

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd. Suite 1000
Arlington, VA 20598-7100
Staff Symbol: (CA)
Phone: [REDACTED]
E-mail: [REDACTED]@uscg.mil
Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 4802 5381

5890/DWHZ
14 November 2011

Ms. Brenda Ann Billiot
[REDACTED]

Re: Claim Number: N10036-1406

Dear Ms. Billiot:

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 N10036-1406 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 N10036-1406.

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: (1) Claim Summary/Determination Form
(2) List of documentation submitted by the Claimant

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1406
Claimant	Ms. Brenda Billiot
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$33,189.00

FACTS

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

CLAIM AND CLAIMANT

On 13 September 2011, Ms. Brenda Billiot (the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$33,189.00 in loss of profits and impairment of earnings capacity allegedly resulting from the Deepwater Horizon oil spill.¹

The Claimant lives in Cut Off, Louisiana where she works as an offshore boat captain. At the time of the oil spill, the Claimant alleged that “Jambon Boat Rentals had [the Claimant’s] name on the board, waiting for the next crew change.”² According to the Claimant, this opportunity never materialized as a result of the Deepwater Horizon oil spill.

The Claimant further alleged that “due to the BP oil spill, [she] has not been able to find work as an offshore boat captain . . . Washington pulled out or stopped all drilling.”³ The Claimant further alleged, that she has “always been able to find work in the Gulf of Mexico, either by shrimping, oystering, fishing and for the past 29 years, working as an offshore boat captain.”⁴

The Claimant has alleged that due to the oil spill she sustained a loss of income in the amount of \$33,189.00.⁵

APPLICABLE LAW

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

The OSLTF which is administered by the NPFC, is available, pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136, to pay claims for uncompensated damages. One type of damages available pursuant to 33 C.F.R. § 136.231 is

¹ Optional OSLTF Claim Form, dated 4 August 2011.

² Letter from the Claimant to the NPFC, 4 August 2011.

³ Optional OSLTF Claim Form, dated 4 August 2011.

⁴ Optional OSLTF Claim Form, dated 4 August 2011.

⁵ Optional OSLTF Claim Form, dated 4 August 2011.

a claim for loss of profits or impairment of earning capacity due to injury to or destruction of natural resources.

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

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

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

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

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

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support this claim the claimant submitted the following documentation:

- See Enclosure 2.

On 21 October 2010, the Claimant presented an Emergency Advance Payment (EAP) claim to the RP/GCCF, seeking loss of profits damages in the amount of \$33,189.00.⁶ The Claimant was assigned Claimant ID 3250367.⁷ The EAP claim was assigned claim # 306105. This claim was denied by the RP/GCCF.

⁶ GCCF U.S. Coast Guard Report, 11/2/2011.

⁷ GCCF Denial Letter on Interim Payment/Final Payment Claim, 22 June 2011.

On 23 May 2011, the Claimant presented a Second Quarter Interim Payment Claim (ICQ22011), again seeking loss of profits damages in the amount of \$33,189.00.⁸ The ICQ22011 was assigned claim # 9387510, and was denied by the RP/GCCF.

On 13 September 2011, the Claimant presented this claim to the NPFC, seeking \$33,189.00 in loss of profits and impairment of earnings capacity damages. Because this is a claim regarding the same losses, and claiming the same amount in damages as previously claimed to the RP/GCCF, the NPFC deems presentment requirements to have been met and may adjudicate this claim in the entire amount of \$33,189.00.⁹

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, 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 this claim.

In order to prove a claim for loss of profits and impairment of earnings capacity, a claimant must demonstrate (1) that she sustained an identifiable financial loss, and (2) that the loss was the result of the discharge or substantial threat of discharge of oil, caused by the Deepwater Horizon oil spill.

