

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd. Suite 1000
Arlington, VA 20598-7100
Staff Symbol: (CA)
Phone: 800-280-7118
E-mail: arl-pf-npfcclaimsinfo@uscg.mil
Fax: 202-493-6937

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5890/DWHZ
29 November 2011

Ms. Sherry J. Savoie


Re: Claim Number: N10036-1529

Dear Ms. Savoie:

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 the claim number N10036-1529 involving the Deepwater Horizon oil spill. Please see the attached 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 N10036-1529.

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

Enclosure: Claim Summary/Determination Form

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1529
Claimant	Sherry J. Savoie/SeaDogs Seafood, LLC.
Type of Claimant	Corporate (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$40,000.00

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 19 October 2011, Ms. Sherry Savoie, on behalf of SeaDogs Seafood, LLC (collectively, the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$40,000.00 in loss of profits damages, and \$40,000.00 in loss of subsistence use, resulting from the Deepwater Horizon oil spill.¹

The Claimant alleged that in January 2010, the Claimant founded a commercial fishing company, SeaDogs Seafood, LLC, which was officially incorporated in the state of Louisiana on 25 October 2010.² The Claimant did not fish in 2010, but stated that the company had anticipated beginning shrimping operations in the spring of 2010.³ However, due to the Deepwater Horizon oil spill, the Claimant alleged to have been unable ever begin shrimping. The Claimant further alleged that due to the poor shrimp crop in 2011, they have not shrimped for profit during this year as well.⁴ SeaDogs Seafood has earned no income since it was officially incorporated.

Upon clarification of OPA's damage categories, the Claimant withdrew the loss of subsistence use component of this claim, choosing to proceed only with the loss of profits claim.⁵ The Claimant alleged that due to their inability to shrimp for profit in 2010 and 2011, the Claimant lost profits in the amount of \$40,000.00. The Claimant calculated this figure based on the U.S. Bureau of Labor Statistics reported earnings for "fishers and related fishing workers" in May of 2010.⁶

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

¹ Optional OSLTF Claim Form, dated 3 August 2011.

² State of Louisiana Business certification, 25 October 2010.

³ Letter from the Claimant explaining formation of SeaDogs Seafood, LLC, 17 April 2011.

⁴ PHONECON: NPFC Staff and the Claimant, 21 November 2011.

⁵ Letter from the Claimant, withdrawing claim for subsistence use, 11 November 2011.

⁶ U.S. Bureau of Labor Statistics, Occupational Employment and Wages, May 2010, 45-3011 Fishers and Related Fishing Workers.

waters or adjoining shorelines or the exclusive economic zone, as described in Section 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.
- (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 this claim, the Claimant submitted the following documentation:

- Optional OSLTF Claim Form, 11 October 2011;
- GCCF letter, denying Emergency Advance Payment claim, 14 December 2010, Claimant ID 3438379;
- GCCF Deficiency Denial Letter on Interim Payment/Final Payment Claim, 7 June 2011;
- Letter from the Claimant explaining formation of SeaDogs Seafood, LLC, 17 April 2011;
- L.D.W.F. Announces Immediate Changes to the Louisiana Shrimp Season, 8 May 2010;

