Profits and Earning Capacity Damage Claims

Claims for loss of profits or impairment of earning capacity originate from the injury to, destruction of, or loss of real or personal property or natural resources.

General Claim Requirements

A claim for loss of profits or earning capacity damage can be presented by any claimant who sustained the loss or impairment. The claimant need not be the owner of the damaged property or resources to recover for lost profits or income. When preparing the claim for submission to the [Oil Spill Liability Trust Fund](https://www.uscg.mil/Mariners/National-Pollution-Funds-Center/Glossary/) (OSLTF or Fund), the claimant is reminded that they bear the burden of providing all evidence, information, and documentation deemed relevant and necessary by the Director of the CG National Pollution Funds Center (NPFC), to support and properly process the claim. At a minimum, the claimant will be required to:

* Prove that the damage costs associated with the claim meet the criteria for a claim as established within the [Oil Pollution Act of 1990](https://www.uscg.mil/Mariners/National-Pollution-Funds-Center/Glossary/) (OPA) as detailed below.

	+ The substance associated with the response was [oil](https://www.uscg.mil/Mariners/National-Pollution-Funds-Center/Glossary/);
	+ That there was a [discharge](https://www.uscg.mil/Mariners/National-Pollution-Funds-Center/Glossary/) of oil or [substantial threat of discharge](https://www.uscg.mil/Mariners/National-Pollution-Funds-Center/Glossary/) of oil;
	+ The discharge or substantial threat of oil discharge impacted a [navigable waterway of the United States](https://www.uscg.mil/Mariners/National-Pollution-Funds-Center/Glossary/); and
	+ The discharge or substantial threat of discharge of oil originated from a [vessel](https://www.uscg.mil/Mariners/National-Pollution-Funds-Center/Glossary/) or [facility](https://www.uscg.mil/Mariners/National-Pollution-Funds-Center/Glossary/).
* Prove that real or personal property or natural resources have been injured, destroyed, or lost.
* Prove that your income was reduced as a consequence of injury to, destruction of, or loss of the property or natural resources, and the amount of that reduction.
* Prove the amount of your 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.
* Prove whether alternative employment or business was available and undertaken and, if so, the amount of income received. Note – all income 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.
* Prove that you first presented your loss of profits and earning capacity damage costs claim to the [responsible party (RP)](https://www.uscg.mil/Mariners/National-Pollution-Funds-Center/Glossary), unless:

	+ The NPFC has advertised for claims specific to the incident;
	+ You are a responsible party asserting a claim under the OPA;
	+ You are a U.S. claimant in a case where a [foreign offshore unit](https://www.uscg.mil/Mariners/National-Pollution-Funds-Center/Glossary) has discharged oil; or
	+ A responsible party was never identified for the incident subject to your claim and the incident was determined to be a [mystery spill](https://www.uscg.mil/Mariners/National-Pollution-Funds-Center/Glossary/) by the [Federal On-Scene Coordinator](https://www.uscg.mil/Mariners/National-Pollution-Funds-Center/Glossary/) (FOSC).
* Submit your signed claim in writing with a [sum certain](https://www.uscg.mil/Mariners/National-Pollution-Funds-Center/Glossary/) (total claimed costs) for compensation resulting from the incident.
* Submit the claim within three years after the date on which the injury and its connection with the discharge in question were reasonably discoverable with the exercise of due care.

Compensation Allowed

* The amount of compensation allowable is limited to the actual net reduction or loss of earnings or profits suffered. Calculations for net reductions or losses must clearly reflect adjustment for:

	+ All income resulting from the incident;
	+ All income from alternative employment or business undertaken;
	+ Potential income from alternative employment or business not undertaken, but reasonably available;
	+ Any saved overhead or normal expenses not incurred as a result of the incident; and
	+ State, local, and Federal taxes.

