

U.S. Department of
Homeland Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD

5890
5/5/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]



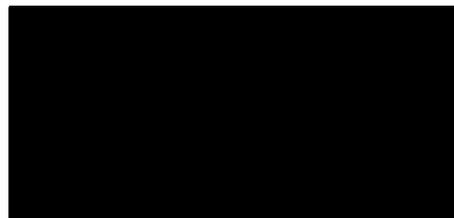
RE: Claim Number: N10036-0500

Dear [REDACTED]

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 claim number N10036-0500 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination Form for further explanation.

Disposition of this reconsideration constitutes final agency action.

If you have any questions or would like to discuss the matter, you may contact me at the above address and phone number.



Chief, Claims Adjudication Division
U.S. Coast Guard

Encl: Claim Summary / Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Date	: 5/3/2011
Claim Number	: N10036-0500
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$13,000.00

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 was 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 claims for certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On 20 January 2011, [REDACTED] (Claimant) presented an Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Fund Center (NPFC) seeking \$8,000.00 in loss of profits and earnings, as well as \$5,000.00 in loss of subsistence use of natural resources, that resulted from the Deepwater Horizon oil-spill. His combined loss is \$13,000.00.

Claimant's submission failed to explain the damages for which he is requesting compensation. The Claimant provided documentation indicating that he had a medical illness he allegedly contracted while handling "contaminated boom," as an oil spill response worker for [REDACTED]. Claimant has provided no explanations or calculations on how he calculated his alleged losses. In a letter dated January 25, 2011, the NPFC requested the Claimant to provide additional information to support his claim for lost profits, including but not limited to, federal tax returns for 2007-2009, copies of pay stubs for all employers for 2010 and if possible a letter from Aerotek that explains why his employment was terminated.¹ The NPFC advised the Claimant that if the requested information was not received within 14 days the NPFC would adjudicate the claim without that information.

The NPFC denied the claim on March 7, 2011, on the basis that the evidence provided for the lost profits portion of his original claim submission was vague. Also, the Claimant did not respond to the NPFC's January 25, 2011, letter requesting additional information. With respect to the initial denial of the Claimant's loss of subsistence use, that portion of the claim was denied because the Claimant provided no evidence to support his request for \$5,000.00 for loss of subsistence use. Additionally, the Claimant provided no supporting documentation to demonstrate how he calculated his loss of subsistence amount.

¹ The claim for loss of subsistence use was addressed separately.
09/14/11

Claimant filed an Emergency Advance Payment claim for lost profits and earnings with the GCCF and was issued GCCF Claimant ID [REDACTED] and [REDACTED]. The GCCF denied his claims on 30 November 2011.

REQUEST FOR RECONSIDERATION:

On April 12, 2011, the NPFC received the Claimant's request for reconsideration which was comprised of a copy of the NPFC's initial determination, an appeal letter dated April 4, 2011, an undated hardship letter explaining how he calculated his lost profits portion of his claim, copies of three food receipts in support of his loss of subsistence use portion of his claim, copies of his recreational fishing licenses in support of his loss of subsistence use portion of his claim, a copy of his 2008 and 2010 Income Tax Returns, a copy of his workers compensation prescription program card which shows a date of injury of June 21, 2010, a copy of a pay stub for Claimant while employed by [REDACTED] for the pay period ending January 26, 2011, and a copy of a pay statement for the Claimant while employed by [REDACTED] for the pay period ending February 14, 2010.

RECONSIDERATION CLAIM ANALYSIS:

NPFC Determination on Reconsideration

Under 33 U.S.C. § 2702(b)(2)(E) and 33 C.F.R. Part 136, a claimant must prove that his loss of income was due to the injury, destruction or loss of real or personal property or 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 to the NPFC all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim. A request for reconsideration must be in writing and include the factual or legal basis for the request. 33 C.F.R. 136.115(d). The NPFC considered all of the documentation presented by the Claimant.

