

## CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-1643
Claimant	: Brian Easterling
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: Donna Hellberg
Amount Requested	: \$33,930.00

### **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 claims for certain individual and business claims on behalf of BP.

### **CLAIM AND CLAIMANT:**

On 13 January 2012, Mr. Brian Easterling (the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$33,930.00 in loss of profits and impairment of earning capacity damages resulting from the Deepwater Horizon oil spill.<sup>1</sup>

The Claimant alleged that in January 2010, he moved from Texas to Mississippi to begin working as the “#1 Deckhand aboard the SeaSaw”<sup>2</sup>, an oyster dredging vessel operating in waters near Pass Christian, Mississippi. The Claimant alleged that he began work in January 2010, and worked until the waters were closed following the oil spill. Specifically the Claimant stated,

On May 2, 2010, NOAA announced the immediate closure of commercial fishing waters. The closing of the commercial fishing waters in Pass Christian, MS caused loss of employment by all SeaSaw employees effective on that day.<sup>3</sup>

The Claimant states that he has “missed approximately 21 months of work due to the oil spill and ha[s] been unable to secure alternative employment.”<sup>4</sup> The Claimant seeks \$33,930.00 due to his inability to dredge for oysters for the periods of “April 22-May 31 2010; October 2010 – May 2011 and; October 2011 – November 2011.”<sup>5</sup>

Prior to presentment to the NPFC, the Claimant presented two Emergency Advance Payment Claims (EAP1, EAP2) to the RP/GCCF seeking loss of profits and wages damages in the amount of \$15,000.00, as well as loss of subsistence use damages in the amount of \$3,000.00.<sup>6</sup> The Claimant was assigned claimant ID 1010706, EAP1 was assigned claim # 21291, and EAP2 was

<sup>1</sup> Claim Cover Letter, 5 January 2012.

<sup>2</sup> Response to NPFC Request for additional information, #3.

<sup>3</sup> Claim Cover Letter, 5 January 2012, #7.

<sup>4</sup> Claim Cover Letter, 5 January 12, #8.

<sup>5</sup> Response to NPFC Request for additional information, #3.

<sup>6</sup> GCCF Claimant Status, accessed on 24 January 2012; GCCF United States Coast Guard Report, 21 February 2012.

assigned claim # 21313.<sup>7</sup> Both EAP claims were denied by the RP/GCCF on 2 November 2010.<sup>8</sup>

The Claimant then presented a First Quarter Interim Payment Claim (ICQ12011) to the RP/GCCF seeking loss of profits and wages damages in the amount of \$30,600.00.<sup>9</sup> The ICQ12011 was assigned claim # 9313322 and was denied by the RP/GCCF on 22 September 2011.<sup>10</sup>

The NPFC denied the claim on March 8, 2012 because in order to prove a claim for loss of profits and impairment of earning capacity damages, a Claimant must provide documentation sufficient to prove (1) that the Claimant sustained an actual financial loss, and (2) that the loss was caused by the discharge of oil resulting from the Deepwater Horizon oil spill.

The Claimant alleged that he began work as a deckhand aboard an oyster dredging vessel in January of 2010, and worked until 2 May 2010, when certain commercial fishing waters were closed as a result of the Deepwater Horizon oil spill.<sup>11</sup> As a result, the Claimant alleged to have lost \$33,930.00 in earnings from the time of the oil spill through November 2011.<sup>12</sup>

1. Failure to provide documentation to substantiate alleged financial loss.

In order to substantiate the Claimant's alleged loss amount, the NPFC requested that the Claimant provide evidence of all income earned in 2009, 2010 and 2011, such as bank account statements, or copies of federal income tax returns.<sup>13</sup> Furthermore, to support the Claimant's assertion that he had been working as a deckhand since January 2010, earning "an average of \$435 per week"<sup>14</sup> the NPFC requested that the Claimant provide records of pay earned in his capacity as a deckhand in 2010 for the period prior to the Deepwater Horizon oil spill.<sup>15</sup> However, the Claimant was unable to adequately document his earnings, stating that he has no bank account records, was paid in cash, and had not filed tax returns in 2009 or 2010.<sup>16</sup>

It should also be noted that according to the Mississippi Department of Marine Resources, "the 2009-2010 commercial oyster season began September 11, 2009 and ended April 1, 2010."<sup>17</sup> In his original submission to the NPFC, the Claimant provided three unsigned receipts as proof of cash payments made to the Claimant by the owner of the vessel. Only one receipt, dated 30 March 2011 is dated prior to the closure of the Mississippi commercial oyster season for 2009-2010.<sup>18</sup> Remaining receipts are for payments made to the Claimant following the closure of the commercial oyster season. Additionally, the Claimant has not presented financial documentation sufficient to allow the NPFC to verify the receipts.

