

U.S. Department of
Homeland Security

**United States
Coast Guard**



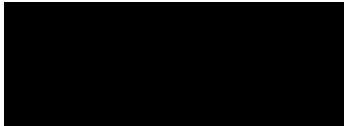
Director
National Pollution Funds Center
United States Coast Guard

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: arl-pf-npfcclaimsinfo@uscg.mil
Fax: 703-872-6113

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 4803 8176

5890/DWHZ
29 May 2013

Snodgrass Brothers, Inc.



Re: Claim Number: N10036-1903

Dear Mr. Toland:

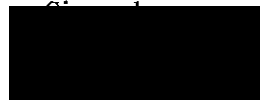
The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq. (OPA) and the associated regulations at 33 C.F.R. Part 136, denies payment on the claim number N10036-1903 involving the Deepwater Horizon oil spill. Please see the attached Claim Summary/Determination 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 N10036-1903.

Mail reconsideration requests to:

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



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

Enclosure: Claim Summary/Determination
cc: 

By Certified Mail:
No. 7011 2000 0001 1246 6793

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1903
Claimant	Snodgrass Brothers, Inc.
Type of Claimant	Private (US)
Type of Claim	Loss of Profits or Impairment of Earning Capacity
Amount Requested	\$471,869.33

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 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 the 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 02 May 2012, and the CSSP began processing claims on 04 June 2012.

CLAIM AND CLAIMANT

On 8 April 2013, Mr. Cary Toland, legal representative of Snodgrass Brothers, Inc., collectively, ("the Claimant") submitted a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$471,869.33 in loss of profits or impairment of earning capacity damages allegedly resulting from the Deepwater Horizon oil spill.¹

The Claimant "owns a commercial freezer fishing vessel that has historically shrimped [the waters which were affected by closures during the Deepwater Horizon oil spill.]" The Claimant has its homeport in Brownsville, Texas and fishes throughout the Gulf of Mexico at various points during the year. The Claimant alleged that "the closure of fishing grounds at a time when Texas season was closed, in addition to the damage and depletion of shrimp stock, caused [the Claimant to sustain] significant losses"² due to its inability to fish in the waters off the Louisiana coast when the Texas fishing waters were closed from approximately mid May to mid June of that year.³

The Claimant seeks to recover \$471,869.93 in economic losses.⁴ The Claimant used a formula provided by the BP claims program, in which the Claimant averaged their earnings in 2007, 2008 and 2009 to calculate actual and future losses.⁵

¹ Optional OSLTF Claim Form, signed on 4 April 2013.

² Optional OSLTF Claim Form, signed on 4 April 2013.

³ See e.g., *Gulf Shrimp Season Closing May 15*, Available at www.tpwd.state.tx.us/newsmedia/releases/?req=20100505a. Accessed on 28 May 2013.

⁴ Optional OSLTF Claim Form, signed on 4 April 2013.

⁵ Seafood Compensation Program claim form, Claimant ID 100055645.

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 water, adjoining shorelines, or the exclusive economic zone of the United States, as described in § 2702(b) of OPA.

The OSLTF 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. 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; and
- (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.

Under 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 NPFC

The Claimant submitted the following documentation in support of this claim:

- Optional OSLTF Claim Form, signed on 4 April 2013;
- Seafood Compensation Claim Form;
- GCCF Form, "Supporting Documentation For a Claim";
- Index of documents;
- 2009 Federal Income Tax Returns, including Form 1120S, showing total income of \$304,796.00;
- 2008 Federal Income Tax Returns, including Form 1120S, showing total income of \$410,033.00;
- 2007 Federal Income Tax Returns, including Form 1120S, showing total income of \$441,926.00;
- Shrimp Invoices/Receipts;
- Federal Fisheries Permit, Gulf of Mexico Shrimp, effective 1 May 2010;
- Certificate of Vessel Documentation;
- Claimant Statement, 26 August 2010;
- NOAA Gulf Shrimp Database, Vessel Reports, 2008 – 11 April 2010;
- Letter from NOAA to Snodgrass Brothers, Inc., 12 September 2010;
- Map of Gulf of Mexico Fishing Areas;
- Statement of Loss;
- Monthly Chart of Vessel Activity;
- Letter from the Claimant's representative to the GCCF re SW1 Form, 12 September 2012;
- Seafood Compensation Claim Form, signed on 12 September 2012;
- Objection to Proposed Seafood Compensation Plan Exhibit 4(D0, proof of homeport in Gulf Coast Area or Proof of Shrimp Landed in Gulf Coast Area as Defined in Exhibit 22;
- GCCF Claim Packet;
- Letter from Claimant's representative to GCCF, 5 December 2011;
- Federal Fisheries Permit, effective 1 May 2011;

Prior to presentment of this claim to the NPFC, the Claimant sought to recover these alleged losses through the GCCF and the BP Claims Program. The GCCF denied payment on an Emergency Advance Payment (EAP) claim and awarded the Claimant a final payment of \$25,000.00, \$15,000.00 of which was paid to the Claimant.⁶ The claim remains under review with the BP Claims Program.