Loss of Profits or Impairment of Earnings Capacity:

With respect to the Claimant's request for reconsideration on the lost profits portion of his claim, the Claimant asserted that he was employed by [REDACTED] as a pizza delivery driver prior to being hired by Aerotek as a response worker for the Deepwater Horizon incident². The Claimant further asserted on reconsideration that he made \$1,300.00 per month with Domino's plus \$250.00 per month in tips³. The Claimant now alleges that because of the spill, his current monthly income was reduced to \$1,000.00 per month for a difference he calculates as \$500.00 a month⁴. Based on his alleged loss claimed of \$8,000.00, it appears the Claimant is requesting 16 months at \$500.00 a month.

After reviewing the Claimant's assertions and supporting documentation, the NPFC has determined that the Claimant has not proven his alleged financial loss amount of \$8,000.00. The Claimant did not provide monthly pay stubs for his employment with [REDACTED] in order to substantiate his statement that he made \$1,300.00 a month plus \$250.00 per month in tips. Additionally, the Claimant has not provided specifics with respect to when he started his employment with [REDACTED] how many days a week he works. Based on the copy of the

² See Appeal letter from Claimant dated April 11, 2011 in support of his request for reconsideration.

³ *Id*

⁴ *Id*

Claimant's 2010 Income Tax Return provided, his annual income for Domino's in 2010 was \$5,435.00 and his annual income for Domino's in 2009 was \$4,743.00.

In doing the math simply based on income tax returns for 2009 & 2010, the Claimant only made \$10,178.00 in gross annual earnings at [REDACTED] over a two year period; therefore, the alleged loss amount claimed is not supported by the documentation presented nor has the Claimant clearly identified the time period for which the alleged \$8,000.00 covers.

The NPFC again denies the lost profits portion of the claim because (1) the Claimant has failed to meet his burden to demonstrate he has a loss of profits in the amount claimed and (2) the Claimant has failed to meet his burden to establish that his 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.

Loss of subsistence Use:

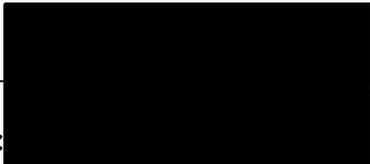
With respect to the Claimant's request for reconsideration on the loss of subsistence use portion of his claim, the Claimant asserted that fishing in the Gulf of Mexico, Mobile Bay, Dauphin Island, Dog River and Bayou La Batre was part of his family culture and also a financial means of saving money on food costs with having to support a family of 5. Claimant further asserted that he and his wife fished weekly at the above referenced locations but due to the oil spill, the Claimant stated his rights were taken away.

With respect to the Claimant's calculation of loss of subsistence use, he asserted that he calculates a savings on food cost to be \$200.00 per month and states that to this day, he has not been fishing for fear that the waters and fish are still contaminated. The Claimant provided a copy of three grocery receipts that range from July 2010 through March 2011 and copies of his resident fishing licenses which appear valid prior to the incident.

The NPFC again denies the loss of subsistence use portion of the claim because the NPFC finds that the Claimant has not met his burden of proving a subsistence use 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). Specifically, he has not:

- (1) demonstrated that he is a subsistence user. He has not provided sufficient supporting information to prove his subsistence use, such as statements or affidavits that address the frequency and amount of subsistence catch and consumption that he and/or his family relied upon to meet the minimum necessities of life, or
- (2) provided adequate documentation to support the dollar amount of subsistence use claimed. Mr. Hines claims \$5,000 for his loss of subsistence use, but describes his loss as \$200 per month in his letter requesting reconsideration. The NPFC cannot determine the period of claimed loss or actual costs incurred to replace the fish that he would have caught and eaten if the spill had not occurred.

Based on the foregoing, this claim is denied upon reconsideration.

Claim Supervisor: 

Date of Supervisor's review: *5/5/11*

Supervisor Action: *Denial on reconsideration approved*

Supervisor's Comments:

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



CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Number: [REDACTED]



5890/DWHZ
Claim# N10036-0502
22 March 2011

RE: Claim Number: N10036-0502

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et. seq. (OPA 90) and the associated regulations, 33 C.F.R. Part 136, denies payment on your claim, # N10036-0502, involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination Form for further explanation.

