

U.S. Department of
Homeland Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

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CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 2446 4371

5890
30 April 2012

David Moore
[REDACTED]

Re: Claim Number: N10036-1655

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 the claim number N10036-1655 involving Deepwater Horizon. 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 N10036-1655.

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: (1) Claim Summary / Determination Form
(2) Documentation Provided by the Claimant

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-1655
Claimant	: David Moore
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: \$43,500.00

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 January 2012, David Moore ('the Claimant') presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$43,500.00 in loss of profits and impairment of earning capacity damages resulting from the Deepwater Horizon oil spill.¹ The Claimant was a boat owner, who asserts lost profits on the sale of his 46 ft boat because sales of large boats plunged during the oil spill incident.²

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 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

¹ Optional OSLTF Claim Form received 25 January 2012.

² Optional OSLTF Claim Form received 25 January 2012 and Claimant's letter to BP/GCCF dated 31 October 2010.

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

The Claimant asserts having presented a claim to the BP on 9 August 2010 and that it has been denied.³ The NPFC independently confirmed presentation to the GCCF of an Emergency Advance Payment (EAP) Claim on 23 August 2010 in the amount of \$22,000.00 and a Full Review/Final (FRF) Payment Claim in the amount of \$10,000.00 on 20 April 2011. Both GCCF claims were assigned under GCCF Claimant Identification Number 1146130. Separate claim numbers were assigned: Claim Number 2202 was assigned to the EAP Claim and Claim Number 9363351 was assigned to the FRF Claim and both claims have been denied by the GCCF.⁴

On 24 January 2012, the Claimant presented this claim to the Oil Spill Liability Trust Fund (OSLTF) for \$43,500.00 in loss of profits and impairment of earnings capacity damages resulting from the Deepwater Horizon oil spill.⁵

A Claimant is required to present the same claim to the NPFC as was presented to the RP.⁶ Amounts claimed to the NPFC in excess of the amount claimed to the RP are denied due to lack of presentment to the RP: \$21,500 of this claim is denied for lack of proper presentment to the RP. Amounts that were properly presented to the RP/GCCF (\$22,000.00) are addressed below. Further, because the subject matter of the Claimant's FRF Claim appear to be based upon the same subject matter, i.e. that he lost profits on the sale of his boat as a result of the Deepwater Horizon oil spill, the NPFC deems this Claim Summary Determination as being outcome determinative for the Claimant's GCCF claims.

To support this claim the Claimant presented a large amount of documentation, which is listed in Enclosure (2).

³ Optional OSLTF Claim Form received 25 January 2012, GCCF Denial Letter [of Emergency Action Payment Claim] dated 8 December 2010 and GCCF Denial Letter [of Final Payment Claim] dated 30 April 2011.

⁴ GCCF – U.S. Coast Guard Report as of 12 April 2012.

⁵ Optional OSLTF Claim Form received 25 January 2012.

⁶ 33 C.F.R. § 136.103(a) requires that, except as provided in paragraph (b) of the section, “all claims for removal costs or damages must be presented first to the responsible party or guarantor ...” Subparagraph (b) does not apply to this claim.

The Claimant's documentation with the original claim included, among other things, letters of explanation,⁷ photographs of his boat,⁸ listings of similar Marine Trader yachts sold,⁹ a copy of his boat's listing for sale,¹⁰ proof of ownership,¹¹ industry articles on 2010 boat sales,¹² and a denial letter from the GCCF.¹³

NPFC Determination

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 waters or adjoining shorelines or the exclusive economic zone, as described in Section 2702(b) of OPA. Pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136, the OSLTF, which is administered by the NPFC, is available to pay claims for uncompensated damages.

This claim is denied because the Claimant failed to prove that the cause of the alleged loss was due to the injury or destruction or loss of real or personal property or a natural resource as a result of a discharge or a substantial threat of a discharge of oil.

After an initial review, the NPFC discussed the claim with the Claimant and verbally requested additional information to further evaluate the claim.¹⁴ Among other things, additional financial documentation and additional documentation supporting and explaining how the Deepwater Horizon oil spill caused the Claimant's losses were requested. The Claimant responded the same day by providing yacht industry press releases on sales, sales agreement documents for his purchase of the boat in 2008 and for his sale of the boat in 2011, the boat's listing for sale, and a full copy of the GCCF's last denial letter.¹⁵

On 14 March 2012, the Claimant provided a letter of authorization for the GCCF to release a copy of his claim file to the NPFC,¹⁶ as well as additional documents on 29 March 2012.¹⁷ Documents received from the GCCF pursuant to the Claimant's request were added to this claim once received.