On 8 April 2013, the Claimant presented this claim to the NPFC. Because this appears to be the same claim, regarding the same damages as previously presented to the Responsible Party, and because damages subject of this claim were denied, OPA presentment requirements have been satisfied.⁷

Furthermore, evidence in this claim submission indicates that the Claimant is pursuing this claim as a "direct short form participant" in MDL-2179 in the U.S. District Court for the Eastern District of Louisiana.⁸

⁶ Responsible Party/NPFC Claim Status update.

⁷ 33 C.F.R. § 136.103(a).

⁸ Objection to Proposed Seafood Compensation Plan, MDL No. 2179, U.S. District Court for the Eastern District of Louisiana.

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, 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 all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim.

This claim is denied for the reasons listed below.

1. The claim is currently the subject of an action in court by the Claimant to recover the same damages as now before the NPFC.

In accordance with OPA's implementing regulations, the NPFC may not make payment on a claim "during the pendency of an action by the person in court to recover costs which are the subject of the claim."⁹ The Claimant has included a copy of an objection filed in the U.S. District Court for the Eastern District of Louisiana, in which the Claimant argues against stated requirements for inclusion in a seafood compensation settlement class. In the objection, the Claimant notes that the Claimant and other similarly situated claimants "are all direct short form participants in this litigation." As such, the NPFC would be precluded from making a payment on this claim, as the Claimant is also seeking to recover these losses through judicial proceedings.¹⁰

The remainder of this determination addresses the substantive reasons for denial.

In order to prove a claim for loss of profits damages, a Claimant must provide evidence sufficient to prove (1) that the Claimant sustained a loss or reduction in income, and (2) that the financial loss was caused by harm to property or natural resources resulting from the discharge of oil during the Deepwater Horizon oil spill.

2. Failure to prove that the Claimant sustained a financial loss.

The Claimant has not provided financial data sufficient to prove that they sustained a loss during any period following the Deepwater Horizon oil spill. The Claimant provides copies of income tax returns for 2007, 2008 and 2009, but fails to provide returns for 2010. It is unclear then, what effect, if any, the Claimant's alleged inability to shrimp due to fishery closures, affected its income in that year.

In a letter dated 23 April 2013, the NPFC requested that the Claimant provide certain additional documentation to prove that they indeed sustained a loss of earnings as a result of the fishery closures. The Claimant was asked to respond to the additional information request within 30 days of the April 23 letter. As of the date of this determination, the Claimant has failed to respond.

In order to document the extent of the Claimant's catch in 2010 following the oil spill, the NPFC requested proof of the Claimant's total catch in 2008, 2009 and 2010. Landing data provided in this claim submission only documents the Claimant's catch in 2008, 2009 and from 1 January through 11 April of 2010. The NPFC also asked that the Claimant explain how they calculated their loss to arrive at their sum certain of \$471,869.33. Because the Claimant failed to respond to

⁹ 33 C.F.R. § 136.103(d).

¹⁰ Objection, page 2.

these requests and because documentation provided in the Claimant's original submission fails to substantiate the claimed loss, the Claimant has not demonstrated that they sustained a financial loss during any period following the oil spill.

3. Failure to prove that the alleged financial loss was caused by the Deepwater Horizon oil spill.

The Claimant has also failed to provide evidence to prove that they were likely to have fished the closed fishing areas during oil spill related closure periods. Landing data only documents the Claimant's catch through 11 April 2010 and does not indicate where or if the Claimant fished during the remainder of 2010. Furthermore, the Claimant did not respond to the NPFC's request for documentation indicating the Claimant's total catch in areas affected by the closures for 2008, 2009 and 2010.

Based on the foregoing, this claim is denied because the Claimant has failed to provide evidence sufficient to prove (1) that they sustained a financial loss in the amount \$471,869.33, 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. Additionally, this claim is currently the subject of an action by the Claimant to recover these costs in the U.S. District Court for the Eastern District of Louisiana, and is therefore not eligible for payment through the OSLTF.


Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *5/29/13*

Supervisor's Action: *Denial approved*

Supervisor's Comments: