

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
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20 November 2012

Charles Abbott, Esq.
650 Poydras Street Suite 2810
New Orleans, LA 70130

RE: Claim Number: N10036-1674

Dear Mr. Charles Abbott, Esq.:

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 N10036-1674 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. 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 N10036-1674.

Mail reconsideration requests to:

Director (ca)
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd, Suite 1000
Arlington, VA 20598-7100

Sincerely,

1

Claims Adjudication Division
National Pollution Funds Center
U.S. Coast Guard

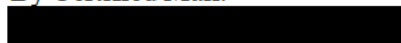
Enclosure 1: Claim Summary/Determination Form

Enclosure 2: List of documents submitted by the Claimant to the NPFC

cc:



By Certified Mail:



CLAIM SUMMARY / DETERMINATION FORM

Claim Number	N10036-1674
Claimant	Pasadena Crab Company d/b/a Seaside of Pasadena
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$47,624.00

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.

On 08 March 2012, the United States District Court, Eastern District of Louisiana issued a "Transition Order" (TO) limiting the GCCF's ability to accept, process, or pay claims except as provided in that order. The TO created a Transition Process (TP) to facilitate transition of the claims process from the GCCF to a proposed Court Supervised Settlement Program (CSSP). The Court granted Preliminary Approval of the proposed settlement agreement on 2 May 2012, and the CSSP began processing claims on 4 June, 2012.

CLAIM AND CLAIMANT

On 09 February 2012, Pasadena Crab Company (Claimant) presented a claim letter seeking \$47,624.00 for loss of profits and impairment of earnings capacity to the National Pollution Funds Center (NPFC) alleging damages resulting from the Deepwater Horizon oil spill.¹

In 2008, the Claimant opened Seaside of Pasadena with the formal name being Pasadena Crab Company in Pasadena Maryland. The owner also owns Seaside of Glen Burnie, also located in Maryland; the businesses are crab-houses and retail/carryout businesses who primarily sell seafood from Louisiana and the Gulf of Mexico.² Seaside of Pasadena and Seaside of Glen Burnie share a website on which they advertise "Serving Gulf Coast Seafood and Louisiana Crabs, since 1993."³ The Claimant asserts that the business lost earnings which resulted from (1) the rise in seafood prices, (2) customers fears of oil and dispersant contamination to the seafood, and (3) reduction in quantity of crabs the restaurants could obtain from Louisiana due to closures and fishermen working for the BP vessel of opportunity (VOO) program instead of crabbing.⁴

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

¹ Letter titled BP oil spill interim claim form for Pasadena Crab Company at Section VIII.

² Narrative from Cotton Schmidt & Abbott dated 03 February 2011, at page 5.

³ <http://theseasiderestaurant.com/>

⁴ Narrative from Cotton Schmidt & Abbott dated 03 February 2011, at pages 11-15.

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.

Pursuant to 33 U.S.C. § 2712(f), payment of any claim or obligation by the Fund under OPA shall be subject to the United States Government acquiring by subrogation all rights of the claimant or State to recover from the responsible party.

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support his claim, the Claimant submitted: See enclosure 2.

The Claimant seeks lost profits and impairment of earnings capacity in the amount of \$47,624.00.

Prior to presenting this claim to the NPFC, the Claimant filed an Emergency Advance Payment (EAP) claim with the GCCF on 22 November 2010 in the amount of \$52,058.00.⁵ He was assigned Claimant ID #3421937 and claim #521841. This claim was denied.⁶ Additionally, the Claimant filed an Interim 1 Claim (ICQ12011) with the GCCF in the amount of \$47,624.00, he was assigned Claim #9276419 and was denied.⁷

⁵ Report from the GCCF dated 21 May 2012.

⁶ Report from the GCCF dated 21 May 2012.

⁷ Report from the GCCF dated 21 May 2012.

Evidence presented in this claim submission indicates that the Claimant is not a member of the economic damages class of the Deepwater Horizon oil spill class action settlement (the BP settlement) based on the geographical location of the Claimant's business.