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<sup>7</sup> GCCF Claimant Status, accessed on 24 January 2012.

<sup>8</sup> GCCF denial letter on Emergency Advance Payment claim, 2 November 2010.

<sup>9</sup> GCCF United States Coast Guard Report, 21 February 2012.

<sup>10</sup> GCCF Denial Letter on Interim Payment/Final Payment Claim, 22 September 2011.

<sup>11</sup> Claim Cover Letter, 5 January 2012, #7.

<sup>12</sup> Response to NPFC request for additional information,

<sup>13</sup> NPFC Request for additional information, 26 January 2012.

<sup>14</sup> Claim Cover Letter, 5 January 2012, #6.

<sup>15</sup> NPFC Request for additional information, 26 January 2012.

<sup>16</sup> Response to NPFC Request for additional information, #'s 3, 4..

<sup>17</sup> DMR Annual report, FY2010.

<sup>18</sup> Three receipts provided by the Claimant are dated 3/30/2010, 4/5/2010 and 4/17/2010.

Because the Claimant has not adequately documented his income prior to or following the Deepwater Horizon oil spill, the Claimant has not proven that he sustained an actual financial loss in the period following the Deepwater Horizon oil spill.

2. Failure to prove loss as a result of the Deepwater Horizon oil spill.

As noted above, information available through the Mississippi Department of Marine Resources indicates that the commercial oyster season closed on April 1, 2010.<sup>19</sup> According to the Claimant's submission, "[o]n May 2, 2010, NOAA announced the immediate closure of commercial fishing waters . . . caus[ing] a loss of employment by all SeaSaw employees effective that day."<sup>20</sup> Furthermore, the Claimant stated that the SeaSaw only dredged for oysters and was not used to catch other seafood.<sup>21</sup> Because the commercial oyster season was reported to have ended prior to the closure of commercial fishing waters, and because the SeaSaw was not used for purposes other than oyster dredging, it is unclear how or if the water closures following the oil spill actually affected the Claimant's ability to earn income throughout 2010.

Regarding the Claimant's alleged losses in 2011; the Claimant has not provided documentation sufficient to prove that the continued inability of the SeaSaw to dredge for oysters upon the reopening of waters was actually caused by the discharge of oil resulting from the Deepwater Horizon oil spill. To the contrary, evidence submitted by the Claimant indicates that the Mississippi Oyster harvest was likely to have been damaged due to fresh water incursion resulting from opened spillways to prevent Mississippi River flooding.<sup>22</sup>

This claim was therefore denied because the Claimant failed to meet his burden to demonstrate (1) that he sustained a loss in the amount of \$33,930.00, and (2) that the alleged loss was 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.

**REQUEST FOR RECONSIDERATION:**

The Claimant requested reconsideration which was received by the NPFC on April 1, 2012 via regular mail. The Claimant provided a one-page letter requesting reconsideration and also provided the following supporting documents:

1. Mississippi Department of Marine Resources (MDMR) News Release dated June 1, 2010 entitled "*Precautionary Closure of Portions of Mississippi Marine Waters To All Commercial and Recreational Fishing, Effective Immediately;*"
2. Copy of Map showing area closed to all commercial and recreational fishing as identified under (1) above;
3. Mississippi Department of Marine Resources (MDMR) News Release dated April 13, 2010 entitled "*Mississippi Oyster Reef Areas to Open Wednesday, April 14;*"
4. Mississippi Department of Marine Resources (MDMR) News Release dated April 23, 2010 entitled "*Mississippi's Regular Oyster Season to Close April 30, 2010;*"
5. Mississippi Department of Marine Resources (MDMR) News Release dated April 28, 2010 entitled "*Mississippi Oyster Reef Areas to Open Thursday, April 29.*"

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<sup>19</sup> DMR Annual Report, FY2010.

<sup>20</sup> Claim Cover Letter, 5 January 2012, #7.

<sup>21</sup> Response to NPFC Request for additional information, #1.

<sup>22</sup> Article submitted by Claimant entitled "Mississippi Oyster Harvest Could be Lost" by Harry R. Webber dated 16 July 2011, Associated Press.

