

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  
4200 Wilson Blvd., Suite 1000  
Arlington, VA 20598-7100  
Staff Symbol: (CA)  
Phone: 1-800-280-7118  
E-mail: [arl-pf-npfcclaimsinfo@uscg.mil](mailto:arl-pf-npfcclaimsinfo@uscg.mil)  
Fax: 202-493-6937

CERTIFIED MAIL - RETURN RECEIPT REQUESTED  
Number: 7011 1570 0001 4802 7309

5890/DWHZ  
16 November 2011

Holland, Groves, Shneller, & Stolze  
On behalf of Brian Ronshausen  
30 N. Tucker Blvd. Suite 801  
St. Louis, MO 63101

RE: Claim Number: N10036-1481

Dear Mr. Schneller, Esq.:

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 N10036-1481 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 N10036-1481.


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

cc: Brian Ronshausen

  
By Certified Mail No.: 7011 1570 0001 4802 7316

Enclosure: Claim Summary/Determination Form

## CLAIM SUMMARY / DETERMINATION FORM

Claim Number	N10036-1481
Claimant	Brian Ronshausen
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$43,000.00

### ***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 October 2011, Brian Ronshausen (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form seeking \$43,000.00 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 is a self employed commercial fisherman out of Port St. Lucie Florida.<sup>1</sup> He asserted that “after the oil spill I was unable to fish as much or as often.”<sup>2</sup> The Claimant seeks \$43,000.00 in lost profits.<sup>3</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 § 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.

<sup>1</sup> Optional OSLTF claim form dated 15 September 2011.

<sup>2</sup> Optional OSLTF claim form dated 15 September 2011.

<sup>3</sup> Optional OSLTF claim form dated 15 September 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 his claim, the Claimant submitted:

- 1) Optional OSLTF claim form dated 15 September 2011;
- 2) Cover letter from representation;
- 3) Florida vessel registration expired 17 November 2010;
- 4) List of unknown payments from 12 September 2008 through 03 July 2009;
- 5) Ticket numbers from 02 January 2009 through 09 July 2009;
- 6) 2007 Form 1040 U.S. Individual Income Tax Return;
- 7) 2008 Form 1040 U.S. Individual Income Tax Return;
- 8) 2009 Form 1040 U.S. Individual Income Tax Return;
- 9) Copy of Florida drivers license;
- 10) Copy of Florida Fish and Wildlife Commercial Saltwater Products License.

Claimant seeks lost profits and impairment of earnings capacity in the amount of \$43,000.00.

On 11 October 2011, the NPFC sent a letter to the 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 17 October 2011 to both the representing law firm<sup>4</sup> and the Claimant.<sup>5</sup>

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<sup>4</sup> USPS 7011 1150 0000 4666 6433.

Prior to presenting his claim to the NPFC, the Claimant filed an Emergency Advance Payment claim (EAP) with the GCCF on 19 October 2010 in the amount of \$31,000.00.<sup>6</sup> He was assigned Claimant ID #1172434 and claim #3028412.<sup>7</sup> This claim was denied.<sup>8</sup> Additionally, the Claimant filed a Full Review Final claim (FRF) with the GCCF on 19 October 2010, he was assigned claim #9017804.<sup>9</sup> The claim was filed for \$31,000.00 and is currently under re-review by the GCCF. The Claimant filed an Interim claim (ICQ12011) on 13 January 2011 in the amount of \$43,000.00. For his ICQ12011, he was assigned GCCF claim #9211744 and the claim is currently under re-review.

Based upon the evidence provided by the Claimant, it appears that the subject matter for each of the three GCCF claims is the same as the subject matter of his claim before the NPFC, i.e., that he lost profits as a commercial fisherman as a result of the Deepwater Horizon oil spill. The NPFC deems each of the Claimant's three GCCF claims to be properly presented to the responsible party and properly presented to the NPFC. Accordingly, this Claim Summary determination for NPFC Claim N10036-1481 considers and addresses the earnings claimed in the three claims presented to the responsible party, specifically; GCCF Claim #'s 3028412 (EAP), 9017804 (FRF), and 9211744 (ICQ12011).

### **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.

After an initial review of the claim, the NPFC sent the Claimant and his legal representative letters requesting additional information in order to further evaluate the claim.<sup>10</sup> To date, neither the Claimant nor his legal representative has responded to the request.<sup>11</sup> The NPFC therefore proceeded to evaluate the claim with the documentation originally submitted.

The Claimant alleged lost profits in the amount of \$43,000.00.<sup>12</sup> The documentation the Claimant provided shows that he had net income from his fishing business in the amounts of \$7,606.00 for 2007,<sup>13</sup> \$8,797.00 for 2008<sup>14</sup> and \$2,985.00 for 2009.<sup>15</sup> The fishing business's net income declined by \$5,812<sup>16</sup> from 2008 through the end of 2009 or 66%<sup>17</sup> prior to the oil spill.

The Claimant has provided no documentation for his earnings or profits for 2010. Accordingly, an alleged loss of \$43,000.00 is unsubstantiated by the documentation provided.

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<sup>5</sup> USPS 7011 1150 0000 4666 6426.

<sup>6</sup> Report from the GCCF dated 02 November 2011.

<sup>7</sup> Report from the GCCF dated 02 November 2011.

<sup>8</sup> Report from the GCF dated 02 November 2011.

<sup>9</sup> Report from the GCF dated 02 November 2011.

<sup>10</sup> The letter was sent on 11 October 2011.

<sup>11</sup> The letter was delivered to Claimant's and legal representation's address on record on 17 October 2011.

<sup>12</sup> Optional OSLTF claim form dated 15 September 2011.

<sup>13</sup> 2007 form 1040 U.S. Individual Income Tax Return.

<sup>14</sup> 2008 form 1040 U.S. Individual Income Tax Return.

<sup>15</sup> 2009 form 1040 U.S. Individual Income Tax Return.

<sup>16</sup> \$8,797.00 minus \$2,985.00 equals \$5,812.00.

<sup>17</sup> \$2,985.00 divided by \$8,797.00 equals .34 minus 1 equals .66 or 66%.

In conjunction with his claim, the Claimant asserted that the Deepwater Horizon oil spill made him “unable to fish as much as possible.”<sup>18</sup> The NPFC’s certified letter requesting additional information sent to the Claimant and his legal representative dated 11 October 2011 asked for, among other things, an explanation of how Port St. Lucie Florida’s fishing was impacted by the Deepwater Horizon oil spill, how the oil spill caused his alleged damages, and contact information for some of his larger customers.<sup>19</sup> As of the date of this determination, neither the Claimant nor his legal representative has responded to the NPFC’s request for additional information. As such, the Claimant has not established that his alleged loss of profits and impairment of earnings capacity was due to 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: *NPFC Claims Adjudication Division*

Date of Supervisor’s Review: *11/16/11*

Supervisor’s Actions: *Denial approved*

Supervisor’s Comments:

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<sup>18</sup> Optional OSLTF claim form dated 15 September 2011.

<sup>19</sup> USPS 7011 1150 0000 4666 6433 and USPS 7011 1150 0000 4666 6426.