Based upon the evidence provided by the Claimant, it appears that the subject matter for each of his GCCF claims is the same as the subject matter of his claim before the NPFC, i.e., that the Claimant lost earnings as a result of the Deepwater Horizon oil spill.

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 or destruction or loss of real or personal property or 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. The NPFC considered all the documentation submitted by the Claimant.

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 asserts he lost profits in the amount of \$47,624.00 from 01 May 2010 through 31 December 2010.⁸ The Claimant hired Bourgeois Bennett CPAs & Consultants to prepare the lost profit computations. The CPA firm applied a 3.7% growth rate⁹ to 2009 sales for the months of May through December 2010. They then projected the costs of goods sold and variable expenses based on the 2009 percentages of sales for the two expenses.¹⁰ The accountants then subtracted May through December 2010's actual profits before fixed expenses from projected income before fixed expenses totaling \$47,624.00 in claimed lost profits.¹¹

The Claimant states the 3.7% growth factor was used "based on inflationary growth estimates commonly used by the GCCF."¹² The NPFC does not factor into its assessment 3.7% growth trend based inflation. Furthermore, the Claimant has no historical financial data to acquire an accurate growth trend from previous years because the company was opened in late 2008.

Based on the profit and loss statements provided for 2009 and 2010, the Claimant experienced a 4.02% decline in sales prior to the Deepwater Horizon oil spill when comparing the months of January through April 2009 to the same unaffected months in 2010.¹³ Despite a decline in sales for the first third of 2010 and preceding the Deepwater Horizon incident, the sales revenue for the claimed loss period, May through December 2010 was 7.64% higher in 2010 than 2009.¹⁴

⁸ Narrative from Cotton Schmidt & Abbott dated 03 February 2011, at page 16.

⁹ Bourgeois Bennett CPAs & Consultants lost profits assessment for Seaside of Pasadena prepared 01 February 2011 at Exhibit IV.

¹⁰ Bourgeois Bennett CPAs & Consultants lost profits assessment for Seaside of Pasadena prepared 01 February 2011 at Exhibit III and V.

¹¹ Bourgeois Bennett CPAs & Consultants lost profits assessment for Seaside of Pasadena prepared 01 February 2011 at Exhibit I.

¹² Bourgeois Bennett CPAs & Consultants lost profits assessment for Seaside of Pasadena prepared 01 February 2011 at Methodology.

¹³ 2009 & 2010 profit and loss statements for Seaside of Pasadena (January through April 2010 = \$434,253.00 & January through April 2009 = \$452,447.00).

¹⁴ 2009 & 2010 profit and loss statements for Seaside of Pasadena (May through December 2010 = \$920,686.00 & 2009 = \$855,351.00).

In the accounting computation provided by Bourgeois Bennett, they make upward adjustments to sales for December 2009 from \$31,060.00¹⁵ to \$83,462.00,¹⁶ an increase of \$52,402.00. The accountant states “December 2009 was adjusted to reflect actual sales in that month before any accounting adjustments, however they do not explain what adjustments but rather just increase the December sales numbers. Furthermore, the 2009 December increase is not supported by the 2009 profit and loss statements or the 2009 tax return. Based on the 2009 profit and loss statements, total sales equal \$1,307,802.00¹⁷ rather than the inflated Exhibit IV Sales Analysis of \$1,360,204.00.¹⁸

The Claimant’s 2009 tax return is in accord with the non-inflated December sales and the profit and loss statements, the taxes show gross receipts or sales in the amount of \$1,307,802.00.¹⁹ Only on an unexplained Exhibit V is there a showing of sales totaling \$1,360,204.00 because of the December 2009 adjustment. Additionally, when looking at the submission in the most advantageous way for the Claimant, the unexplained increase for December 2009 of \$52,402.00 merely raises gross sales for May through December 2009 to \$907,753.00²⁰ which is \$12,933.00 less than May through December 2010 totaling \$920,686.00. Thus either with the adjustment for December 2009 or without the adjustment, the Claimant has not proven that they sustained lost profits for 01 May through 31 December 2010 as a result of the Deepwater Horizon Oil Spill.