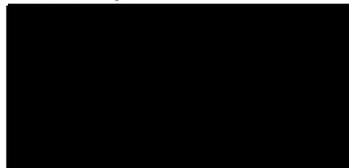
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-0502.

Mail reconsideration requests to:

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

Sincerely,



U. S. Coast Guard
Claims Manager

Enclosure: Claim Summary/Determination Form

CLAIM SUMMARY/DETERMINATION FORM

Date	18 March 2011
Claim Number	N10036-0502
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits & Earning Capacity
Claim Manager	[REDACTED]
Amount Requested	\$133,000.00

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 was 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 claims for certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On 21 January 2011, [REDACTED], on behalf of [REDACTED] (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Funds Center (NPFC) seeking \$133,000.00 in lost profits and earnings capacity. Claimant attributed her loss to the Deepwater Horizon oil spill.¹

Claimant owns a construction company that operates out of Wiggins, Mississippi.² She asserted that as a result of the Deepwater Horizon oil spill, "tourism went to zero" and "all contracts that people wanted to build restaurants/addition/gas station halted. . . ."³ Claimant seeks projected revenues from two cancelled contracts, totaling \$133,000.00.⁴

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 waters or adjoining shorelines or the exclusive economic zone, as described in Section 2702(b) of OPA.

The OSLTF which is administered by the NPFC, is available, pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136, to pay claims for uncompensated damages. 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.

¹ OSLTF claim form.

² Company Agreement for [REDACTED] 01 January 2010.

³ OSLTF claim form.

⁴ Correspondence from Claimant, dated 05 December 2010, describing the claim. The correspondence states that Claimant seeks a gas station cancellation loss of \$70,000.00 and a restaurant cancellation loss of \$63,000.00 for a total loss of \$133,000.00. However, on 21 January 2011, Claimant provides a recalculation of its total loss at \$313,000.00. Since Claimant did not request an amendment to its sum certain to reflect the later loss figure, the NPFC will treat Claimant's total loss as the original sum certain of \$133,000.00.

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.
- (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.

DETERMINATION OF LOSS

Claimant's Submission

To support this claim, Claimant presented the following documentation to the NPFC:

- OSLTF claim form, dated 20 October 2010;
- GCCF Final Payment claim form, dated 17 December 2010;
- Correspondence from Claimant, dated 05 December 2010, describing the claim;
- Company Agreement for [REDACTED] 01 January 2010;
- Profit & Loss Summary, January through June 2010;
- Profit & Loss Detail, 01 January 2010 through 09 December 2010;
- Various job estimate sheets, including photos, Google map print-outs, floor plans and specifications;
- Cancellation statement from [REDACTED] dated 25 June 2010;
- Claimant handwritten response to NPFC request for additional information;
- [REDACTED] Property Link print-outs for various parcels;
- Various Stone County Building and Code Department Permits;
- News article on oil spill residue, 06 January 2011;
- Summary of Loss prepared by claimant, dated 21 January 2011;

- Mississippi Secretary of State Business Services, Limited Liability Partnership filing, 12 March 2010;
- Internal Revenue Service, assignment of EIN, 16 February 2010; and
- 2010 Form 1040 Tax Return.

Claimant seeks \$133,000.00 in lost profits and earnings capacity allegedly resulting from the Deepwater Horizon oil spill.

On 05 September 2010, Claimant filed a six-month Emergency Advance Payment claim for \$62,000.00 in lost profits and earnings with the GCCF. Claimant was assigned GCCF Claimant ID [REDACTED] and Claim [REDACTED]. On 14 December 2010, this claim was denied.⁵

NPFC Determination

Under 33 CFR 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 CFR § 136.233, a claimant must establish loss of profits or impairment of earning capacity. The NPFC considered all the documentation submitted by the Claimant.

