

U.S. Department of
Homeland Security

**United States
Coast Guard**

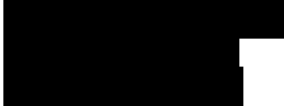


Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd., Suite 1000
Arlington, VA 20598-7100
Staff Symbol: (CA)
Phone: 1-800-280-7118
E-mail: arl-pf-npfcclaimsinfo@uscg.mil
Fax: 202-493-6937

CERTIFIED MAIL-RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 4802 8719

5890/DWHZ
15 February 2012

David W. Cueva


Re: Claim Number: N10036-1669

Dear Mr. Cueva:

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 N10036-1669 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 N10036-1669.

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	N10036-1669
Claimant	David W. Cueva
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity/Subsistence Use
Amount Requested	\$85,300.00

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 6 February 2012, David W. Cuevas individually, and as a self-purported agent of “Sabine,” “Sabine Transport,” and/or “Admiral Sabine” (collectively “the Claimant”), presented an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) seeking \$50,000.00 in loss of profits and impairment of earnings capacity and \$35,300.00 in lost subsistence use that allegedly resulted from the Deepwater Horizon oil spill.¹

At the time of the Deepwater Horizon oil spill, the Claimant contends he was an oysterman.² The Claimant asserts that he experienced reduced earnings and subsistence losses due to the Deepwater Horizon oil spill.³ The Claimant makes a number of disjointed assertions in his claim-submission paperwork-- some related to the Deepwater Horizon oil spill and some not.⁴ Those contentions are more fully discussed in the “Determination of Loss” section below.

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, 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).

¹ Optional OSLTF Claim Form, dated 21 July 2011 with attachments.

² Optional OSLTF Claim Form, dated 21 July 2011 with attachments and PHONECON between NPFC and Claimant on 4 January 2012..

³ Optional OSLTF Claim Form, dated 21 July 2011 with attachments.

⁴ PHONECON between the Claimant and NPFC on 6 February 2012.

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.

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.

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 21 July 2011;
- Document entitled "Chandeleur Islands Marsh Restoration Summary Date and Graphics" with handwritten notations and underlining by Claimant;
- Two-page handwritten letter from Claimant to NPFC dated 21 January 2012.

Prior to presenting this claim to the NPFC, the Claimant filed a claim with BP and reports being issued BP Claim # 6866124149185. Subsequently, the Claimant filed two Emergency Advance Payment (EAP) claims with the GCCF for loss of earnings and loss of subsistence. Claimant reports being assigned GCCF Claimant ID # 1135149. The loss-of-earnings EAP claim was for \$50,000.00 and the loss-of-subsistence claim was for \$18,000.00. Both EAP claims were filed in 2010. In 2011, the Claimant also filed two Interim Payment claims for loss of income. Claimant filed a 1st quarter Interim claim for \$50,000.00 and a 2nd quarter Interim claim for \$20,000.00.⁵

Based upon the evidence provided by the Claimant, it appears that the subject matters for the Claimant's GCCF claims regarding loss of earnings and loss of subsistence are the same as the subject matters of his claim before the NPFC, i.e., that due to the Deepwater Horizon oil spill, the Claimant experienced reduced earnings and loss of subsistence. 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 N10036-1669 considers and addresses the damages claimed in the claims presented to the responsible party regarding loss of earnings and loss of subsistence.

⁵ Email from the GCCF to the NPFC on 4 January 2012.

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.

This claim is denied because the Claimant failed to prove he suffered a financial loss or loss of subsistence due to the Deepwater Horizon oil spill. The exact basis of the Claimant's submission is difficult to discern from his documentary submission to the NPFC. The Claimant's Optional OSTLF Claim Form contains various statements purportedly in support of his claim. These include: "Poluted [sic] Sabine Wildlife refuge Conservation Site," "Spartina alterniflora grasses insurance contract attached," and "Drilling in unauthorized Zone!"

It is unclear how Claimant's submission of the document entitled "Chandeleur Islands Marsh Restoration Summary Date and Graphics" relates to his claim. This document also contains various indecipherable hand-written notations seemingly unrelated to the claim. These include: "*Water Pollution Insurance Law*[88] 1980-1985(ins. Lease)," "Sabine Missip. Agent D.W. Cueva," and "<TRUST>PART: Geronimo/Fort twiggy."

The NPFC attempted to get additional information from the Claimant and discussed his claim with him via telephone on 4 January 2012. During this conversation, the Claimant was unable to explain his claim and, among other things, stated that a nuclear warhead was struck while drilling, that he holds a seat for the British embassy, that he has rights to Bank of America royalties, and that he was an oysterman at the time of the Deepwater Horizon spill.

While the Claimant asserts to have been an oysterman at the time of the spill, his claim-submission paperwork does not provide adequate support for either his loss of income or loss of subsistence claims. As discussed above, the NPFC was unsuccessful in obtaining additional relevant information about his claim by speaking with him via telephone.

This claim is denied because the Claimant failed to meet his burden to demonstrate either that he has suffered the damages alleged or that alleged damages are 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: *2/15/12*

Supervisor's Actions: *Denial approved*

Supervisor's Comments: