

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
Number: 7011 1570 0001 4802 8078

5890/DWHZ
Claim # N10036-1500
09 December 2011

Bill Magee
[REDACTED]

Re: Claim Number: N10036-1500

Dear Mr. Magee:

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 your claim number N10036-1500 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. If, however 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 N10036-1500.

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

Enclosures: (1) Claim Summary/Determination Form

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1500
Claimant	Bill Magee
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$7,200.00

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 12 October 2011, Bill Magee, (the Claimant) presented an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) seeking \$7,200.00 in loss of profits and impairment of earnings capacity that allegedly resulted from the Deepwater Horizon oil spill.

At the time of the Deepwater Horizon oil spill, the Claimant caught and sold fish and shrimp in the Prentiss, Mississippi region.¹ The Claimant asserts that due to the Deepwater Horizon oil spill, he was unable to continue fishing and shrimping.² As a result, the Claimant asserts he had no seafood to sell to his customers and suffered reduced income in 2010 and 2011.³

The Claimant provided the following explanation regarding the calculation of his sum certain of \$7,200.00: the Claimant stated that by selling shrimp and fish he would earn between \$300.00 and \$500.00 a month.⁴ The Claimant took the average of the two, \$400.00, and used this to represent his monthly losses.⁵ The Claimant then multiplied the \$400.00 figure by eighteen, representing monthly losses from April 2010-September 2011, for a product of \$7,200.00.⁶ The Claimant then adopted this number as his sum certain.⁷

¹ Hand-written letter from the Claimant to the NPFC dated 28 September 2011.

² Optional OSLTF Claim form dated 28 September 2011 and received 12 October 2011.

³ Optional OSLTF Claim form dated 28 September 2011 and received 12 October 2011.

⁴ Hand-written letter from the Claimant to the NPFC dated 28 September 2011.

⁵ Hand-written letter from the Claimant to the NPFC dated 28 September 2011.

⁶ Hand-written letter from the Claimant to the NPFC dated 28 September 2011.

⁷ Optional OSLTF Claim form dated 28 September 2011 and received 12 October 2011.

APPLICABLE LAW

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a). Damages include the loss of profits or impairment of earning capacity due to the injury, destruction or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant. 33 U.S.C. § 2702(b)(2)(E).

The OSLTF, which is administered by the NPFC, is available to pay claims for uncompensated damages pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136. With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

Pursuant to the claims regulations, 33 C.F.R. § 136.233, a claimant must establish the following to prove loss of profits or impairment of earning capacity:

- (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 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 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

The Claimant's Submission to the OSLTF

In support of his claim, the Claimant presented the following documentation to the NPFC:

- Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form, dated 12 October 2011;
- Hand-written letter from the Claimant to the NPFC dated 28 September 2011;
- Hand-written letter from the Claimant dated 12 October 2011;
- Document titled 'Missing Information' dated 24 May 2011;
- Pay stub from Lawrence County School District dated 30 September 2010;
- 2010 Form W-2 Wage and Tax Statement from Lawrence County School District;
- Document titled 'New Hire Employment Data' dated 08 December 2009;
- 2008 Form W-2 Wage and Tax Statement from Asplundh Tree Expert Co.;
- Document titled 'Request for Employment Verification' received 15 April 2008;
- Document titled 'Weekly Payroll Record' received 15 April 2008;
- Pay stub from Bounds Lumber for period 29 February 2008-20 March 2008;
- Pay stubs from Lawrence County School District for dates 30 June 2010, 28 July 2010; 30 November 2010; 29 January 2011; 26 May 2011;
- Photocopy of the Claimant's Mississippi Driver License;
- Hand-written letter from the Claimant dated 24 August 2010;
- Document containing the Claimant's hand-written calculations for selling fish;
- Document titled 'Economic Loss' dated 18 November 2010;
- GCCF Denial Letter dated 30 July 2011; GCCF Full Review Final Payment Claim Form dated 23 December 2010;
- Hand-written letter from the Claimant to the GCCF;
- GCCF Claim Form dated 08 November 2010;
- GCCF Supporting Documentation for Individual and Business Claims forms;
- GCCF Full Review Final Claim Form.

Prior to presenting this Claim to the NPFC, the Claimant filed a claim with BP on 29 July 2010.⁸ The BP claim was denied.⁹ Additionally the Claimant filed an Emergency Advance Payment (EAP1) Claim with the GCCF for loss of profits and impairment of earnings capacity on 05 December 2010 in the amount of \$429.00.¹⁰ The Claimant was assigned Claimant ID # 1067417 and Claim ID # 4034989. The EAP1 claim was denied 14 December 2010.¹¹ Additionally, the Claimant filed a Full Review Final (FRF1) Claim with the GCCF for loss of profits and impairment of earnings capacity on 05 December 2010 in the amount of \$429.00.¹² The Claimant was assigned Claim ID # 9009418. The FRF1 Claim was denied.¹³ Additionally, the

⁸ Report from the GCCF dated 05 December 2011.