The Claimant has worked as an offshore boat captain in the Gulf of Mexico for approximately twenty seven years.¹⁰ At the time of the Deepwater Horizon oil spill, the Claimant alleged that she was scheduled to begin work as a captain for Jambon Boat Rentals out of Golden Meadow, Louisiana.¹¹ She specifically stated that because of uncertainty following the oil spill, she had agreed to a “15% cut back” on her salary.¹² The Claimant stated that she lost this particular employment opportunity, and that subsequently was unable to find work because “Washington pulled out or stopped all drilling.”¹³

In a letter dated 24 September 2011, the NPFC requested that the Claimant provide documentation regarding the specific job that the Claimant alleged to have lost with Jambon Boat Rentals at the time of the oil spill.¹⁴ The Claimant was unable to respond to this request, due to alleged difficulty communicating with the former employer and personnel changes at Jambon Boat Rentals.¹⁵

The NPFC contacted Jambon Boat Rentals to confirm the Claimant’s allegation that she was either employed or would have been imminently employed with Jambon Boat Rentals at the time of the oil spill. A representative of Jambon Boat Rentals informed the NPFC that the Claimant last worked with the company on 11 June 2009, at which time she voluntarily left her position for another employment opportunity.¹⁶ The representative did not confirm that the Claimant was

⁸ GCCF U.S. Coast Guard Report, 11/2/2011.

⁹ 33 C.F.R. 133.106(a).

¹⁰ Letter from the Claimant to the NPFC, 4 August 2011.

¹¹ Letter from the Claimant to the NPFC, 4 August 2011.

¹² Letter from the Claimant to the NPFC, 4 August 2011.

¹³ Optional OLSTF Claim Form, dated 4, August 2011.

¹⁴ NPFC letter requesting additional information, 24 September 2011.

¹⁵ Response to request for additional information, received on 8 November 2011.

¹⁶ Fax from Jambon Boat Rentals to the NPFC, regarding last dates of the Claimant’s employment.

actually employed by the company at the time of the oil spill, or that the Claimant would have been employed, had the oil spill not occurred.¹⁷

The Claimant has also alleged that she was generally unable to find work offshore due to drilling and permitting restrictions in the Gulf of Mexico, following the Deepwater Horizon oil spill.¹⁸ However, any losses the Claimant alleged to have incurred as a result of the moratorium, and subsequent drilling and permitting restrictions, are not losses caused by the discharge or substantial threat of discharge of oil resulting from the Deepwater Horizon oil spill.

This claim is denied because the Claimant failed to meet her burden to demonstrate (1) that she sustained a 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: *11/14/11*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

¹⁷ Fax from Jambon Boat Rentals to the NPFC, regarding last dates of the Claimant's employment.

¹⁸ Optional OSLTF Claim Form, dated 4 August 2011.