Claimant seeks \$133,000.00 resulting from the cancellation of two contracts (one for a gas station and another for a restaurant) by [REDACTED]. Claimant alleged that [REDACTED] cancelled these contracts as a result of the Deepwater Horizon oil spill. A letter submitted by the Claimant, and presumably signed by [REDACTED] indicated that [REDACTED] cancelled the contracts because the oil spill caused a reduction in tourism.⁶

The NPFC attempted to verify the letter by contacting [REDACTED]. Claimant was made aware of the importance of validating the cancellations through [REDACTED] and the Claimant indicated that she would assist in having [REDACTED] return the NPFC's calls.⁷ Despite these efforts, the NPFC has been unable to make contact with the Claimant's customer in order to validate the cancellations. Aside from the Claimant-generated contracts and cancellations, no further independent evidence, documentation, or historical financial data was presented to the NPFC to validate that the \$133,000.00 loss resulted from the Deepwater Horizon oil spill.

This claim is denied because the alleged loss of \$133,000.00 is not due to the injury, destruction or loss of property or natural resources, as a result of a discharge or substantial threat of a discharge of oil.

Claim Supervisor: [REDACTED]

Date of Supervisor's Review: 3/19/11

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

⁵ GCCF denial letter Re: Emergency Advance Payment, dated 14 December 2010.

⁶ Cancellation statement from [REDACTED] dated 25 June 2010.

⁷ PHONECON between NPFC and Claimant on 28 February 2011.

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
National Pollution Funds Center
United States Coast Guard

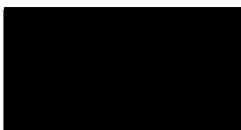
NPFC CA MS 7100
US COAST GUARD

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CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim # N10036-0503
22 February 2011



RE: Claim Number: N10036-0503

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on claim number N10036-0503 involving the Deepwater Horizon incident. Please see the enclosed Claim Summary/Determination Form for further explanation.

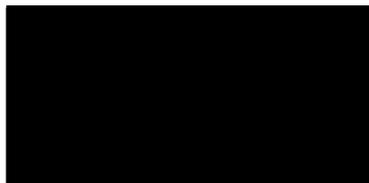
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-0503.

Mail reconsideration requests to:

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

Sincerely,



U.S. Coast Guard
Claims Manager

Enclosure: Claim Summary / Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Date	: 2/22/2011
Claim Number	: N10036-0503
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$2,000.00

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 was 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 claims for certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On 02 February 2011 [REDACTED] (claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Funds Center (NPFC) seeking \$2,000.00 in what the Claimant has categorized as natural resource damages although the NPFC has categorized the claim as a lost profits and earning capacity claim since he is requesting compensation for lost wages.

Claimant works as a heavy equipment operator for Mobile Area Water and Sewer System (MAWSS). As a side business endeavor, the Claimant fishes recreationally and then sells his catch to regular customers.¹ Claimant alleged that he has not been able to sell fish to his customers because of the Deepwater Horizon incident.²

Claimant seeks \$2,000.00 in lost profits.³

APPLICABLE LAW

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a). Damages include the loss of profits or impairment of earning capacity due to the injury, destruction or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant. 33 U.S.C. § 2702(b)(2)(E).

The OSLTF, which is administered by the NPFC, is available to pay claims for uncompensated damages pursuant to 33 USC § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 CFR Part 136. With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person by

¹ PHONECON between the NPFC and claimant on 03 FEB 2011.

² OSLTF claim form.

³ Claimant's erroneous election of natural resource damage is harmless. We construe his loss as a claim for lost profits in light of his submission. The NPFC notes that the Claimant had presented a lost profits claim to the GCCF before filing with the NPFC.

payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

Pursuant to the claims regulations, 33 CFR § 136.233, a claimant must establish the following to prove loss of profits or impairment of earning capacity:

- (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.
- (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 CFR § 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 CFR § 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.

DETERMINATION OF LOSS

Claimant's Submission:

To support his claim, claimant submitted the following:

1. OSLTF claim form dated 27 January 2011;
2. Handwritten list of customers with phone numbers;
3. Copy of claimant's Alabama state boat registration; and
4. Copy of claimant's MWASS employee ID.

Claimant seeks \$2,000.00 in lost profits due to the inability to sell fish to customers allegedly as a result of the Deepwater Horizon incident.

On 28 June 2010, the Claimant filed a claim with the responsible party, BP.

