

U.S. Department of  
Homeland Security

**United States  
Coast Guard**



Director  
National Pollution Funds Center  
United States Coast Guard

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US COAST GUARD  
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CERTIFIED MAIL – RETURN RECEIPT REQUESTED  
Number: 7011 1150 0000 4636 2144

5890/DWHZ  
21 September 2011

Mr. Patrick Jefferson  
[REDACTED]

Re: Claim Number: N10036-1415

Dear Mr. Jefferson:

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 N10036-1415 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 N10036-1415.

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	N10036-1415
Claimant	Mr. Patrick Jefferson
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$25,000.00

### ***FACTS***

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

### ***CLAIM AND CLAIMANT***

On 14 September 2011, Mr. Patrick Jefferson (the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$25,000.00 in natural resource damages resulting from the Deepwater Horizon oil spill.<sup>1</sup>

The Claimant alleged that he is a “local fisherman who sells fish. But due to the oil spill, [the Claimant] lost a lot of money.”<sup>2</sup>

Claims for natural resource damages may only be brought by an “appropriate natural resources trustee” and not by a private individual claimant.<sup>3</sup> Therefore, the Claimant is not authorized to present a natural resources claim to the NPFC. The Claimant has alleged that due to the oil spill, he was no longer able to catch and sell fish for a profit. Therefore, this claim is based on an alleged reduced income as a consequence of injury to or destruction of natural resources, and falls within the OPA’s loss of profits damage category.<sup>4</sup> Accordingly, the NPFC has reclassified this claim as a claim for loss of profits and impairment of earnings capacity in the amount of \$25,000.00.

### ***APPLICABLE LAW***

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

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

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

<sup>1</sup> Optional OSLTF Claim Form, received on 14 September 2011.

<sup>2</sup> Optional OSLTF Claim Form, received on 14 September 2011.

<sup>3</sup> 33 C.F.R. § 136.207(a).

<sup>4</sup> 33 C.F.R. § 136.233(b).

- (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:

- Optional OSLTF Claim Form, received 14 September 2011;
- Copy of NPFC Claimant's Guide;
- Spreadsheet entitled, "Loss of Wages;"
- Letter from the Claimant to GCCF, undated;
- Copy of fish receipts, signed by the Claimant.

Prior to presentment to the NPFC, the Claimant presented two Emergency Advance Payment claims (EAP1 and EAP2) to the RP/GCCF. EAP1 claimed lost profits or earnings and was assigned Claim # 186855. EAP2 claimed loss of subsistence use, and was assigned Claim # 3025381. The Claimant was assigned ID 3132000. EAP1 and EAP2 were denied on 24 November 2010 and 4 December 2010, respectively.

The Claimant then presented a First Quarter Interim Claim (ICQ12011) to the RP/GCCF. ICQ12011 was assigned Claim # 9319493. The Claimant received a determination letter on this claim, offering payment of \$2,868.96 as an interim payment, as well as \$5,000.00 as full and final payment, in a letter dated 8 June 2011. The Claimant accepted the offer on 24 June 2011

and the GCCF subsequently issued payment upon receiving the Claimant's signed Release and Covenant Not to Sue.<sup>5</sup>

## **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.

This claim is denied because (1) the Claimant has signed a Release and Covenant Not to Sue in return for final payment from the RP/GCCF, and (2) the Claimant has failed to demonstrate that he has sustained a financial loss.

1. The Claimant has released rights regarding this injury to the RP/GCCF.

Based on the information available to the NPFC, the Claimant has accepted a Final payment from the RP/GCCF in the amount of \$5,000.00, and been compensated a total of \$7,868.96.<sup>6</sup> The Claimant has executed a Release and Covenant Not to Sue in return for final payment.<sup>7</sup> By signing this document, the Claimant has released to the RP/GCCF, any rights to additional recovery regarding this injury.<sup>8</sup> The Release executed by the Claimant specifically states,

By signing this document, you are forever waiving and releasing all claims that you may have against BP or any other party . . . in connection with the [Deepwater Horizon oil spill].<sup>9</sup>

The Claimant has therefore waived rights to further recovery regarding the losses presented to the NPFC. Any payment from the Oil Spill Liability Trust Fund (the Fund) requires the acquisition of rights from the RP/GCCF. Because these rights have been released by the Claimant to the RP/GCCF, the Claimant cannot also recover from the Fund.

If the Claimant believes that payments received from the RP/GCCF are for damages other than those that are the subject of this claim, the Claimant must explain this in his request for reconsideration. The Claimant must also include copies of any and all waivers and covenants signed by the Claimant regarding injuries related to the Deepwater Horizon oil spill.

2. The Claimant has not provided documentation to demonstrate that he has sustained a loss of income as a result of the Deepwater Horizon oil spill.

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

The Claimant has failed to demonstrate that he has sustained an actual financial loss. The Claimant indicated to the NPFC that he has not paid taxes on his earnings as a fisherman in the

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<sup>5</sup> GCCF Claimant Status, accessed on 19 September 2011.

<sup>6</sup> GCCF Claimant Status, accessed on 19 September 2011.

<sup>7</sup> GCCF Claimant Status, accessed on 19 September 2011.

<sup>8</sup> GCCF Release and Covenant Not to Sue.

<sup>9</sup> GCCF Release and Covenant Not to Sue.

prior years because commercial fishing is something he does “on the side.”<sup>10</sup> Furthermore, receipts for sales of fish, included in the Claimant’s submission, are signed only by the Claimant and not by the purchaser. Therefore, the receipts are not proof that the amounts on the receipts were actually paid by purchasers to the Claimant.

Should the Claimant pursue this claim on reconsideration, the Claimant should present valid copies of trip tickets to substantiate the receipts submitted in the Claimant’s file, a copy of a valid commercial fishing license, and tax returns to substantiate his claimed \$25,000.00 in damages.

This claim is denied because the Claimant (1) has released his rights for any further recovery regarding this alleged injury, to the RP/GCCF, (2) failed to meet his burden to demonstrate (a) that he sustained a loss in the amount of \$25,000.00 and (b) failed to demonstrate that he any loss he may have sustained was due to 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: *9/21/11*

Supervisor’s Action: *Denial approved*

Supervisor’s Comments:

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<sup>10</sup> PHONECON: NPFC Staff and the Claimant, 19 September 11, EM