The Claimant purchased the boat on 4 December 2008 for \$100,000.00¹⁸ and, after making restorations and repairs, agreed to sell the boat on 25 April 2011 for \$85,000.00, which was completed on 13 May 2011.¹⁹ Based on sale prices of similar boats sold in 2010, the Claimant asserts that the value of the boat in 2010 was \$137,000.00.²⁰ The NPFC notes that the fee paid to the selling yacht broker has not been specifically identified, nor has documentation been provided to show that it was paid. Even if documentation on broker's fees were provided, the alleged loss would continue to be limited to the amount claimed to the GCCF which was \$22,000.00.

⁷ Claimant letter to the NPFC dated 12 January 2012 and Claimant letter to BP dated 31 October 2010.

⁸ Sea Skipper photographs, port bow on, and stern.

⁹ Yacht World historical listings of 46' Marine Trader yachts sold, 2001-2009.

¹⁰ 2010 listing of Claimant's boat for sale through M.G. Mayer Yachts, New Orleans, LA.

¹¹ Coast Guard Certificate of Documentation issued 4 February 2010, O.N. 1073550, 46.2 x 14.6 x 7.5, 33 GRT, FRP vessel owned by David Moore of Slidell, LA.

¹² BoatWizard North America March 2010 notice of report "Another Strong Month for U.S. Brokerage Sales", BoatWizard North America 9 July 2010 notice of report "Big-Boat Sales Valuations Dip in U.S. Brokerage Market in June", and Trade Only Today article posted 7 April 2010, "Big-Boat Sales Spur Brokerage Gains".

¹³ GCCF Denial Letter on Interim Payment/Final Payment Claim dated 30 April 2011.

¹⁴ Phone conversation between Claimant and NPFC Staff on 16 February 2012.

¹⁵ Claimant's email to NPFC dated 16 February 2012 with additional documentation.

¹⁶ Claimant letter to NPFC dated 14 March 2012.

¹⁷ Claimant's emails (3 total) to NPFC dated 29 March 2012.

¹⁸ Yacht Purchase and Sale Agreement dated 4 December 2008.

¹⁹ Yacht Purchase and Sale Agreement dated 25 April 2011 and Bill of Sale for O.N. 1073550 dated 13 May 2011.

²⁰ Claimant's Bullets on Loss Totals with attachments (calculation of average value not confirmed).

Failure to Prove Causation

The NPFC requested that the Claimant provide evidence or documentation that would indicate that the claimed damages were caused by the Deepwater Horizon oil spill. Causation is an element of every claim that must be proven by the Claimant. Here, the Claimant has provided a report that, although overall yacht sales through the brokerage market were down 9% compared to 2010, bigger boat sales in April 2011 had improved over April 2010. The same report indicates that the average time for a boat to sell was lower in April 2011 than in April 2010, falling 6 days to 285 days.²¹ This report does not mention effects of the oil spill or regional/coastal differences in this data.

The Claimant asserts that selling a big boat in the Gulf of Mexico in 2010 was harder than smaller boats because, people could use smaller boats for VOO²² and make money and that, if you were not making money on the oil spill, you did not want to have your boat damaged by oil in the water.²³ Other documentation provided by the Claimant indicates that the April 2010 sales for big-boats had increased over 2009, up from 144 in 2009 to 218 in 2010.²⁴ No regional or coastal differences in sales were mentioned in this data either. Another report for June 2010 indicated that, for the third straight month, it took over 300 days to sell a boat.²⁵ The Claimant indicated that he had listed his boat with M.G. Mayer in April 2010, so it should not be surprising that the sale of the Claimant's boat (a big-boat) would take upwards to a year.

The only regional information provided was 2009 and 2010 data from SoldBoats.com.²⁶ There were 19 big-boats in the 2010 data sort, which included a size sort of 45-50 feet. The 2009 data was sorted the same criteria as 2010 data, except for the year and that it was not sorted by region. Counting the big-boats in AL, FL, LA, MS, and TX in the 2009 data, the total was 18 big boats sold in the Gulf Coast states in 2009. Compared to 2009 data, 2010 big boat sales were slightly greater.

The Claimant has not provided evidence sufficient to prove that his alleged loss of value in his boat was the result of the Deepwater Horizon oil spill.

Accordingly, this claim is denied because Claimant has failed to demonstrate that the alleged loss is due to injury or destruction or loss of real or personal property or a natural resource as a result of a discharge or a substantial threat of a discharge of oil.

Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *4/30/12*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

²¹ YachtWorld.com, undated email attachment, "April Brokerage Sales Fall, But Larger Boats Sell".

²² Vessels of Opportunity are often used for oil spill response work.

²³ Phone conversation between Claimant and NPFC Staff on 29 March 2012.

²⁴ Trade Only Today article posted 7 April 2010, "Big-Boat Sales Spur Brokerage Gains".