On 22 October 2010, the Claimant filed a six-month Emergency Advance Payment (EAP) claim for \$6,000.00 in lost profits and earnings with the GCCF. He was assigned Claimant ID # [REDACTED] and Claim [REDACTED]. This claim was denied. The NPFC verified this information.

NPFC Determination

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. The NPFC considered all of the documentation submitted by the Claimant.

In an effort to glean more information about the Claimant's submission, the NPFC contacted the Claimant on 03 February 2011. The Claimant stated that he fished in Dog River and the waters surrounding Dauphin Island. Claimant also admitted that while he sold fish he caught from these waters, he did not hold an Alabama commercial fishing license. The NPFC confirmed with the Alabama Department of Conservation and Marine Resources that the Claimant was required to hold a commercial fishing license to fish these waters.⁴

Because the Claimant did not hold a commercial fishing license, he could not legally sell the fish he caught and subsequently couldn't sell as a result of the Deepwater Horizon incident. This claim is denied because the Claimant could not produce the proper documentation to demonstrate an appropriate lost profits and earnings claim under OPA.⁵

Claim Supervisor: 

Date of Supervisor's review: *February 22, 2011*

Supervisor Action: *Denial approved*

Supervisor's Comments:

⁴ PHONECON between the NPFC and the Alabama Department of Conservation and Natural Resources, Marine Resources Division (MRD) on 22 February 2011. The MRD indicated that all waters south of Interstate 10 (I-10) are subject to commercial fishing licensure requirements. Dog River and the waters surrounding Dauphin Island are south of I-10.

⁵ Given this ground for denial, we need not address the sufficiency of claimant's evidence in support of his lost profits claim.

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
National Pollution Funds Center
United States Coast Guard

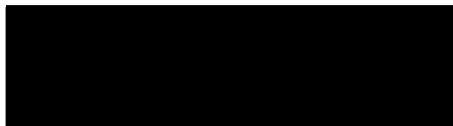
NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim# N10036-0504
02 March 2011



RE: Claim Number: N10036-504

Dear [REDACTED]

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 claim number N10036-0504 involving the Deepwater Horizon oil-spill. Please see the enclosed Claim Summary/Determination Form for further explanation.

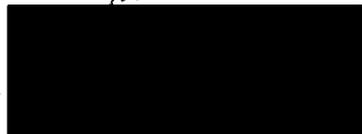
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-0504.

Mail reconsideration requests to:

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

Sincerely,



U. S. Coast Guard
Claims Manager

Enclosure: Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00001986

CLAIM SUMMARY / DETERMINATION FORM

Date	28 February 2011
Claim Number	N10036-0504
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
Claim Manager	[REDACTED]
Amount Requested	\$4,200.00

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 was 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 claims for certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On 21 January 2011, [REDACTED] (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Funds Center (NPFC) seeking \$4,200.00 in lost profits and earning capacity allegedly resulting from the Deepwater Horizon oil-spill.

Claimant asserted that he is a part time freelance mate in Islamorda, Florida, where he “work[s] on any boat that needs [him] on any [given] day.”¹ He further asserted that he is paid in cash, mainly tips from fishing trips. Claimant alleged that as a result of the oil-spill, he lost 14 eight-hour boat trips at a daily pay rate of \$300.00.

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 waters or adjoining shorelines or the exclusive economic zone, as described in Section 2702(b) of OPA.

The OSLTF which is administered by the NPFC, is available, pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136, to pay claims for uncompensated damages. 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.

- (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.

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support his claim, Claimant submitted the following documentation to the NPFC:

- Typed letter explaining his claim to the NPFC, dated 8 January 2011;
- Typed letter to the GCCF requesting a final claim, dated 09 December 2010;
- Typed letter to the GCCF requesting expeditious review of his claim, undated;
- GCCF denial letter, dated 06 December 2010;
- Merchant Marine Officer License expiring 5 May 2011;
- 2008 1040 U.S. Individual Income Tax Return;
- 2009 1040A U.S. Individual Income Tax Return;
- Handwritten 2009 1099-Misc missing federal identification number;
- Handwritten 2008 1099-Misc missing federal identification number; and
- Check from [REDACTED] for \$220.00 dated 12 December 2010.

