

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
National Pollution Funds Center

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16480

10 November 2011

CERTIFIED MAIL Number: 7011 1150 0000 4636 2847

Ms. Albinie Bryant
[REDACTED]

RE: Claim Number: N10036- 1450

Dear Ms. Bryant:

The National Pollution Funds Center (NPFC) reviewed your claim for lost use of natural resources following the Deepwater Horizon oil spill. We have determined that you have not met your burden of proving a loss as defined by the Oil Pollution Act (OPA, 33 U.S.C. 2701 *et seq.*) and OPA claims regulations (33 C.F.R. Part 136). Accordingly, the NPFC denies payment of your claim. The basis of this determination follows.

Background

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

Facts

On 27 September 2011, the NPFC received your claim for \$4,870. Your claim was presented as the alleged (1) value that you place on the recreational fishing experience, and (2) loss of fish that you would have caught and consumed. Your claim submitted to the GCCF was denied on 15 February 2011.

Applicable Law

OPA provides that the Oil Spill Liability Trust Fund (OSLTF) is available to pay claims for uncompensated damages resulting from oil pollution incidents (33 U.S.C. §2712(a)(4)). Damages include lost use of natural resources for recreation and subsistence food (33 U.S.C. §2702(b)(2)(A)(C)). The regulations at 33 C.F.R. Part 136 provide the requirements for claims to the OSLTF.

General Claim Requirements

Claims to the OSLTF 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 by payment by any person within 90 days after the date the claim was presented before presentment to the NPFC (33 U.S.C. §2713(c)(2); except as noted in 33 C.F.R. §136.103(a)).

Specific Claim Requirements

The claims regulations (33 C.F.R. §136) provide additional requirements for claims to the OSLTF. 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.

OPA and the claims regulations also provide that the use of natural resources by the public is a type of damage that can only be claimed by designated federal, state, or tribal trustees. For the Deepwater Horizon spill, this would be each of the Gulf coastal states, National Oceanic and Atmospheric Administration, and U.S. Department of the Interior.

NPFC has provided more detail about these claim requirements at:
http://www.uscg.mil/npfc/Claims/DWH_faqs.asp.

Claim Submission and Documentation

The NPFC received your Optional OSLTF Claim Form on 26 September 2011, on which you assert that you were unable to recreationally fish and supplement your diet because fish and other seafood were allegedly deemed unfit for human consumption for months. The claim form you submitted did not include a sum certain. On 27 September 2011, you faxed a sum certain of \$4,870 to the NPFC to complete your claim submission. No other supporting documentation was included with your claim.

NPFC Determination

The NPFC finds that you:

- (1) are not an authorized claimant under OPA to seek compensation for the value that you place on your ability to fish recreationally (such losses can only be claimed by a designated natural resource trustee), and

(2) have not met your burden of proving a subsistence use loss as defined by OPA (33 U.S.C. 2701 et seq.) and the OPA claims regulations (33 C.F.R. Part 136). Specifically, you have not:

- a) established that you suffered a loss of subsistence use of natural resources as a result of the spill (i.e., you provide no evidence to support your claim that you had a pattern of subsistence use of natural resources, and that you suffered subsistence use losses due to the oil spill); nor
- b) explained or documented how you determined your claimed loss of \$4,870 (i.e., the period of your claimed 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).

Accordingly, your claim is denied.

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 (N10036-1450) 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 [REDACTED]

Sincerely,

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