U.S. Department of
Homeland Security

**United States
Coast Guard**

Director
United States Coast Guard
National Pollution Funds Center

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5890
06/10/2013

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7012 2210 0001 7215 0476

Atlantic Seafood Company
[redacted]

RE: Claim Number: N10036-1880

Dear Mr. Barker:

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 N10036-1880 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.

[redacted]
Chief, Claims Adjudication Division
U.S. Coast Guard

Encl: Claim Summary / Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-1880
Claimant	: Atlantic Seafood Company
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits or Impairment of Earning Capacity
Amount Requested	: $2,680,355.00

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 8 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 21 December 2012, Mr. Charles Barker, legal representative of Atlantic Seafood Company (collectively, "the Claimant") submitted a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking $2,680,355.00 in loss of profits or impairment of earning capacity damages allegedly resulting from the Deepwater Horizon oil spill.[1]

The Claimant is a wholesale distributor of fresh and frozen seafood, headquartered in Hampstead, North Carolina. The Claimant delivers products to "coastal and inland markets in Florida, Georgia, Tennessee, South Carolina, North Carolina, Virginia and Maryland."[2] In December of 2008, the Claimant finalized the purchase of a competing seafood distributor, also based on Hampstead. In spite of new business generated by the acquisition of this company, the Claimant alleged that Deepwater Horizon oil spill has caused them to experience certain financial losses, which began after April 20, 2010 and are expected to continue through April 30, 2013.

The Claimant alleged that the oil spill caused the company to sustain losses stemming from product unavailability, lack of consumer interest, and increased gasoline prices. From the time of the oil spill through April 30, 2013, the Claimant alleged that sustained oil spill related losses of $2,680,355.00, which includes $103,727.00 in fees incurred for the forensic accounting reports submitted with this claim.

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[1] Sum certain statement, received on 16 January 2013.
[2] Financial Forensic Report cover letter, pg 4.

The NPFC originally denied the claim on 23 January 2013 because the Claimant did not provide evidence sufficient to prove (1) that they sustained a financial loss in the amount $2,680,355.00 or (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 discharge of oil.

REQUEST FOR RECONSIDERATION:

On 21 February 2013, the NPFC received the Claimant's request for reconsideration of this claim. In their reconsideration request letter, the Claimant asked for an extension to provide evidence to support their reconsideration request. The NPFC granted the Claimant a 60-day extension and the Claimant was asked to provide all evidence by the close of business on 23 May 2013. As of the date of this determination, the Claimant has not provided any evidence in support of their request for reconsideration.

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. Under 33 CFR § 136.115(d), the NPFC, upon written request of the claimant, will reconsider any claim denied. 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.

Upon receipt of the Claimant's request for reconsideration, the NPFC performed a ***de novo*** review of the entire claim submission.

This review sought to determine whether or not the Claimant provided evidence on reconsideration sufficient to prove (1) that the Claimant sustained a financial loss in the amount alleged, and (2) that the Claimant's loss was due to damage to real property or natural resources caused by the discharge of oil resulting from the Deepwater Horizon oil spill.

In their original submission the Claimant alleged that the oil spill prevented them from purchasing seafood for resale in the quantities that they otherwise would have, and also caused safety concerns among consumers regarding seafood consumption. Furthermore, the Claimant alleged that the oil spill drove gas prices higher, thereby cutting into the Claimant's profit margin. For these reasons, the Claimant alleged to have sustained financial losses related to the oil spill totaling $2,680,355.00.

As previously noted, the Claimant did not provide any new evidence to support the reconsideration of this claim. Documentation provided in the Claimant's original submission failed to prove (1) that the Claimant ever purchased seafood items from affected areas of the Gulf of Mexico, (2) that the Claimant was unable to purchase certain products from the Gulf of Mexico in the period following the oil spill, (3) that the Claimant's profits or earnings were reduced following the oil spill, or (4) that the oil spill caused the Claimant's fuel costs to increase.

Furthermore, even if the Claimant had incurred losses due to safety concerns among customers, these losses would not be compensable under OPA's loss of profits damage category, which specifically makes compensation available only for losses incurred "due to the injury to, destruction of, or loss of real or personal property or natural resources" caused by an oil spill.[3] These losses would not have been caused by actual damage to Gulf of Mexico fisheries during the oil spill and would therefore not be compensable under OPA.

Based on the foregoing, this claim is again denied because (1) the Claimant has failed to prove that they sustained a loss of $2,680,355.00, and (2) the Claimant has failed to demonstrate that their alleged loss is due to injury or destruction or loss of real or personal property or a natural resource as a result of damage to real property or natural resources caused by the discharge of oil (i.e., the Deepwater Horizon oil spill).

This claim is denied upon reconsideration.

Claim Supervisor: ***Thomas Morrison***

Date of Supervisor's review: ***06/10/13***

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

Supervisor's Comments:

[3] 33 C.F.R. § 136.231(a).