Claimant seeks \$4,200.00 in lost earnings allegedly resulting from the Deepwater Horizon oil-spill.

On 12 November 2010, Claimant presented a six-month Emergency Advance Payment (EAP) claim for \$3,500.00 in lost earnings to the GCCF. He was issued GCCF Claimant ID [REDACTED] and Claim [REDACTED]. On 10 December 2010, this claim was denied by the GCCF.²

² This information was verified by the NPFC. Claimant has a Final Payment claim under review at the GCCF.
09/14/11 FOIA2011-3580-0001988

NPFC Determination

The claim is denied because the alleged loss in the amount of \$4,200.00 is not due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil.

Claimant alleged that as a result of the Deepwater Horizon oil-spill, he missed out on 14 eight-hour boat trips at a daily pay rate of \$300.00. After initially reviewing the evidence, the NPFC sent the Claimant a letter, dated 25 January 2011, requesting additional information in order to properly adjudicate the claim. The letter requested, among other things, financial documentation, including Claimant's W-2's & 1099's, and statements from boat owners, who previously employed the Claimant, explaining the impact on Deepwater Horizon oil-spill on the decision not to rehire Claimant. To date, the Claimant has not responded to the NPFC's request for information.³

The NPFC therefore proceeded with the adjudication of his claim based on the evidence the Claimant originally submitted on 21 January 2011. The evidence does not support the allegation that the Claimant lost \$4,200.00 in earnings due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil.

In light of the foregoing, this claim is denied.

Claim Supervisor 

Date of Supervisor's Review: *3/2/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

³ The letter was sent Certified Mail Return Receipt Requested. The USPS Tracking site showed the letter was delivered 18 February 2011.

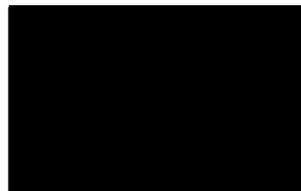
U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD



Fax: 202-493-6937
5890
1/24/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]



RE: Claim Number: N10036-0505

Dear [REDACTED]

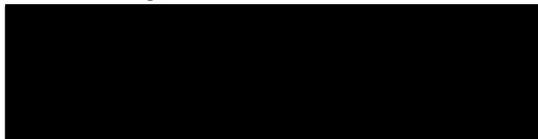
The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number N10036-0505 involving Deepwater Horizon. Please see the attached Claim Summary / Determination form for an explanation regarding this denial.

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 N10036-0505.

Mail reconsideration requests to:

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

Sincerely,



Claims Manager
U.S. Coast Guard

CLAIM SUMMARY / DETERMINATION FORM

Date	: 1/24/2011
Claim Number	: N10036-0505
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$7,750.00

FACTS:

On or about April 20, 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 was discharged from an offshore facility associated with the Deepwater Horizon and located on the Mississippi Canyon, Block 252 (the Deepwater Horizon incident). This area was leased by BP Exploration and Production, Inc. (BP). The Coast Guard designated the offshore facility as the source of the discharge and BP as the responsible party (RP) for the discharge. BP accepted the designation, advertised its OPA claims process, and compensated claimants. On August 23, 2010, the Gulf Coast Claims Facility (GCCF) began accepting and adjudicating claims on behalf of BP.

CLAIM AND CLAIMANT

On January 19, 2011, [REDACTED] (Claimant) presented lost profits & earnings claim in the amount of \$7,750.00 to the National Pollution Funds Center (NPFC) for reimbursement. The Claimant has only provided an Oil Spill Liability Trust Fund (OSLTF) claim form, an illegible copy of the GCCF denial letter dated October 2010, a copy of a pay stub to Claimant for the period of November 28, 2010 through December 11, 2010 which shows a total gross earnings year to date of \$24,311.64, and a copy of a W-2 from [REDACTED] for 2009 with a total wages paid of \$29,466.59. The Claimant's submission fails to support the amount requested and the submission contains no explanation of how the Claimant has arrived at the loss claimed nor is there supporting documentation that demonstrates a loss as a direct result of the Deepwater Horizon incident.