⁹ Report from the GCCF dated 05 December 2011.

¹⁰ Report from the GCCF dated 05 December 2011.

¹¹ GCCF Denial Letter dated 14 December 2010.

¹² Report from the GCCF dated 05 December 2011.

¹³ Report from the GCCF dated 05 December 2011.

Claimant filed an Emergency Advance Payment (EAP2) Claim with the GCCF for loss of subsistence use on 05 December 2010 in the amount of \$2,574.00.¹⁴ The Claimant was assigned Claim ID # 4034990. The EAP2 Claim was denied on 08 December 2010.¹⁵ Additionally the Claimant filed a Full Review Final (FRF2) Claim with the GCCF for loss of subsistence use on 05 December 2010 in the amount of \$2,574.00.¹⁶ The Claimant was assigned Claim ID # 9009418. The FRF2 Claim was denied.¹⁷ Additionally, the Claimant filed a Full Review Final (FRF3) Claim with the GCCF for damages due to physical injury on 04 January 2011 in the amount of \$5,500.00.¹⁸ The Claimant was assigned Claim ID # 9138590. The FRF3 Claim was denied on 30 July 2011.¹⁹ Additionally, the Claimant filed a Full Review Final (FRF4) Claim with the GCCF for loss of profits and impairment of earnings capacity on 04 January 2011 in the amount of \$800.00.²⁰ The Claimant was assigned Claim ID # 9138590. The FRF4 Claim was denied on 30 July 2011.²¹ Additionally, the Claimant filed a Full Review Final (FRF5) Claim with the GCCF for loss of subsistence use dated 04 January 2011 in the amount of \$800.00.²² The Claimant was assigned Claim ID # 9138590. The FRF5 Claim was denied on 30 July 2011.²³

Based upon the evidence provided by the Claimant, it appears that the subject matter for the GCCF claims regarding loss of profits and impairment of earnings capacity is the same as the subject matter of the claim before the NPFC, i.e., that due to the Deepwater Horizon oil spill, the Claimant was unable to sell his caught fish and shrimp and as a result suffered reduced income. The NPFC deems the Claimant's GCCF claims regarding loss of profits and impairment of earnings capacity to be properly presented to the RP and properly presented to the NPFC. Accordingly, this Claim Summary Determination for NPFC Claim N10036-1500 considers and addresses the earnings claimed in the claim presented to the responsible party regarding loss of profits and impairment of earnings capacity up to \$800.00,²⁴ specifically; GCCF Claim #'s 4034989 (EAP1), 9009418 (FRF1) and 9138590 (FRF4).

Regarding GCCF claims filed by the Claimant regarding loss of subsistence use and damages due to physical injury, the NPFC has not received any claims from the Claimant regarding subsistence or injury damages. Accordingly, this Claim Summary Determination for NPFC Claim N10036-1500 does not consider or address the claims presented to the responsible party involving loss of subsistence and physical injury damages, specifically; GCCF Claim #'s 9009418 (FRF2), 4034990 (EAP2), 9138590 (FRF3) and 9138590 (FRF5).

¹⁴ Report from the GCCF dated 05 December 2011.

¹⁵ GCCF Denial Letter dated 08 December 2010.

¹⁶ Report from the GCCF dated 05 December 2011.

¹⁷ Report from the GCCF dated 05 December 2011.

¹⁸ Report from the GCCF dated 05 December 2011.

¹⁹ GCCF Deficiency Denial Letter dated 30 July 2011.

²⁰ Report from the GCCF dated 05 December 2011.

²¹ GCCF Deficiency Denial Letter dated 30 July 2011.

²² Report from the GCCF dated 05 December 2011.

²³ GCCF Deficiency Denial Letter dated 30 July 2011.

²⁴ See discussion of the Claimant's claimed amount of damages below in NPFC Determination.

NPFC Determination

The claim is denied. 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 documentation presented by the Claimant.

