

U.S. Department of  
Homeland Security

United States  
Coast Guard



Director  
United States Coast Guard  
National Pollution Funds Center

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US COAST GUARD  
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CERTIFIED MAIL - RETURN RECEIPT REQUESTED  
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5890/DWHZ  
13 October 2011

Robert Jackson  
[REDACTED]

RE: Claim Number: N10036-1404

Dear Mr. Jackson:

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 N10036-1404 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 N10036-1404.

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	N10036-1404
Claimant	Robert Jackson
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 06 September 2011, Robert Jackson (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form seeking \$10,000.00 for loss of profits and impairment of earnings capacity to the National Pollution Funds Center (NPFC) alleging damages resulting from the Deepwater Horizon oil spill.

The Claimant alleged that he lost supplemental income because he was unable to catch seafood which he sold to the public due to the Deepwater Horizon oil spill.<sup>1</sup> The Claimant stated that he made between \$1,500.00 and \$2,000.00 a month totaling a loss of \$9,000.00.<sup>2</sup>

### ***APPLICABLE LAW***

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

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

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

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

<sup>1</sup> Letter from the Claimant explaining claim dated 19 October 2010.

<sup>2</sup> Letter from the Claimant explaining claim dated 19 October 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 his claim, the Claimant submitted the following documentation:

- 1) Optional OSLTF claim form dated 24 July 2011;
- 2) Residential saltwater fishing license for 02 May 2011 to 31 August 2011;
- 3) Letter from the Claimant explaining claim dated 19 October 2010.

Claimant seeks lost earnings and impairment of earnings capacity in the amount of \$10,000.00.

In section 3 of the Optional OSLTF Claim Form submitted to the NPFC, the Claimant indicated damages of \$10,000.00 within the "natural resources" category but also circled the "profits and earning capacity" category. The Claimant did not specify a damage amount with the profits and earning capacity block but instead drew an arrow to the \$10,000.00 figure designated under the natural resources category.<sup>3</sup> The Claimant inserted the sum of \$10,000.00 under the "Total Amount Claimed" block, creating a discrepancy on the face of the OSLTF form as to what category the Claimant actually intended his damages to be included under. The Claimant also

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<sup>3</sup> Optional OSLTF claim form dated 24 July 2011.

provided an accompanying letter dated 19 October 2010 which stated that the Claimant lost “supplemental income” due to his inability to sell seafood that he catches.<sup>4</sup> The NPFC tried unsuccessfully to contact the Claimant to clarify his intentions. The NPFC left voice messages to call the NPFC via telephone seven times at four different numbers provided by the Claimant on 16 September 2011, 20 September 2011, and 05 October 2011. Because of the inability of the NPFC to confirm the Claimant’s intentions, the NPFC will proceed to determine this claim based upon the totality of the submission and will review his claim as one for lost profits and impairment of earnings capacity and not as a claim for natural resource damages.

Prior to presenting his claim to the NPFC, the Claimant filed an Emergency Advance Payment (EAP) for subsistence with the GCCF on 20 October 2010 in the amount of \$5,200.00.<sup>5</sup> He was assigned Claimant ID #3242762 and claim #298203. The EAP claim was denied.<sup>6</sup> Additionally, Claimant filed a Full Review Final claim (FRF) for subsistence with GCCF #9251845 which was filed on 27 January 2011 for \$10,000.00. The FRF claim was also denied.<sup>7</sup> Based upon the evidence provided by the Claimant, it appears that the subject matter for each of the GCCF claims is different than the subject matter of the claim before the NPFC, i.e. the Claimant presented two subsistence claims to the GCCF but has presented a lost profits and impairment of earnings claim to the NPFC. Under 33 C.F.R. § 136.103(a), all claims for removal costs or damages must be presented first to the responsible party (RP).

### **NPFC Determination**

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

Under 33 C.F.R. § 136.103(a), all claims for removal costs or damages must be presented first to the RP. The Claimant failed to make proper presentment to the RP before submitting his claim to the NPFC as is required under 33 C.F.R. §136.103(a). The Claimant presented two subsistence claims to the GCCF on 20 October 2010 and 27 January 2011 before presenting a lost profits and impairment of earnings claim to the NPFC on 06 September 2011.<sup>8</sup> Accordingly this claim is denied for the Claimant’s failure to first properly present his lost profits and impairment of earnings capacity claim to the RP.

Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor’s Review: *10/13/11*

Supervisor’s Actions: *Denial approved*

Supervisor’s Comments:

<sup>4</sup> Letter from the Claimant explaining claim dated 19 October 2010.

<sup>5</sup> Report from the GCCF dated 06 October 2011.

<sup>6</sup> Report from the GCCF dated 06 October 2011.

<sup>7</sup> Report from the GCCF dated 06 October 2011.

<sup>8</sup> Report from the GCCF dated 06 October 2011.