

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
National Pollution Funds Center
United States Coast Guard

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US COAST GUARD
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CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7012 2210 0001 7215 0100

5890/DWHZ
29 April 2013

Mr. Michael Anderson


Re: Claim Number: N10036-1907

Dear Mr. Anderson,

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 N10036-1907 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 N10036-1907.

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
Enclosure (2): Evidence Submitted in Support of Claim N10036-1907

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1907
Claimant	Michael Anderson
Type of Claimant	Private (US)
Type of Claim	Real or Personal Property/Loss of Profits or Impairment of Earning Capacity
Amount Requested	\$59,245.55

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 02 April 2013 the NPFC received a claim to the Oil Spill Liability Trust Fund (OSLTF) from Mr. Michael Anderson ("the Claimant") seeking \$59,245.55 in loss of profits or impairment of earning capacity damages and real or personal property loss allegedly resulting from the Deepwater Horizon oil spill.¹

The Claimant is a commercial fishing vessel ported in Savannah, Georgia. The Claimant asserted that at the time of the oil spill the vessel was fishing for shrimp in Gulf Coast Federal Waters before encountering oil spilled as a result of the blowout of the Deepwater Horizon rig. As a result, the Claimant alleged that his catch and equipment were oiled, causing him to sustain loss of profits damages as well as real or personal property damages. Specifically, the Claimant alleged that "due to the oil spill, [the Claimant] sustained contaminated shrimp, shrimp nets, wash down pump, and fish holds".² The Claimant further states that 8,783 pounds of shrimp "spoiled due to oil contamination."

The Claimant seeks to recover \$59,245.55 in losses allegedly incurred due to the damage to his vessel and fishing equipment as well the loss of his catch.

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

¹ Optional OSLTF Claim Form received 02 April 2013.

² Optional OSLTF Claim Form received 02 April 2013.

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.

In order to prove a claim for Real or Personal Property damage under OPA, 33 C.F.R. § 136.215 requires that a claimant provide evidence to prove, in part:

- (1) An ownership or leasehold interest in the property;
- (2) That the property was injured or destroyed;
- (3) The cost of repair or replacement; and
- (4) The value of the property both before and after injury occurred.
 - (b) In addition, for each claim for economic loss resulting from destruction of real or personal property, the claimant must establish –
- (5) That the property was not available for use and, if it had been, the value of that use;
- (6) Whether or not substitute property was available and, if used, the costs thereof; and
- (7) That the economic loss claimed was incurred as a result of the injury to or destruction of the property.

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:

See, Enclosure (2).

On 02 April 2013, the NPFC received a claim to the Oil Spill Liability Trust Fund (OSLTF) from Mr. Michael Anderson ("the Claimant") seeking \$59,245.55 in loss of profits or impairment of earning capacity damages and real or personal property damages allegedly resulting from the Deepwater Horizon oil spill.³ The Claimant asserted that he presented this claim to the Responsible Party on 5 May 2010 and that it remains unresolved. Therefore, the Claimant has satisfied OPA presentment requirements and the NPFC may properly adjudicate this claim to the extent that all damages now presented were included in this claim as first presented to the RP.⁴

Furthermore, evidence in this claim submission indicates that the location of the Claimant's business likely excludes them from the Economic and Property Damage and Class Action Settlement (the E&PD Settlement).

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.

In order to prove any claim for costs or damages under OPA, a claimant must provide evidence to prove that the damage or cost was incurred as a result of "the discharge, or substantial threat of discharge of oil . . ."⁵ This claim is denied because the Claimant has not provided any verifiable evidence to prove (1) that he actually sustained the losses alleged, or (2) that the alleged losses were incurred as a result of the Deepwater Horizon oil spill.

The basis for this claim is the alleged oiling of the Claimant's vessel, fishing gear and shrimp catch as a result of the Deepwater Horizon oil spill. In support of his claim, the Claimant provided various fishing licenses for the year 2011. However, he has not proven that he had attained the requisite licenses for 2010, nor has he otherwise provided evidence sufficient to prove that he was indeed fishing in an affected area at the time of the oil spill. Furthermore, the Claimant's assertion that his equipment and catch was contaminated on or before 24 April 2010 is not supported by evidence regarding the location and trajectory of the oil spill as compiled by the National Oceanic and Atmospheric Administration.⁶ According to this information, the oil

³ Optional OSLTF Claim Form received 02 April 2013.

⁴ 33 C.F.R. § 136.103(a).

⁵ 33 C.F.R. § 136.1(a)(1).

⁶ See, Approximate oil locations from April 22, 2010 to April 26, 2010, NOAA. Available at, http://archive.orr.noaa.gov/book_shelf/1882_cumulative2.pdf, accessed on 29 April 2013.

spill had not reached the area where the Claimant alleged to have been fishing at the time his equipment and catch were allegedly contaminated.

Should the Claimant wish to pursue this claim on reconsideration, the Claimant should provide copies of licenses to show that the vessel was authorized to fish in affected waters in 2010, as well as proof that he incurred certain costs due to the oiling of his equipment, vessels and shrimp catch. The Claimant should also specifically indicate the location of his vessel at the time it allegedly encountered oil.

Based on the foregoing, this claim is denied because the Claimant has failed to provide evidence sufficient to prove that he sustained a financial loss, or that he incurred real or personal property damages as a result of the discharge or substantial threat of discharge of oil resulting from the Deepwater Horizon oil spill.

Claim Supervisor: *NPFC Claims*

Date of Supervisor's Review: *4/20/13*

Supervisor's Action: *Denial with no cost*

Supervisor's Comments:

Enclosure (2)
Evidence Presented in Support of
NPFC Claim # N10036-1907

- 1) Mr. Michael Anderson Optional OSLTF Claim Form received at NPFC 02 April 2013
- 2) Various documents:
 1. Georgia Commercial Fishing Boat License dated 18 May 2011
 2. NOAA Federal Fisheries Permit – South Atlantic Penaeid Shrimp dated 22 April 2011
 3. NOAA Federal Fisheries Permit – Gulf Royal Red Shrimp dated 03 June 2011
 4. NOAA Federal Fisheries Permit – Rock Shrimp (Carolinas Zone) dated 22 April 2011
 5. NOAA Federal Fisheries Permit – Gulf of Mexico Shrimp (Moratorium) dated 03 June 2011
 6. USCG Certificate of Documentation for the M/V Brians Crew dated 21 September 2011
 7. Invoice Bull River Seafood dated 01 May 2010
 8. Invoice Bull River Seafood dated 28 April 2010
 9. Invoice Dennis Miles Net Works dated 03 May 2010
 10. Letter from Frank Driggers to BP Claims not dated.