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

- Optional OSLTF Claim Form, dated 4 August 2011;
- Letter from the Claimant to the NPFC, 4 August 2011;
- Copy of Louisiana Workforce Commission, Monetary Determination, 21 November 2010.
- Response to NPFC request for additional information, dated 27 October 2011;
- Letters from the Claimant, listing enclosures, 28 October 2011;
- Record of payment to the Claimant from Jambon Marine Holdings, LLC, January 2009;
- Record of U.S. DOT, Alcohol Testing completion;
- Copy of the Claimant's passport;
- Copy of the Claimant's Merchant Mariner Credential;
- Various Marine Service/Safety Certification cards;
- USCG Endorsement to License, Mariner #: 1549057;
- USCG U.S. Merchant Marine Officer Certification, 2001, 2006;
- Marine Radio Operator Permit;
- Note from the Claimant's doctor, certifying her ability to return to work on 23 September 2010;
- 2010 W-2 Wage and Tax Statement, showing wages of \$4,022.00 paid by Global Oilfield Contractors, LLC;
- 2010 Schedule M (Form 1040A or 1040);
- 2010 Form 1040;
- 2009 Form 1040;
- 2009 W-2 Wage and Tax Statement, showing wages of \$21,377.82 paid by Jambon Marine Holdings, LLC;
- 2009 Federal Tax return, showing adjusted gross income of \$24,945.00;
- 2009 Form 1040, showing wages of \$24,860.00;
- 2009 Form 2106-EZ;
- 2008 Louisiana Resident Information Sheet;
- 2008 Form W-2 Wage and Tax statement, showing wages of \$39,173.11 paid by Jambon Marine Holdings, LLC;
- 2008 Form W-2 Wage and Tax statement, showing wages of \$27,205.27 paid by Kevin Gros Offshore, LLC;
- 2008 W-2 Summary;
- 2007 Form 1040, showing wages of \$76,665.00;
- Letter from Phillips Petroleum Company, 2 January 1991;
- Letter from Robert J. Eymard, verifying the Claimant's employment, 1989 – 1991;
- Application for License as Officer, Operator or State Officer, 4 October 1991;
- Letter from AMC Marine Service, verifying the Claimant's employment;
- Letter from Edison Chouest Offshore, verifying the Claimant's 1992 employment, 4 October 2011;
- Certificate of Service, Lytal Marine Operators, Inc.;
- Letter from Lytal Marine Operators, Inc., certifying the Claimant's employment, 12 May 1997;
- Proof of payment to the Claimant by Lytal Supply Boats, Ltd.;
- Letter from Bordelon Marine Inc., certifying the Claimant's employment, 17 March 2003;
- Letter from C&C Offshore, Inc., certifying the Claimant's employment;
- Proof of payment to the Claimant by Falcon Operators, Inc.;
- Jambon Boat Rentals, LLC, chart showing the Claimant's Seatime Accumulation;
- Letter from Kevin Gross Offshore, certifying the Claimant's employment, 20 March 2008;
- 2006 Form W-2 Wage and Tax Statement, showing wages of \$50,920.00 paid by Jambon Marine Holdings, LLC;
- 2006 Form W-2 Wage and Tax Statement, showing wages of \$3,937.50 paid by Sea Boat Rentals, Inc.;
- 2006 Federal Tax Return Summary, showing adjusted gross income of \$71,195.00;

- 2006 Form 1040A, showing wages of \$71,195.00;
- 2006 Louisiana Tax Return Summary;
- 2005 Form W-2 Wage and Tax Statement, showing wages of \$1,730.74 paid by Marc C LLC;
- 2005 Form W-2 Wage and Tax Statement, showing wages of \$3,500.00 paid by Jambon Boat Rentals, LLC;
- 2005 Form W-2 Wage and Tax Statement, showing wages paid by Jambon Gulf Express, LLC and Jambon Investments, LLC;
- 2005 Federal Income Tax Return Summary;
- 2005 Form 1040A, showing wages of \$16,294.00;
- 2005 Louisiana Resident Individual Income Tax Return summary;
- 2005 Form 1040A;
- 2005 Schedule EIC (Form 1040A or 1040);
- 2004 Federal Income Tax Return Summary;
- 2004 Form W-2 Wage and Tax Statement, showing wages of \$17,595.00 paid by C&C Offshore, Inc.;
- 2004 Form 1040A;
- 2003 Form W-2 Wage and Tax Statement, showing wages of \$30,325.00 paid by C&C Offshore, Inc.;
- 2003 U.S. Individual Income Tax Return Summary;
- 2003 Louisiana Individual Income Tax Return Summary;
- 2003 Form 1040A;
- 2003 Form SSA-1099- Social Security Benefit Statement;
- 2003 Form 1098-E Student Loan Interest Statement;
- 2002 Form W-2 Wage and Tax Statement, showing wages of \$2,250, paid by Bordelon Marine, Inc.;
- 2002 Federal Income Tax Return Summary;
- 2002 Louisiana Income Tax Return Summary;
- 2002 Form 1040EZ;
- 2001 Form W-2 Wage and Tax Statement, showing wages of \$19,957.50 paid by Lytal Supply Boats, Inc.;
- 2001 Form W-2 Wage and Tax Statement, showing wages of \$13,680.00 paid by Lytal Boats;
- 2001 Form 1040;
- 2001 Form W-2 Summary;
- 2001 Form 8453;
- 1995 Form W-2 Wage and Tax Statement, showing wages of \$2,292.50 paid by Seacor Marine;
- 1995 Form W-2 Wage and Tax Statement, showing payments by AMC Liftboats, Inc., AMC marine Service, Inc.;
- 1995 Form 1040.