According to the Claimant’s tax returns in 2009, the Claimant had \$1,307,802.00 in gross receipts as compared to 2010 of \$1,320,571.00, thus the Claimant had higher volume of sales after the oil spill.²¹ The Claimant’s net income according to their 2009 and 2010 tax returns show an increase in profits for 2010 over 2009 in the amount of \$2,157.00.²² Therefore, the Claimant earned more money in 2010 than 2009 as filed with the Federal Government. Accordingly, the Claimant has not established his sum certain by a preponderance of the evidence as presented to the NPFC

Based on the foregoing, this claim is denied because the Claimant failed to meet his burden to demonstrate that he sustained a loss in the amount of \$47,624.00.

Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor’s Review: *11/20/12*

Supervisor’s Actions: *Denial approved*

Supervisor’s Comments:

¹⁵ Bourgeois Bennett CPAs & Consultants lost profits assessment for Seaside of Pasadena prepared 01 February 2011 at Exhibit IV.

¹⁶ Bourgeois Bennett CPAs & Consultants lost profits assessment for Seaside of Pasadena prepared 01 February 2011 at different Exhibit IV.

¹⁷ Bourgeois Bennett CPAs & Consultants lost profits assessment for Seaside of Pasadena prepared 01 February 2011 at Exhibit II.

¹⁸ Bourgeois Bennett CPAs & Consultants lost profits assessment for Seaside of Pasadena prepared 01 February 2011 at changed Exhibit IV.

¹⁹ Form 1120S U.S. Income Tax Return for an S Corporation, at line one.

²⁰ 2009 Profit and loss statements for Seaside of Pasadena May through December.

²¹ 2009 & 2010 Forms 1120s U.S. Tax Return for an S Corporation.

²² Ibid.

Enclosure 2

Submitted Documentation for N10036-1674

- 1) Cotton Schmidt & Abbott LLP Cover Letter
- 2) Cotton Schmidt & Abbott LLP Introduction Letter
- 3) Cotton Schmidt & Abbott LLP Interim Claim form for Pasadena Crab Company (Seaside of Pasadena) (explanation of claim)
- 4) Emails between Claimant and GCCF personnel from 18 February 2011 through 29 December 2011.
- 5) BP Oil Spill Interim Claim Form 3421937
- 6) Maryland Sales and Use Tax License dated 01 July 2008
- 7) Lost Profits Assessment of Pasadena Crab Company Resulting from the Deepwater Horizon Oil Spill prepared by Bourgeois Bennett, LLC CPAs dated 01 February 2011
- 8) Anne Arundel County Board of Liquor License Commissioners dated 01 May 2010
- 9) Maryland Drivers License for David Snyder
- 10) Seaside of Pasadena's Current Ear4nings Report for 08 March 2010 through 10 November 2010
- 11) GCCF Interim payment Claim Form
- 12) Seaside of Pasadena ad stating "We proudly serve Louisiana Crabs and Gulf Coast Seafood"
- 13) Website screenshot of add stating "serving gulf coast seafood and Louisiana crabs since 1993
- 14) 2009 Form 1120S US Income Tax Return for an SC
- 15) Seaside of Pasadena Transactions by Account as of 31 December 2010 and 2009
- 16) Seaside of Pasadena Profit and Loss Statement for October 2010
- 17) Seaside of Pasadena Profit and Loss Statement for November 2010
- 18) Seaside of Pasadena Profit and Loss Statement for December 2010
- 19) Seaside of Pasadena Profit and Loss Statement for January through September 2010 and by month
- 20) Seaside of Pasadena Profit and Loss Statement for January through December 2009 and by month
- 21) Seaside of Pasadena Profit and Loss Statement for January 2011 through July 2011
- 22) 2001 Service Corp Transaction Detail by Account from January 2001 through December 2010
- 23) Six pictures of crabs
- 24) Article from Bloomberg Businessweek titled "Oil Spill Imperils Gulf Coast Fishing Industry (Update 1) dated 29 April 2010 –
- 25) Article from Gulflive.com Harlan Kirgan MS press titled "Researchers find evidence of oil spill in Gulf's food chain" dated 30 June 2010
- 26) Article from Los Angeles Times titled "Gulf oil spill: Undersea oil masses confirmed in tests" dated 21 June 2010
- 27) Article from LA Seafood Newsroom titled "Fishermen fear the Economic Worst" dated 17 June 2010
- 28) Article from Gulflive.com Harlan Kirgan MS press titled "Shrimpers opting for cleaning Gulf of Mexico oil over shrimping" dated 16 June 2010