- L.D.W.F. Announces Further Recreational and Commercial Fishing Closure due to Gulf of Mexico Oil Spill, 9 May 2010;
- L.D.W.F. Actively Enforcing Fishing Closure in Oil Spill Area, 11 May 2010;
- L.D.W.F. Announces New Areas Open to Shrimping and Adjustments to Precautionary Fisheries Closures West of the Mississippi River, 10 May 2010;
- L.D.W.F. Modifies Closures in Portions of the Barataria and Terrebonne Basins and Territorial Seas to Recreation and Commercial Fishing, 22 May 2010;
- Oil Still Gushing From Rig; fishing closed east of Mississippi, open elsewhere, AP, 4 May 2010;
- Letter from the Claimant, withdrawing claim for subsistence use, 11 November 2011;
- Request for Release of L.D.W.F Trip Ticket Report Data to an individual fisherman, undated;
- Various boat and fishing licenses/certifications;
- Response to request for additional information, 11 November 2011;
- Two Receipts from the Seafood Shed, showing sales of \$25.85 and \$53.15 on 14, 15 October 2011;
- Table of Contents;
- 1. Executive Summary of Claim;
- 2. Business Description and Vision;
- 3. Definition of Market;
- 4. Description of the Products and Services;
- 5. Organization and Management;
- 6. Marketing and Sales Strategy;
- 7. Financial Management;
- 2010 Form 1040, showing adjusted gross income of \$8,677.00;
- 2010 Schedule A, Form 1040;
- SeaDogs Seafood, LLC Profit and Loss Statement, 2011;
- SeaDogs Seafood, LLC Profit and Loss Statement, 2010;
- 2010 Schedule C (Form 1040) showing business loss of \$17,677.00;
- Rev November 2009 Form 6198;
- 2010 Form 2106-EZ;
- Rev December 2006, Form 8283;
- 2010 Schedule M (Form 1040A or 1040);
- IRC Section 172(b)(3), 12/31/2010;
- 2010 Schedule A Lines 21, 23, 28;
- State of Louisiana Business certification, 25 October 2010;
- Document showing business registration date on 25 October 2010, and business status as “Not in Good Standing for failure to file annual report”;
- Print-out of Louisiana Department of Wildlife and Fisheries “Shrimp Seasons”;
- U.S. Bureau of Labor Statistics, Occupational Employment and Wages, May 2010, 45-3011 Fishers and Related Fishing Workers;
- Local Fisherman Skeptical of Promises, 28 October 2011;
- NMFS Landings Query Results, 2009, 2010;
- Move on Louisiana Shrimpers’ oil spill claims: An editorial, 29 October 2011;
- Kenneth Feinberg vows better lifeline for shrimpers at House hearing, 27 October 2011;
- Authorization for the Daryl Savoie, 28 October 2011.

On 22 November 2010, the Claimant presented an Emergency Advance Payment (EAP) Claim to the RP/GCCF seeking loss of profits and earnings damages. The Claimant was assigned

claimant ID 3438379 and the EAP claim was assigned claim # 520970.⁷ This claim was denied on 14 December 2010.⁸

The Claimant then presented a First Quarter Interim Payment Claim (ICQ12011) to the RP/GCCF seeking loss of profits and wages damages. The ICQ12011 was assigned claim # 9160886 and was denied by the RP/GCCF.

The Claimant then presented two Full Review Final Claims (FRF1, FRF2) to the RP/GCCF. In FRF1, the Claimant sought loss of profits and wages damages, and in FRF2, the Claimant sought loss of subsistence use damages. FRF1 was assigned claim # 9129997 and FRF2 was assigned claim # 9517685. FRF1 was denied and FRF2 received a deficiency denial on 7 June 2011.⁹

On 12 October 2010, the Claimant also presented an Emergency Advance Payment (EAP) claim seeking \$10,000.00 for individual loss of profits and earning capacity to the RP/GCCF. The Claimant was assigned Claimant ID # 3159617 and the EAP claim was assigned claim # 214519. This claim was paid in the amount of \$4,200.00.¹⁰ The Claimant then accepted a Quick Pay final payment in the amount of \$5,000.00 as full and final payment.¹¹

On 19 October 2011, the Claimant, on behalf of her business, presented this claim to the NPFC, seeking \$40,000.00 in loss of profits and earnings capacity damages, and \$40,000.00 in loss of subsistence use.¹² Upon clarification of the OPA damage categories, the Claimant withdrew her loss of subsistence use claim.¹³ Therefore, the NPFC shall adjudicate this claim in the amount of \$40,000.00 in loss of profits damages, to the extent that these damages were first presented to and denied by the RP/GCCF.¹⁴ Any damage amount now presented to the NPFC, which was not first presented to the RP/GCCF, is denied for improper presentment.

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, 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 this claim.

This claim is denied because the Claimant failed to demonstrate that she sustained an actual financial loss as a result of the Deepwater Horizon oil spill.

The Claimant stated that she was prepared to begin a commercial fishing business in May of 2010, but was unable to do so because of the Deepwater Horizon oil spill. The Claimant stated that she began her business, SeaDogs Seafood, LLC in January 2010, anticipating the start of the shrimping season in May of 2010.¹⁵ However, the Claimant stated that she has earned no profits in 2010 or 2011 since the formation of her business.¹⁶ Furthermore, the Claimant did not actually incorporate her business until several months after the oil spill, in October 2010, and the

⁷ GCCF Claimant Status, accessed on 21 November 2011.

⁸ GCCF Emergency Advance Payment Denial Letter, 14 December 2010.