APPLICABLE LAW:

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a). Damages include the loss of profits or impairment of earning capacity due to the injury, destruction or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant. 33 U.S.C. § 2702(b)(2)(E).

The OSLTF, which is administered by the NPFC, 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. With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

Pursuant to the claims regulations, 33 C.F.R. § 136.233, a claimant must establish the following to prove loss of profits or impairment of earning capacity:

- (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.
- (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.

DETERMINATION OF LOSS

NPFC Determination

Under 33 CFR 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 CFR § 136.233, a claimant must establish loss of profits or impairment of earning capacity. The NPFC considered all the documentation submitted by the Claimant.

The claim is denied because the Claimant has failed to meet her burden of proof by providing supporting documentation for the claim and has also failed to establish a loss of profits or impairment of earnings.

Claim Supervisor: 

Date of Supervisor's review: *1/24/11*

Supervisor Action: *Denial approved*

Supervisor's Comments:

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

Fax: 202-493-6937

CERTIFIED MAIL - RETURN RECEIPT REQUESTED
Number: Claim

5890/DWHZ
N10036-0506
03 March 2011



RE: Claim Number: N10036-0506

Dear Ms. [REDACTED]:

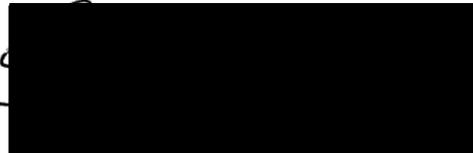
The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et. seq. (OPA 90) and the associated regulations, 33 C.F.R. Part 136, denies payment on your claim, # [REDACTED]. Please see the enclosed Claim Summary/Determination Form for further explanation.

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 N10036-0506.

Mail reconsideration requests to:

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



Claims Manager
U. S. Coast Guard

Enclosure: Claim Summary/Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Date	03 March 2011
Claim Number	N10036-0506
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Real or Personal Property and Subsistence Use
Claim Manager	[REDACTED]
Amount Requested	\$216,000.00

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 was 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 claims for certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On 21 January 2011, [REDACTED] (Claimant) presented an Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Fund Center (NPFC) seeking \$200,000.00 in real or personal property damages, as well as \$16,000.00 for loss of subsistence use of natural resources, which resulted from the Deepwater Horizon oil-spill. Her combined loss is \$216,000.00.

With respect to her alleged loss of \$200,000.00 in real or personal property damages, Claimant asserted that the value of her land has decreased since it was last appraised in 2007.

With respect to her alleged subsistence loss of \$16,000.00, Claimant asserts that she was unable to fish, shrimp or crab due to fear of contamination by oil, claiming damages for the lost fish, shrimp, and crab she would have caught and eaten.

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 waters or adjoining shorelines or the exclusive economic zone, as described in Section 2702(b) of OPA.

Real or Personal Property

Under 33 U.S.C. § 2702(b)(2)(B), real or personal property, a claimant may recover damages for injury to, or economic losses resulting from destruction of, real or personal property, which shall be recoverable by a claimant who owns or leases that property.

The Oil Spill Liability Trust Fund (OSLTF), which is administered by the NPFC, is available, pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136. With certain exceptions, a claim must first be presented to the responsible

party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

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.

Pursuant to the claims regulations at 33 C.F.R. § 136.213, a claim for injury to, or economic losses resulting from the destruction of, real or personal property may be presented only by a claimant either owning or leasing the property. Further, any claim for loss of profits or impairment of earning capacity due to injury to, destruction of, or loss of real or personal property must be included as subpart of the claim under § 136.213 and must include the proof required under § 136.233.

A claimant seeking compensation for damages to real or personal property must establish –

- (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.

In addition, for each claim for economic loss resulting from destruction of real or personal property, the claimant must establish-

- (1) That the property was not available for use and, if it had been, the value of that use;
- (2) Whether or not substitute property was available and, if used, the costs thereof; and
- (3) That the economic loss claimed was incurred as the result of the injury to or destruction of the property.

