

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  
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Arlington, VA 20598-7100  
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CERTIFIED MAIL-RETURN RECEIPT REQUESTED  
Number: 7011 1570 0001 4802 7132

5890/DWHZ  
29 November 2011

Richard Moore  
[REDACTED]

Re: Claim Number: N10036-1521

Dear Mr. Moore:

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 N10036-1521 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 N10036-1521.

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	N10036-1521
Claimant	Richard Moore
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$59,520.00

### ***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 25 October 2011, Richard Moore, (the Claimant), presented an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) seeking \$59,520.00 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 was employed by Freeport Launch, LP, based in Freeport, Texas, as a captain of a chase vessel.<sup>1</sup> Freeport Launch's vessels are contracted to work for seismic ships in the Gulf of Mexico.<sup>2</sup> The Claimant asserts that he was out of work and experienced reduced earnings due to the Deepwater Horizon oil spill.<sup>3</sup>

The Claimant provided the following explanation regarding the calculation of his sum certain of \$59,520.00: the Claimant added the total number of working days lost, 189 regular days plus three holiday days, for a total of 192 days.<sup>4</sup> The Claimant then multiplied his daily wage of \$310.00 by 192 for the product of \$59,520.00.<sup>5</sup>

### ***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,

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<sup>1</sup> Optional OSLTF Claim Form, dated 20 October 2011; Letter from Freeport Launch, LP to "Whom It May Concern," dated 23 May 2011.

<sup>2</sup> Letter from Freeport Launch, LP to "Whom It May Concern," dated 23 May 2011.

<sup>3</sup> Optional OSLTF Claim Form, dated 20 October 2011; Letter of claim explanation, dated 20 October 2011.

<sup>4</sup> Letter of claim explanation, dated 20 October 2011.

<sup>5</sup> Letter of claim explanation, dated 20 October 2011.

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 OSLTF Claim Form, dated 20 October 2011;
- Letter of claim explanation, dated 20 October 2011;
- Letter from the NPFC to the Claimant, dated 12 September 2011;
- Photocopy of the Claimant's United States of America Merchant Mariner Credential;
- Document titled "SuperCache GOM Phase 1 Line Coordinates in WGS84";
- Document titled "SuperCache GOM Phase 1 & 2 Line Coordinates in WGS84-Revision 3";
- Letter from Gulf Resource Management Inc. to "Whom It May Concern," dated 23 May 2011;
- Letter from Freeport Launch, LP to "Whom It May Concern," dated 23 May 2011;
- Letter from Freeport Launch, LP to "Whom It May Concern," dated 17 January 2011;
- Maps of the Gulf of Mexico;
- Mackay Communications Work Order Continuation Sheet [undated];
- Mackay Communications Work Order Continuation Sheet dated 12 May 2010;
- Mackay Communications Work Order Continuation Sheet dated 21 May 2010; and
- Freeport Launch, LP Daily Master's Logs for the dates 08 May 2010-30 July 2010, 05 February 2011-04 May 2011, 03 June 2011-23 August 2011.

Prior to presenting this Claim to the NPFC, the Claimant filed an Emergency Advance Payment (EAP) claim with the GCCF for loss of earnings on 04 October 2010 in the amount of \$52,080.00.<sup>6</sup> The Claimant was assigned Claimant ID # 3097330 and Claim # 151947. The EAP claim was denied by the GCCF.<sup>7</sup> Additionally, the Claimant filed a Full Review Final claim for loss of earnings (FRF1) in the amount of \$52,080.00 and loss of subsistence (FRF2) in the amount of \$11,000.00 on 21 January 2011. He was assigned Claim # 9236175.<sup>8</sup> Both FRF1 and FRF2 were also denied by the GCCF.<sup>9</sup>

Based upon the evidence provided by the Claimant, it appears that the subject matter for the Claimant's GCCF claims regarding loss of earnings is the same as the subject matter of his claim before the NPFC, i.e., that due to the Deepwater Horizon oil spill, the Claimant experienced reduced earnings at Freeport Launch. The NPFC deems that Claimant's GCCF claims were properly presented to the RP and properly presented to the NPFC. Accordingly, this Claim Summary Determination for NPFC claim N10036-1521 considers and addresses the earnings claimed in the claims presented to the responsible party regarding loss of earnings, specifically; GCCF Claim #'s 151947 (EAP) and 9236175 (FRF1).

### **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.

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<sup>6</sup> Report from the GCCF dated 21 November 2011.

<sup>7</sup> Report from the GCCF dated 21 November 2011.

<sup>8</sup> Report from the GCCF dated 21 November 2011.

<sup>9</sup> Report from the GCCF dated 21 November 2011.

This claim is denied because the Claimant failed to prove he suffered a financial loss due to the Deepwater Horizon oil spill. In his submission to the NPFC, the Claimant stated that he experienced a loss because Freeport Launch “did not receive permits after BP leak due to moratorium.”<sup>10</sup> He reiterated this assertion elsewhere stating “THE GOV. PUT A MORITORIUM ON THE GULF AND SEISMIC SHIPS WERE EFFECTED WITH THE MORITORIUM AS TO NO PERMITS” [sic].<sup>11</sup>

Additionally, the Claimant provided letters from Freeport Launch, LP. Notably, both these letters indicated “Mr. Moore has been without work for an extended period of time due to this moratorium.”<sup>12</sup> Consequently, the Claimant failed to prove that his alleged loss was a result of the Deepwater Horizon oil spill as opposed to other factors such as delays in permitting and the moratorium on drilling which are intervening causes and thus not a consequence of the oil spill.

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.

Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor’s Review: *11/29/11*

Supervisor’s Actions: *Denial approved*

Supervisor’s Comments:

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<sup>10</sup> Optional OSLTF Claim Form, dated 20 October 2011.

<sup>11</sup> Letter of claim explanation, dated 20 October 2011.

<sup>12</sup> Letter from Freeport Launch, LP dated 17 January 2011; Letter from Freeport Launch, LP dated 23 May 2011.