

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: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7012 2210 0001 7215 0261

5890/DWHZ
20 May 2013

Law Office of Cary M. Toland PC
[REDACTED]
[REDACTED]

Re: Claim Number: N10036-1914

Dear Snodgrass Seafood, Inc:

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 N10036-1914 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 N10036-1914.

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: Claim Summary/Determination
cc: [REDACTED]

By Certified Mail:
No. 7012 2210 0001 7215 0278

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1914
Claimant	Snodgrass Seafood, Inc.
Type of Claimant	Private (US)
Type of Claim	Loss of Profits or Impairment of Earning Capacity
Amount Requested	\$244,888.16

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 11 April 2013, Mr. Cary M. Toland, on behalf of Snodgrass Seafood, Inc. (collectively, "the Claimant") submitted a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$244,888.16 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 Brownsville, Texas. The Claimant alleged that the business "purchased the bulk of its wholesale seafood from [waters affected by the Deepwater Horizon oil spill]."² The Claimant stated that the "the sudden lack of availability combined with the increase in price and consumer fear [regarding oil spill tainted seafood] caused sales to drop to a point that the business could no longer sustain itself and was forced to shut down."³

The Claimant alleged that the oil spill caused the company to sustain losses stemming from product unavailability, lack of consumer interest and fear of tainted seafood.⁴ The Claimant alleged that the business sustained oil spill related losses of \$244,888.16.

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 dated 11 April 2013.

² Optional OSLTF Claim Form dated 11 April 2013.

³ Optional OSLTF Claim Form dated 11 April 2013.

⁴ Optional OSLTF Claim Form dated 11 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.

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).

Prior to presenting this claim to the NPFC, the Claimant attempted to recover these damages from the Responsible Party through the GCCF and BP Claims Program. According to the

Claimant's submission, the documentation now provided to the NPFC was presented to BP on 21 January 2013. The Claimant was assigned claimant ID 100066316 and claim #58810.⁵ The Claimant submitted a request for reconsideration 09 April 2013.⁶ No further action has been taken as of the filing of this claim with the NPFC on 11 April 2013. As such, because more than 90 days have passed since the presentment of this claim to the Responsible Party, OPA presentment requirements have been met and the NPFC may properly adjudicate this claim.⁷

Furthermore, evidence in this claim submission indicates that the Claimant is geographically excluded from the Economic and Property Damage Class Action Settlement. (the E&PD Settlement).⁸

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 a claim for loss of profits damages, a claimant must provide documentation sufficient to prove (1) that the claimant experienced a loss or reduction in income and (2) that the financial loss was caused by the discharge of oil resulting from the Deepwater Horizon oil spill.

The Claimant alleged to have sustained losses stemming from various sources, including: (1) product unavailability, and (2) decreased customer demand. However, the Claimant failed to provide evidence to prove that the Claimant actually relied on the availability of seafood from waters affected by the oil spill, nor have they proven that they were unable to sell seafood as a result of the oil spill.

1. Product Unavailability

The Claimant alleged that certain seafood products became unavailable after the oil spill, causing the Claimant to lose sales and eventually close the business sometime in 2011. The Claimant provided tax returns, profit and loss statements, franchise tax documents and licenses in support of their claim.

In order to prove that the Claimant sustained a loss based on the unavailability of seafood, the Claimant would have to provide evidence to prove that they purchased certain seafood products from affected areas of the Gulf of Mexico, and were no longer able to purchase those products due to fishery closures caused by the spill. Furthermore, the Claimant would have to prove that the inability to purchase certain seafood products actually impacted the Claimant's overall sales.

The Claimant has not provided any evidence, such as purchase receipts or trip tickets, to prove that they indeed purchased seafood from Gulf of Mexico waters which were affected by fishery closures in 2010. Additionally, the Claimant did not provide financial documentation for the year 2010 to allow the NPFC to compare the Claimants earnings during the allegedly affected period, with the Claimant's earnings prior to the oil spill. Furthermore, the Claimant's federal tax returns for 2007, 2008 and 2009 indicate that the Claimant's revenue had been sharply

⁵ Deepwater Horizon Claims Center Denial Notice dated 13 March 2013

⁶ Re-Review of Reconsideration Request Form dated 09 April 2013

⁷ 33 C.F.R. § 136.103(c)(2).

⁸ Claimant is headquartered in Brownsville, Texas.

decreasing in the years prior to the oil spill. In 2007, 2008 and 2009, the Claimant reported revenue of \$1,193,733.00, \$322,131.00 and \$255,218.00 respectively.⁹ The Claimant has not provided any evidence that might indicate that the factors causing the Claimant's sales to decrease substantially in years prior to the oil spill, were no longer affecting the Claimant's sales at the time of the oil spill.

Having considered this evidence, the NPFC has determined that the Claimant has not proven that they sustained losses due to the unavailability of certain seafood items caused by the Deepwater Horizon oil spill.

2. Decreased consumer demand

The Claimant also alleged that the Deepwater Horizon oil spill caused a perception among consumers that seafood was unsafe, resulting in reduced demand and slower sales. The Claimant has not provided any evidence that might indicate that their customer base chose not to purchase seafood as a result of concerns regarding oil contamination.

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 \$244,888.16 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.

Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *5/20/13*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

⁹ 2007 – 2009, Forms 1120.