

U.S. Department of
Homeland Security

United States
Coast Guard



Director
National Pollution Funds Center

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May 22, 2013

CERTIFIED MAIL Number: 7011 2000 0001 1246 6724

Henry Thomas
[REDACTED]

RE: Claim Number: N10036-1922

Dear Mr. Thomas:

The National Pollution Funds Center (NPFC) reviewed your claim for lost use of natural resources following the Deepwater Horizon oil spill. We have determined that you have not met your burden of proving a loss as defined by the Oil Pollution Act (OPA, 33 U.S.C. §2701 *et seq.*) and OPA claims regulations (33 C.F.R. Part 136). Accordingly, the NPFC denies payment of your claim. The basis of this determination follows.

Background

On or about April 20, 2010, the Mobile Offshore Drilling Unit Deepwater Horizon exploded and sank in the Gulf of Mexico. As a result, oil was discharged and the Federal Government and Gulf Coast states closed certain waters to commercial and recreational fishing. The Coast Guard designated the source of the discharge and identified BP as a responsible party (RP). BP accepted the designation, advertised its claims process under OPA, and began accepting and adjudicating individual and business claims through the Gulf Coast Claims Facility (GCCF).

On March 8, 2012, the United States District Court, Eastern District of Louisiana, issued a "Transition Order" (TO) that limited the GCCF's ability to pay claims and created a process to facilitate the transition of the claims from the GCCF to a Court-Supervised Settlement Program (CSSP). Under the CSSP, claimants within designated zones will be compensated, as appropriate, by the CSSP unless they opt out. The CSSP began processing claims on June 4, 2012.

The Claim

On April 25, 2013, the NPFC received your claim for \$43,320 for lost subsistence use of natural resources following the Deepwater Horizon oil spill. You presented your claim to the GCCF on April 11, 2012; you stated that you never received a response from the GCCF regarding this claim. Based on your mailing address, you do not reside within the designated zones subject to CSSP jurisdiction.

Applicable Law

OPA provides that the Oil Spill Liability Trust Fund (OSLTF) is available to pay claims for uncompensated damages resulting from oil pollution incidents (33 U.S.C. §2712(a)(4)). Damages include loss of subsistence use of natural resources (33 U.S.C. §2702(b)(2)(C)) (i.e., resources relied upon for food). The regulations at 33 C.F.R. Part 136 include general claim requirements and requirements specific to lost subsistence use claims.

General Claim Requirements

Claims to the OSLTF must be: (a) in writing for a sum certain (33 C.F.R. §136.105(b)), (b) submitted to the NPFC within three years after the date on which the injury and its connection with the incident were reasonably discoverable (33 C.F.R. §136.101(a)), and (c) presented first to the RP or guarantor and that claim is denied or not settled by payment by any person within 90 days after the date the claim was presented before presentation to the Fund (33 U.S.C. §2713(c)(2); except as noted in 33 C.F.R. §136.103(a)).

Subsistence Use Loss Claim Requirements

The claims regulations (33 C.F.R. §§136.219-223) provide additional requirements for lost subsistence use claims. Specifically, each claim for loss of subsistence use of natural resources must:

- 1) be for lost subsistence use and submitted by an eligible claimant;
- 2) identify and describe the actual subsistence use of each specific natural resource for which compensation is being claimed;
- 3) describe how and to what extent the claimant's subsistence use was affected by injury to or loss of each specific natural resource;
- 4) describe efforts to mitigate the subsistence use loss;
- 5) be based on the reasonable cost to replace the lost subsistence use of natural resources; and
- 6) be reduced by the amount of all compensation made available to the claimant to compensate for the loss, all income which was derived by utilizing the time which otherwise would have been used to obtain the subsistence resources, and any avoided costs associated with the subsistence activity, such as gas for vehicles or boats, bait, and other overhead costs not incurred due to the spill.

NPFC has provided more detail about these claim requirements at:
http://www.uscg.mil/npfc/Claims/DWH_faqs.asp.

Claim Submission and Documentation

The NPFC received your claim on April 25, 2013 for loss of subsistence use. Additional documentation provided in support of your claim includes:

- news articles regarding the Deepwater Horizon oil spill;
- your GCCF Full Review Final Payment Claim Form (pages 1, 2, 9, 10, 13, and 14);
- a photocopy of a letter that you sent to the GCCF, undated;

- photocopies of various pages of the 2010-2011 Texas Hunting and Fishing Regulations;
- a menu from Acme Seafood Market;
- a photocopy of your Texas fishing license, valid 09/27/09 through 08/31/10;
- a photocopy of your Texas fishing license, valid 09/03/10 through 09/30/11; and
- a photocopy of your Texas driver's license.

NPFC Determination

The NPFC finds that you have not met your burden of proving a subsistence use loss as defined by OPA (33 U.S.C. 2701 et seq.) and the OPA claims regulations (33 C.F.R. Part 136). Your claim is denied because you have not:

- 1) Established that you suffered a loss of subsistence use of natural resources as a result of the spill (i.e., you do not provide evidence to support your claim that you had a pattern of subsistence use of natural resources prior to the oil spill, and that you suffered subsistence use losses due to the oil spill); nor
- 2) Explained or documented how you determined your claimed loss of \$43,320 (i.e., the period of your claimed loss and the actual costs incurred to replace your claimed loss including sufficient documentation to establish reasonable estimates of replacement costs based on a pattern of subsistence use).

Request for Reconsideration

Under OPA, you may ask the NPFC to reconsider this determination. Reconsideration requests must be received by the NPFC in writing within 60 days of the date of this letter, and will be based upon the additional factual or legal information that you provide with your request. A claim may be reconsidered only once, and written disposition of a reconsideration request constitutes final agency action. If the NPFC fails to issue a written decision within 90 days after receipt of a request for reconsideration, this determination, at the option of the claimant, shall be deemed final agency action.

Should you choose to request NPFC reconsideration of this determination, please mail the request and additional claim information with the appropriate claim number (N10036-1922) to:

Chief (Cn)
National Pollution Funds Center
U.S. Coast Guard, Stop 7100
4200 Wilson Boulevard, Suite 1000
Arlington, VA 20598-7100

If you have any questions about reconsideration, please feel free to contact the NPFC at the above address or by phone at 800-280-7118.



~~RICHARD NANCE~~

Claims Manager

Natural Resource Damage Claims Division