⁹ GCCF Deficiency Denial Letter on Interim Payment/Final Payment Claim, 7 June 2011.

¹⁰ GCCF United States Coast Guard Report, 21 November 2011.

¹¹ GCCF United States Coast Guard Report, 21 November 2011.

¹² Optional OSLTF Claim Form, dated 11 October 2011.

¹³ Letter from the Claimant to the NPFC, withdrawing loss of subsistence use claim, 11 November 2011.

¹⁴ 33 C.F.R. § 136.103(a).

¹⁵ Letter explaining formation of SeaDogs Seafood, LLC, 17 April 2011.

¹⁶ State of Louisiana Business certification, 25 October 2010;

Claimant's business status is currently listed as "not in good standing due to failure to file annual report."¹⁷

In 2011, the Claimant sold \$79.00 in shrimp to The Seafood Shed, which the Claimant states is its only customer.¹⁸ Upon contacting The Seafood Shed, the NPFC was informed by the owner that the Claimant was not a regular seller with the Seafood Shed and was not listed in the company's seller database.¹⁹

Based on the fact that the Claimant reported to have never earned income, (other than \$79.00 in shrimp sales for 2011), the NPFC does not have sufficient documentation to substantiate this claim for loss of profits, as the Claimant has never actually earned profits, and has not presented documentation to demonstrate that the Claimant would have earned profits were it not for the Deepwater Horizon oil spill. Without a record of business earnings either before or after the oil spill, the Claimant has failed to demonstrate that earnings actually dropped or decreased as compared to pre/post-oil spill levels.

Furthermore, the post-oil spill date of the incorporation of the Claimant's business, and the fact that the Claimant earned no profits in 2010, indicates that the Claimant did not actually intend to begin to shrimp for profit in May 2010. Therefore any losses the Claimant alleged to have incurred are speculative and unproven. It should also be noted that the Claimant's business is currently listed as "Not in good standing for failure to file annual report."²⁰

The Claimant also failed to present sufficient documentation regarding methods for calculating the Claimant's losses. The Claimant stated that the Claimant would've earned approximately \$40,000.00 per year, based on the earnings of the 90th percentile of "fishers and related fishing workers" as reported by the U.S. Bureau of Labor Statistics.²¹ However, the Claimant has not provided any evidence that would allow the NPFC to calculate the Claimant's actual losses or to indicate that the Claimant would have been earning the approximate income earned by the highest paid "fishers and related fishing workers."

Additionally, the NPFC notes that the Claimant first filed a claim for individual losses with the RP/GCCF, for which the Claimant accepted a Quick Pay final payment.²² Information available to the NPFC indicates that the Claimant has received an EAP and Quick Pay payment for total payment of \$9,200.00.²³ The RP/GCCF generally requires that a Claimant execute a Release and Covenant Not to Sue in return for a Quick Pay final payment. Because the Claimant has accepted a Quick Pay final payment, and signed a Release and Covenant Not to Sue, the Claimant may have released any rights to additional recovery regarding this injury to the RP/GCCF.²⁴

Should the Claimant chose to pursue this claim on reconsideration, the Claimant should address all deficiencies listed above, and should also provide a copy of all other claims submitted to the

¹⁷ Document showing business registration date on 25 October 2010, and business status as "Not in Good Standing for failure to file annual report."

¹⁸ Response to NPFC request for additional information, 11 November 2011.

¹⁹ PHONECON: NPFC and The Seafood Shed, 21 November 2011.

²⁰ Document showing business registration date on 25 October 2010, and business status as "Not in Good Standing for failure to file annual report";

²¹ U.S Bureau of Labor Statistics, Occupational Employment and Wages, May 2010, Fishers and related Fishing Workers.

²² GCCF United States Coast Guard Report, 21 November 2011.

²³ GCCF United States Coast Guard Report, 21 November 2011.

²⁴ Standard GCCF Notice of Quick Payment Final Claim Determination.

RP/GCCF arising from the Deepwater Horizon in spill, including copies of any and all waivers and covenants signed by the Claimant regarding injuries related to the oil spill.²⁵

This claim is denied because the Claimant failed to meet her burden to demonstrate (1) that she sustained a loss in the amount of \$40,000.00, and (2) 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 Action: *Denial approved*

Supervisor's Comments:

²⁵ 33 C.F.R. § 136.115.