²⁵ BoatWizard Big-Boat Sales Valuations Dip in

²⁶ SoldBoats.com 2009 sales data was sorted on Used, Powered, Sold Jan. through Oct. 2009, 45 – 50 ft length, built 1990 to 1995, and Diesel fuel. 2010 sales data was sorted in a similar way, with the addition a regional sort on Gulf Coast (AL, FL, LA, MS, TX).

1. Optional OSLTF Claim Form received 25 January 2012.
2. Claimant's letter dated 12 January 2012.
3. Sea Skipper photograph, port bow on.
4. Claimant's bullet list for GCCF Claim 1146130.
5. Claimant's BP Request: undated summary.
6. Claimant's BP Denial: Denial Letter on Interim Payment/Final Payment Claim dated 30 April 2011.
7. Claimant's Bullets on Loss Totals with attachments.
 - a. Attachment 1, Purchase Agreement (page 1 only).
 - b. Attachment 2, Yacht World historical listings of 46' Marine Trader yachts sold.
 - c. Attachment 3, 2010 listing of Claimant's boat for sale through M.G. Mayer Yachts, New Orleans, LA.
 - d. Attachment 4, Unsigned Sales Agreement (2 pages).
8. Sea Skipper photograph, stern.
9. Coast Guard Certificate of Documentation, issued 4 February 2010, O.N. 1073550, 46.2 x 14.6 x 7.5, 33 GRT, FRP vessel owned by David Moore of Slidell, LA.
10. BoatWizard North America notice of report, "Another Strong Month for U.S. Brokerage Sales, 8 April 2010.
11. BoatWizard North America article by John Burnham, "Big-Boat Sales Valuations Dip in U.S. Brokerage Market in June, posted 9 June 2010 with 7 listings.
12. Trade Only Today article posted 7 April 2010, "Big-Boat Sales Spur Brokerage Gains".
13. Claimant's response to phone request of 31 October 2010.
14. Claimant's email to NPFC Staff, dated 16 February 2012
15. BoatWizard North America notice of report, "Another Strong Month for U.S. Brokerage Sales, 8 April 2010.
16. BoatWizard North America article by John Burnham, "Big-Boat Sales Valuations Dip in U.S. Brokerage Market in June", posted 9 June 2010 with 7 listings.
17. Trade Only Today article posted 7 April 2010, "Big-Boat Sales Spur Brokerage Gains".
18. Blank copy of Optional OSLTF Claim Form.
19. Yacht Purchase and Sale Agreement dated 25 April 2011. (page 1)
20. Yacht Purchase and Sale Agreement dated 4 December 2008. (pages 1 & 4)
21. Copy of Claimant's letter dated 12 January 2012.
22. Listing of Claimant's boat on M.G. Mayer website dated 11 August 2011.
23. GCCF Denial Letter on Interim Payment/Final Payment Claim dated 30 April 2011.
24. Claimant's email to NPFC dated 14 March 2012 with attachments.
25. Claimant's letter to NPFC dated 14 March 201[2] requesting GCCF claim file.
26. Claimant emails (3 total) dated 29 March 2012.
27. Bill of Sale for O.N. 1073550 dated 13 May 2011.
28. Coast Guard Certificate of Documentation, O.N. 1073550, 46.2 x 14.6 x 7.5, 33 GRT, FRP vessel owned by David Moore of Slidell, LA.
29. Yacht Purchase and Sale Agreement, 1991 Marine Trader Aft Cabin, signed 29 April 2011.
30. YachtWorld.com, undated email attachment, "April Brokerage Sales Fall, But Larger Boats Sell".
31. SoldBoats.com listings, date not legible, 7 boats listed.
32. Trade Only Today article posted 7 April 2010, "Big-Boat Sales Spur Brokerage Gains".
33. Claimant's letter to NPFC dated 14 March 201[2].
34. GCCF Claim Form Generated Online (undated) for Emergency Action Payment Claim in the amount of \$22,000.00.
35. GCCF Claim, undated excerpt, pages 6 & 7.
36. SoldBoats.com 2009 and 2010 excerpt of YachtWorld.com data for Fiberglass, Diesel Power Boats, 45-50 ft in length, located in Gulf Coast (AL, FL, LA, MS & TX), showing manufacturer,

length, list price & date, sold price & date, and location. (110 sales for 2009 and 19 sales for 2010.)

37. Proof of ownership email and USCG Certificate of Documentation for O.N. 1073550, issued 4 February 2010.
38. GCCF Claimant Status cover page, undated.
39. GCCF Full Review Final Payment Claim Form, electronic, printed 25 April 2011.
40. GCCF Denial Letter dated 8 December 2010 (Emergency Action Payment Claim).
41. GCCF letter dated 12 October 2011.
42. GCCF letter dated 30 September 2010.
43. GCCF Denial Letter on Interim Payment/Final Payment Claim dated 30 April 2011.