Example of a Profit and Earning Capacity Damage Claim

You own a water-taxi service that was disrupted as a result of an oil spill incident. Specifically, you had to stop operating your water-taxi as a result of the incident and lost the opportunity to transport passengers back and forth between their destinations. In preparation for submitting your claim to the NPFC, you were able to obtain tax returns, financial statements, and similar documents from comparable periods of time (e.g., same month but from previous years) and during the time-period (e.g., 2-3 weeks before the incident) as your claimed loss or impairment was suffered. Next, you successfully addressed any alternative employment or business opportunities (e.g., moving and then operating your water-taxi in an alternate location outside of the oil spill incident) and, if so, the amount of income received. Lastly, you calculated any saved overhead and other normal expenses not incurred as a result of the incident (e.g., saved fuel costs for not operating the water-taxi, saved personnel/crew costs for not operating the water-taxi…). By providing this information along with other required information (e.g., General Claim requirements and other Supporting Documentation), you may have a profit and earning capacity damage claim for the profits and earnings lost during the oil spill incident.

For reference when calculating your sum certain: profit = income or revenue – expenses.

Examples of Supporting Documentation

You must provide evidence that supports your claim, and you can use whatever documentation you believe best supports your claim. Listed below are examples of documentation typically submitted in support of loss of profit or earning capacity damage claims:

* Photographs or videos of the incident and the response actions.
* Reports from local, State, or Federal agencies overseeing the incident.
* Analysis of oil that is the subject of the incident on which you based your claim submission.
* Tax returns for two years prior to the incident, the year of the incident and the year after the incident, if available.
* Income statements from two years prior to the incident, the year of the incident and the year after the incident, if available.
* Balance sheets from two years prior to the incident, the year of the incident and the year after the incident, if available.
* Cash flow statements from two years prior to the incident, the year of the incident and the year after the incident, if available.
* Receipts or other proof of revenue combined with proof of expenses (e.g., daily logs, catch records, charter agreements, etc.).
* Affidavits or witness statements attesting to the incident and your response to the incident.
* Any additional documentation that you feel supports your claim.

How to Submit Your Claim

1. Develop a claim submission that meets the general requirements for a claim found in 33 CFR 136.10 or complete the [Optional OSLTF Claims Form](https://www.uscg.mil/Portals/0/NPFC/docs/PDFs/OSLTF_Claim_Form_Rev_Aug19.pdf?ver=2017-08-15-124737-893)that describes your claim.
2. Attach supporting documentation, such as those listed above.
3. Submit your removal cost claim submission electronically to the NPFC Claims Division at hqs-smb-npfc-claimsinfo@uscg.mil. Please note, the NPFC’s email server will only accept email attachments up to 8MB in size and any attachments larger than 8MB will be rejected by the NPFC’s mail server. As such, the NPFC recommends claimants request a drop-off for any supporting claim documents in excess of 8MB within their claim submission email to the NPFC. Upon receipt of your electronic claim submission and email request to drop-off additional documents, the NPFC will send you a link to the DoD SAFE server that will allow you to upload your additional documents using the NPFC’s Claims Division email account hqs-smb-npfc-claimsinfo@uscg.mil as the recipient of your documents.

In the alternative, you can mail your claim submission with supporting documentation via US Postal Service or other mail service carriers to the following address:

CG National Pollution Funds Center: Claims

US Coast Guard Stop 7605

2703 Martin Luther King Jr Ave. SE

Washington DC 20593-7605

Note – all mail intended for the NPFC is screened before delivery to our office. In the past, the irradiation methods employed during screening have destroyed CDs and thumb-drives mailed to the NPFC in support of claim submissions. As such, the NPFC Claims Division may ask you to provide your information electronically via the DoD SAFE site if the CDs/thumb drives provided in support of your claim submission are damaged during the screening process.

Questions

The NPFC maintains a toll-free number that’s monitored Monday – Friday from 7:00 a.m. to 4 p.m. EST. The toll-free number is 1-800-280-7118. You can also email the NPFC Claims Division at hqs-smb-npfc-claimsinfo@uscg.mil. Calls or emails placed to the NPFC Claims Division after normal working hours, or on Holidays/weekends, will be responded to on the next business day.

Disclaimer

The summary information contained within this document is intended to assist claimants in the preparation of their claim and not as the sole source of information regarding the OPA or claims regulations. Instead, claimants should review and then rely upon the OPA located at <https://uscode.house.gov/view.xhtml?path=/prelim@title33/chapter40&edition=prelim> and implementing regulations located at <https://www.ecfr.gov/current/title-33/chapter-I/subchapter-M/part-136> for information definitive to their claim and claim submission.