- 29) Article from Daily Finance.com titled “For Food Business, BP Oil Spill is a Recipe for Disaster” dated 09 June 2010
- 30) Article from e360yale.edu titled “The BP Spill’s Growing Toll on the Sea Life of the Gulf” dated 09 June 2010
- 31) Article from suite.com titled “BP Gulf oil spill – Impact on Americas Environment and Economy” dated 07 June 2010
- 32) Article from the dailygreen.com titled “Gauging the Long-Term Impacts of the BP Oil Spill” dated 06 June 2010
- 33) Article from NOLA.com titled “Crab-Crazy MD finds itself a victim of BP’s Gulf oil spill” dated 26 September 2010
- 34) Article from bpoilslick.blogspot.com titled “Oil spill waters contain carcinogens” dated 30 September 2010
- 35) Article from leanweb.org titled “BP oil spill Seafood Sampling Project Results Overview” dated 03 January 2011
- 36) Article from ABC News titled “BP Oil Spill: Oil Hits Louisiana Wetlands, Causes Spike in Seafood Prices” dated 19 May 2010
- 37) Article from The Times Picayune titled “A mixed message in spill’s aftermath” dated 07 January 2011
- 38) Article from The Times Picayune titled “With so little being done to clean this up, were never going to win this battle” dated 08 January 2011
- 39) Article from AP titled “Spill report kindles Democratic push for reform” dated 11 January 2011
- 40) Article from Nola.com titled Scientists wary of BP oil spill’s long-term effects on species dated 10 November 2010
- 41) Article from Newsinferno.com titled “Scientist Studying BP Oil Spill Finds Crude on Gulf of Mexico Floor” dated 30 November 2010
- 42) Article from Ehow.com titled “Risks associated with eating blue crabs” dated 14 October 2010
- 43) Article from USA Today titled Obama goes to LA to address oil spill” dated 04 May 2010
- 44) Article from beforeitsnews.com titled “Numerous Lab BP Gulf Oil Spill Results Contradict Feds Sample-Find Widespread Contamination of Water and Seafood” dated 15 November 2010
- 45) Article from evostc.state.ak.us titled Pacific Herring undated
- 46) Article from NOLA.com titled “MD is hungry for LA crabs, but LA can’t deliver” dated 26 September 2010
- 47) Article from WLF.louisiana.gov/news/32931 titled “LDWF Secretary Again Asks GBP to Fund an Extensive Seafood Testing, Certification and Marketing Plan” dated 15 September 2010
- 48) Article from NOLA.com titled Is it really safe to eat gulf seafood dated 19 December 2010
- 49) Article from The State titled “Gulf oil spill hurt SC businesses dated 11 December 2010
- 50) Article from The Christian Monitor titled “New Gulf oil spill mystery: How much dispersant did BP use?” dated 01 August 2010
- 51) Article from BBC News titled “Gulf of Mexico oil leak worst US environment disaster” dated 30 May 2010
- 52) Article from Slashfood.com titled LA Blue Crabs Show Signs of Oil Contamination dated 10 August 2010