6. Mississippi Department of Marine Resources (MDMR) News Release dated April 6, 2010 entitled “*Mississippi Oyster Reef Areas to Re-open April 7;*”
7. Mississippi Department of Marine Resources (MDMR) News Release dated Nov. 1, 2010 entitled “*2010-2011 Mississippi Oyster Season to Open Nov. 8 to Tonging Only;*”
8. Mississippi Department of Marine Resources (MDMR) News Release dated June 27, 2010 entitled “*Revised Precautionary Closure: Additional Areas of Mississippi Marine Waters Closed to Commercial and Recreational Fishing;*”
9. Mississippi Department of Environmental Quality June 27, 2010 News Release entitled “*MDEQ July 27 Update on Oil Material in Mississippi.*”

### **NPFC Determination on Reconsideration**

Under 33 CFR 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 CFR § 136.233, a claimant must establish loss of profits or impairment of earning capacity and that the loss was due to the destruction or injury to real or personal property or natural resources. The NPFC considered all the documentation submitted by the Claimant. The request for reconsideration must be in writing and include the factual or legal grounds for the relief requested, providing any additional support for the claim. 33 CFR 136.115(d).

The NPFC performed a *de novo* review of the entire claim submission upon reconsideration. The Claimant has tried to address the NPFC’s denial determination by separating his discussion topics into two categories: (1) Failure to provide documentation to substantiate alleged financial loss and (2) Failure to prove the loss was the result of the Deepwater Horizon oil spill.

With respect to the Claimant’s assertions made regarding his failure to provide documentation to substantiate an alleged financial loss, he states:

1. That he provided a copy of his 2008 tax return and has not provided 2009, 2010, or 2011 because he hasn’t filed;
2. That he has not had a bank account since 2009 and that he has been paid cash for employment as a deckhand and he provided a copy of the only three pay receipts he had. The Claimant also stated that he provided a letter from his employer, the owner of the SeaSaw which corroborates his asserted wage earnings;
3. That he provided originals and copies of certified trip tickets showing what the SeaSaw was paid for oyster catches. It is important to know that the Claimant provided only three certified trip tickets for April 19, 20, and 21, 2010;
4. That he provided a copy of the vendor quick report documenting catches for the SeaSaw; and
5. That he has provided 8 different Mississippi Department of Marine Resources (MDMR) News Releases from 2010. The Claimant further states that the NPFC’s denial indicates the oyster season for 2009-2010 was closed on April 1, 2010 but the Claimant states the News Releases he has provided show that the waters were open during the time period for which he submitted receipts and trip tickets. The Claimant states that the oyster season was never permanently closed until the oil spill and that only tonging reefs have been opened since.

With respect to the Claimant's assertions made regarding his failure to prove a loss that was the result of the Deepwater Horizon oil spill, he states:

1. That he has provided a copy of several MDMR News Releases that demonstrate openings and closings for the harvest of oysters;
2. That he has provided a June 1, 2010 MDMR News Release that states the waters were once again closed as "a result of the presence of oil in this general area and the potential impacts of the oil on Mississippi's coastal marine resources;"
3. That the Claimant was forced to move his family in order to take of them; and
4. That the SeaSaw was not able to stay in business due to the continued closures of the waters due to the oil spill.

Based on the Claimant's arguments on reconsideration, the NPFC has determined that the Claimant has not demonstrated that he has sustained a financial loss in the amount alleged. While the NPFC understands that the Claimant has not filed income taxes for 2009 through 2011, the Claimant is not relieved of his burden to prove his alleged loss. Pursuant to 33 CFR 136 §233(c) it states "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.

The Claimant has not demonstrated exactly how much he has made working on the SeaSaw. Because the Claimant has only been able to produce three unverified receipts for cash payments, the documentation is not sufficient to substantiate the Claimant's assertion of an alleged loss of \$33,930.00 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.

Furthermore, the Claimant only made an annual reported income of \$14,985.00 in 2008 as a laborer and with no way to determine the total amount made as a deckhand on the SeaSaw, the NPFC is not able to determine that a financial loss was experienced by the Claimant regardless of when the MDMR determined waterways open or closed for oyster harvesting.

Based on the Claimant's inability to document a financial loss, this claim is denied upon reconsideration.

Claim Supervisor: ***Thomas Morrison***

Date of Supervisor's review: ***5/15/12***

Supervisor Action: ***Denial on reconsideration approved***

Supervisor's Comments:

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: 800-280-7118  
E-mail:  
[REDACTED]@uscg.mil  
Fax: 703-872-6113

5890  
5/15/2012

CERTIFIED MAIL – RETURN RECEIPT REQUESTED  
Number: 7011 1570 0001 4802 9815

Brian Easterling  
[REDACTED]

RE: Claim Number: N10036-1643

Dear Mr. Easterling:

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 N10036-1643 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination Form for further explanation.

Disposition of this reconsideration constitutes final agency action.

Sincerely,

Thomas S. Morrison  
Chief, Claims Adjudication Division  
U.S. Coast Guard

Encl: Claim Summary / Determination Form