

U.S. Department of
Homeland Security

United States
Coast Guard



Director
National Pollution Funds Center

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16480

12 December 2011

CERTIFIED MAIL Number: 7011 1150 0000 4636 2878

Mr. Wayne W. Mason



RE: Claim Number: N10036- 1528

Dear Mr. Mason:

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 25 October 2011, the NPFC received your claim for \$2,000 for lost subsistence use and \$13,000 for damages to natural resources following the Deepwater Horizon oil spill. In a subsequent letter faxed to the NPFC on 27 October 2011, you adjusted your claim explaining that the entire \$15,000 sum certain was for lost subsistence use of natural resources, including fish, shrimp, and crabs, that you would have caught and eaten if not for the spill. Prior to presentment to the NPFC, you presented your lost subsistence use claim to the GCCF, which was denied on 26 July 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 loss of subsistence use of natural resources (33 U.S.C. §2702(b)(2)(C)) (i.e., resources relied upon for food). The regulations at 33 C.F.R. Part 136 include general claim requirements and requirements specific to lost subsistence use claims.

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 Fund (33 U.S.C. §2713(c)(2); except as noted in 33 C.F.R. §136.103(a)).

Subsistence Use Loss Claim Requirements

The claims regulations (33 C.F.R. §§136.219-223) provide additional requirements for lost subsistence use claims. 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.

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 25 October 2011, which included your denial letter from the GCCF, copies of your 2009, 2010, and 2011 fishing licenses, a copy of your boat registration, and receipts and credit card statements that include purchases for gas for your boat before and after the spill. On 27 October 2011, the NPFC also received your fax indicating the claim was for lost subsistence use, exclusively.

NPFC Determination

The NPFC finds that you have not met your burden of proving a subsistence use loss as defined by OPA (33 U.S.C. 2701 et seq.) and OPA claims regulations (33 C.F.R. Part 136). Your claim is denied because you have not:

- 1) established your pattern of subsistence use of natural resources (i.e., how often you fished and the amount that you regularly caught and consumed prior to the spill); nor
- 2) explained or documented how you determined your claimed loss of \$15,000 (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).¹

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 (N10036-1528) to:

Chief (Cn)
National Pollution Funds Center
U.S. Coast Guard, Stop 7100
4200 Wilson Boulevard, Suite 1000
Arlington, VA 20598-7100

¹ Note: Any compensation awarded by the NPFC must be reduced by overheads or other normal expenses of subsistence use not incurred as a result of the incident, such as fuel and bait.

If you have any questions about reconsideration, please feel free to contact the NPFC at the above address or by phone at 800-280-7118.

Sincerely,

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