- 53) Article from Louisianaseafoodnews.com titled “From Oil to Red Tape, The BP Mess Continues” dated 03 October 2010
- 54) Article from Southernstudies.org titled “Independent tests find oil spill contamination in LA oysters and crabs” dated 31 August 2010
- 55) Article from The Christian Monitor titled “Gulf oil spill to blame for oily blobs in vital Gulf sea life?” dated 24 August 2010
- 56) Article from al.com titled “Gulf Seafood/BP image” dated 20 August 2010
- 57) Article from houmatoday.com titled “Major Study charts lasting oil plume in Gulf” dated 19 August 2010
- 58) Article from wwltv.com titled “State pushes for more money from BP for seafood testing” dated 19 August 2010
- 59) Article from McClatchydc.com titled “Gulf oil spill still a threat to seafood, JMA study indicates” dated 17 August 2010
- 60) Article from nola.com titled Blue Crabs provide evidence of oil tainting Gulf food web” dated 10 August 2010
- 61) Article from nowpublic.com titled “Environmental & Health Impacts of BP oil spill by Dr Tom Termotto (handwritten date 05 August 2010)
- 62) Article from Nola.com titled “LA blue crabs are tough, but Gulf oil spill might be tougher” dated 20 July 2010
- 63) Article from Scientific Research into Gulf Seafood Survival dated 13 July 2010
- 64) Article from associatedcontent.com titled “Environmental Effects of the BP Oil Spill” dated 10 July 2010
- 65) Article from usatoday.com titled Food Safety concerns mount as oil found in Gulf crabs” dated 02 July 2010 – oil droplets in crab larvae
- 66) Article from foodsafetynews.com titled “Will Oil-Eating Bacteria Plague the Gulf?” dated 01 July 2010
- 67) Article from McClatchydc.com titled “Oil found in Gulf crabs raises new food chain fears” dated -01 July 2010
- 68) Article from environmentamerica.org titled BP’s Oil Spill Disaster Hurts LA Fisherman & Seafood Businesses dated 07 May 2010
- 69) Since May 6 LA officials have lab tested more than 6930 finfish crab shrimp and oysters none have tested positive for hydrocarbons even close to levels that NOA or the FDA say reach a level of concern, MDMR tested shrimp and crab and found them to be fine (Dale Diaz), NOAA has done testing, FDA has sent a mobile lab to the region and is increasing inspections of Gulf Seafood processors
- 70) Abstract from American Society of Zoologists 1992 titled “effects of pollutants on Molting and Regeneration in Crustacea”
- 71) Deepwater Report to the President dated January 2011
- 72) Study reviewed in Fisheries Science 16(1-3):24-34, 2008 “The Chesapeake Bay Blue Crab: A Multidisciplinary Approach to Responsible Stock Replenishment
- 73) ALS Laboratory Group 06 August 2010 for Boston Chemical Data Group
- 74) Proposal for Fed Grant: Research report on the effect of dispersants on blue crab larvae dated 02 July 2010
- 75) Study titled Polychlorinated Biphenyls in Blue Crabs from South Carolina dated 1987
- 76) Oil spill sampling project results from St. Bernard parish from leanweb.org dated 26 October 2010

- 77) NOAA Technical Memorandum NMFS-AFSC-3 "Impact of Oil Pollution and Prince William Sound Studies: Bibliography of 1960-91 Publications and Reports, Auke Bay Laboratory dated August 1992
- 78) University of Colorado Study titled "Health Effects of the Gulf Oil Spill dated 08 September 2008
- 79) Topical Field Courses – Western Program – Miami University titled "Final Paper: Non-point Source Pollution and its impact on the Chesapeake Bay: ecosystem and human health dated 03 June 2002
- 80) Oxfordjournals.org/content/32/3/495.abstract dated 1992
- 81) Exxon Valdez Oil Spill Restoration Project Final Report dated December 1998

Response to request for additional information

- 82) Cotton Schmidt & Abbott letter dated 13 July 2012 responding to additional questions
- 83) 2010 Form 1120S U.S. Income Tax Return for an S Corporation
- 84) Monthly Profit and Loss statements for January 2011 through May 2012.
- 85) 2011 Form 1120S U.S. Income Tax Return for an S Corporation.
- 86) Bourgeois Bennett Report for 2001 Service Corp. dated 12 July 2012.
- 87) Nine letters from customers and suppliers.
- 88) Menu
- 89) Letter from Servers at Seaside of Pasadena.
- 90) Itemized order list from 06 January 2010 through 18 July 2010.