Under 33 C.F.R. § 136.103(a), all claims for removal costs or damages must be presented first to the responsible party (RP). The Claimant presented an EAP1 Claim to the GCCF for loss of profits and impairment of earnings capacity on 05 December 2011 in the amount of \$429.00.²⁵ Additionally, the Claimant presented a FRF1 Claim to the GCCF for loss of profits and impairment of earnings capacity on 05 December 2011 in the amount of \$429.00.²⁶ Additionally, the Claimant presented FRF4 Claim to the GCCF for loss of profits and impairment of earnings capacity on 04 January 2011 in the amount of \$800.00.²⁷ The Claimant then presented a claim for loss of profits and impairment of earnings capacity on 12 October 2011 in the amount of \$7,200.00 to the NPFC.²⁸ Any claimed amount of damages exceeding \$800.00 was not properly presented to the RP/GCCF pursuant to 33 C.F.R. § 136.103(a) and is therefore denied.

The remainder of the claim is denied because the Claimant failed to prove that the alleged loss in the amount of \$800.00 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.

The Claimant asserts that due to the Deepwater Horizon oil spill, he was unable to catch fish and shrimp and sell them to customers in the Prentiss, Mississippi region.²⁹ As a result of not being able to sell fish and shrimp the Claimant asserts that he suffered reduced income in 2010 and 2011.³⁰ The Claimant, however, failed to prove that his ability to fish and shrimp was affected by the Deepwater Horizon oil spill.

The Claimant's original submission to the NPFC was limited to letters from the Claimant describing his claim as well as financial documentation of the Claimant's earnings unrelated to fishing and shrimping. In an effort to determine the effect of the Deepwater Horizon oil spill on the Claimant's ability to catch and sell fish and shrimp, the NPFC made a request for additional information from the Claimant on 01 November 2011.³¹ The NPFC requested that the Claimant provide the following documentation to support his claim: Federal income tax returns from 2008-2010 including all W-2's and 1099's, full and complete pay stubs from Asplundh Tree Expert, M.M. Line Clearance and Lawrence County School District, bank statements from 2008-present, fishing licenses from 2008-present, trip tickets from fishing and shrimping from 2008-September 2011, sales receipts for sales of fish and shrimp from 2008-September 2011 and receipts for fishing equipment including tackle boxes, bait, fishing poles, hooks, reels, line nets,

²⁵ Report from the GCCF dated 05 December 2011.

²⁶ Report from the GCCF dated 05 December 2011.

²⁷ Report from the GCCF dated 05 December 2011.

²⁸ Optional OSLTF Claim Form received 12 October 2011.

²⁹ Hand-written letter from the Claimant to the NPFC dated 28 September 2011.

³⁰ Optional OSLTF Claim form dated 28 September 2011 and received 12 October 2011.

³¹ NPFC Request For Additional Information dated 01 November 2011.

knives and coolers.³² No response has been received by the NPFC regarding any of the above listed items.

Furthermore, although the Claimant asserts that he was unable to fish and shrimp due to the Deepwater Horizon oil spill, none of the Claimant's submitted documentation provides any evidence to support this claim. The Claimant identifies many of his damages as stemming from his local lake shutting down.³³ The Claimant identified Jefferson Davis County Lake in Mississippi as his local lake.³⁴ Jefferson Davis County Lake is located over 100 miles³⁵ from the Gulf of Mexico. Further, even if the Claimant could show that he obtained fish from Jefferson Davis County Lake, there is no indication that effects from the Deepwater Horizon oil spill would have, or could have, reached an inland lake.

Accordingly, the Claimant failed to provide any documentation that the Deepwater Horizon oil spill affected the Claimant's ability to obtain shrimp or fish from Jefferson Davis County Lake or any other body of water for eventual sale. Further, even if the Claimant could provide information connecting the effects of the Deepwater Horizon oil spill to his ability to catch fish and shrimp, the Claimant failed to provide a valid commercial fishing license. Thus, there is no evidence that under Mississippi state law the Claimant is authorized to catch or sell fish and shrimp. Therefore, the Claimant failed to prove a connection between the Deepwater Horizon oil spill and his ability to catch and sell fish and shrimp to customers in 2010 and 2011.

This claim is denied because the Claimant failed to meet his burden to demonstrate 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 or that he was permitted under state law to catch and sell fish or shrimp for compensation.

Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Review: *12/9/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

³² NPFC Request For Additional Information dated 01 November 2011.

³³ GCCF Full Review Final Claim Form.

³⁴ GCCF Full Review Final Claim Form.

³⁵ See map of Jefferson Davis County Lake:

http://maps.google.com/maps?hl=en&q=jefferson%20davis%20county%20lake&gbv=2&gs_sm=e&gs_upl=458155121015621139130131131151012941277510.9.511410&um=1&ie=UTF-8&sa=N&tab=w1 (last accessed 09 December 2011)