHZ
Claim# N10036-0998
28 June 2011



RE: Claim Number: N10036-0998

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 N10036-0998 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination Form for further explanation.

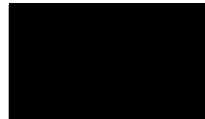
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-0998.

Mail reconsideration requests to:

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

Sincerely,



Claims Adjudication Division
National Pollution Funds Center
Claims Manager

Enclosure: Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00003908

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	N10036-0998
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 16 June 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.

Claimant works as a pathology lab specialist for [REDACTED] in Biloxi Mississippi.¹ Claimant alleged that 16 to 18 percent of the specimen cases he performs are from patients who come to the area in the summer. Claimant stated that due to the Deepwater Horizon oil spill, his hours were reduced from 40 to around 30 to 32 hours a week.²

APPLICABLE LAW

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

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

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

- (a) That real or personal property or natural resources have been injured, destroyed, or lost.
- (b) That the claimant's income was reduced as a consequence of injury to, destruction of, or loss of property or natural resources, and the amount of that reduction.
- (c) The amount of the claimant's profits or earnings in comparable periods and during the period 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 letter "to whom it may concern," explaining claim.

² Id.

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

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

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

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

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

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support his claim, Claimant submitted the following documentation:

- 1) OSLTF claim form dated 13 June 2011
- 2) Claimant letter "to whom it may concern," explaining claim
- 3) General letter from Administrator/CEO of [REDACTED]
- 4) 2010 form 1040A U.S. Individual Income Tax Return
- 5) 2009 form 1040A U.S. Individual Income Tax Return
- 6) Paystubs from [REDACTED] dated 14 May 2010, 11 June 2010, 25 June 2010, 09 July 2010, 23 July 2010, 06 August 2010, 18 February 2011, 10 June 2011,
- 7) Specimen Log 01 July 2009
- 8) Specimen Log 02 July 2009
- 9) Specimen Log 01 July 2010
- 10) Specimen Log 2010

Prior to presentment to the NPFC, Claimant presented an Interim Payment Claim to the RP/GCCF for \$10,000.00 in lost profits and earnings. On 3 June 2011, the Interim Payment Claim was denied by the GCCF.³

On 16 June 2011, Claimant presented the subject claim to the NPFC for \$10,000.00 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 3 June 2011.
09/14/11

NPFC Determination

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

Claimant alleged that he lost hours at [REDACTED] as a result of the Deepwater Horizon oil spill. To verify this allegation, the NPFC contacted the [REDACTED] on 20 June 2011. The CEO could not confirm if the Claimant in fact lost hours as a result of the oil spill, but the CEO did indicate that generally people lost jobs and medical coverage as a result of the oil spill, which impacted Hancock Medical.⁴

In spite of the CEO's general statements, the Claimant failed to provide evidence to corroborate his allegation that he lost hours as a result of the Deepwater Horizon oil spill.

This claim is denied because the Claimant did not demonstrate that his alleged loss in the amount of \$10,000.00 is due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil.

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

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

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

⁴ PHONECON with [REDACTED], Biloxi, MS on 20 June 2011.
09/14/11

U.S. Department of
Homeland Security

United States
Coast Guard



Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim # N10036-0999
21 June 2011

Re: Claim Number: N10036-0999

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 N10036-0999 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 N10036-0999.

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

FOIA2011-3380-00003912

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-0999
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$1,000.00

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

Claimant works as a part-time server at [REDACTED] where she receives hourly pay plus tips.² Claimant alleged that "the oil spill . . . caused a loss of business for the restaurant" which caused a reduction in the Claimant's earnings.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 returns, financial statements, and similar documents. In addition, comparative figures for

¹ Optional OSLTF Claim Form dated 9 June 2011.

² PHONECON: Claimant and NPFC Staff, 17 June 2011.

³ Id.

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

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

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

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

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

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support this claim, Claimant submitted the following documentation:

- Optional OSLTF Claim Form;
- Fax Cover Sheet, dated 11 May 2011;
- 2008 W-2, showing earnings of \$20,062.28;
- 2009 W-2, showing earnings of \$19,789.15;
- 2010 W-2, showing earnings of \$19,745.09;
- 2010 Form 1040A, showing total wages of \$48,345.35;
- 2009 Form 1040A, showing total wages of \$48,804.61;
- 2008 Form 1040A, showing total wages of \$48,137.59.

Prior to presentation 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]. Both claims were denied by the GCCF.⁴

On 16 June 2011, Claimant presented this claim for \$1,000.00 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, 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)

⁴ GCCF denial letters, dated 4 December 2010 & 16 April 2011.

and § 136.105(e)(6), the claimant bears the burden of providing to the NPFC all evidence, information, and documentation deemed necessary by the Director, NPFC, to support her claim.

In reviewing the information provided by the Claimant, the NPFC notes that the Claimant's wages differed slightly from 2008 to 2010.⁵ W-2 Forms provided by the Claimant for 2008, 2009 and 2010 indicated respective earnings of \$20,062.28, \$19,789.15, \$19,745.09. Based on these figures, the Claimant's income dropped by \$273.13 from 2008 to 2009 and \$44.06 from 2009 to 2010. These numbers do not support the Claimant's alleged loss in earnings of \$1,000.00.

Additionally, the Claimant has not provided evidence demonstrating that the alleged loss in the amount of \$1,000.00 resulted from the Deepwater Horizon oil spill.

Because the Claimant failed to demonstrate (1) her alleged loss in the amount of \$1,000.00 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 Claims Adjudication Division*

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

Supervisor's Action: *Denial approved*

Supervisor's Comments:

⁵ W-2 Forms for 2008, 2009, and 2010, provided by Claimant.
09/14/11