If a claimant is claiming loss of profits or impairment of earning capacity due to injury to, destruction of, or loss of real or personal property, the claimant, pursuant to 33 C.F.R. § 136.233, must also establish:

- (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 the 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.
- (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.

Loss of Subsistence Use

OPA provides that the Oil Spill Liability Trust Fund (OSLTF) is available to pay claims for 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)) and natural resource damages (33 U.S.C. § 2702(b)(2)(A)).

Loss of subsistence use of natural resources is recoverable by any claimant who uses the resources that have been injured, destroyed or lost. 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:

- (a) Be for lost subsistence use and submitted by an eligible claimant;
- (b) Identify and describe the actual subsistence use of each specific natural resource for which compensation is being claimed;
- (c) Describe how and to what extent the claimant's subsistence use was affected by injury to or loss of each specific natural resource;
- (d) Describe efforts to mitigate the subsistence use loss; and
- (e) Be based on the reasonable cost to replace the lost subsistence use of natural resources.

DETERMINATION OF LOSS

Claimant's Submission

To support her claim, Claimant submitted the following documentation: the Optional OSLTF Claim Form; a cover letter explaining her claimed loss; copies of her denial letters from GCCF; a copy of the US HUD Settlement Statement Form # [REDACTED] dated 10/31/2003; copies of both her 2007 and 2010 [REDACTED] Property Appraisals; a copy of her 2009-2010 saltwater fishing license, valid through June 30, 2010; a copy of her boat and trailer registration; and letters from two witnesses indicating that the claimant regularly fishes and eats what she catches.

Claimant filed an Emergency Advance Payment (EAP) claim being assigned Claim [REDACTED]. On 24 November 2010, the claim was denied by the GCCF due to lack of submission of proof for her claim. On 06 December 2011, the claim was denied for a second time for the same reason.¹

NPFC Determination

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. The NPFC considered all of the documentation submitted by the Claimant.

Real or Personal Property

The claim for real or personal property damages in the amount of \$200,000.00 is denied. Under 33 U.S.C. § 2702(b)(2)(B), real or personal property, a claimant may recover damages for injury to, or economic losses resulting from destruction of, real or personal property, which shall be recoverable by a claimant who owns or leases that property. In this case, Claimant has not alleged that her property has been physically damaged by the discharge of oil. Rather, she claims a diminution in the property's value, asserting that the property has decreased in value because of the oil spill. As the property itself was not damaged, it cannot be classified as a real or personal property damage under OPA regulations, since property devaluation does not equate to property damage. On the other hand, it is not a loss of profits and earning capacity claim, either, as Claimant has not experienced an economic loss. While the property may have been assessed

¹ See GCCF letters dated 11/24/2010 and 12/06/2010, respectively.

at a lesser value (though not a value below what she originally paid), Claimant has not actually sold the property nor has she shown that the devaluation of the property is a result of the oil spill and not some other factor. As such, any loss that she might experience in the future remains both prospective and speculative.

Loss of Subsistence Use

The NPFC finds that the claimant has not met her burden of proving a subsistence use 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). While it may be reasonable to conclude from information submitted with the claim that Ms. Campbell regularly fishes and eats what she catches, her claim:

- (1) Does not provide any documentation or basis to support the \$16,000 of claimed subsistence use loss. The claimant has not provided the period of claimed loss, the type and amount of catch and consumption typical of this period, or the actual costs incurred to replace the fish that she would have caught and eaten if the spill had not occurred; and
- (2) Indicates that her regular fishing areas include lakes and other inland waters, which, presumably, were not closed to fishing. Without further information from the claimant, this indicates that at least a portion of the claimed loss resulted from a decision not to fish, rather than the oil spill.

██████████ total claim of \$216,000.00 is consequently denied.

Claim Supervisor: ██████████

Date of Supervisor's Review:

Supervisor's Actions:

Supervisor's Comments:

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: [REDACTED]

E-mail: [REDACTED]

Fax: 202-493-6937
5890
1/25/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]



RE: Claim Number: N10036-0507

Dear Ms. [REDACTED]:

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number N10036-0507 involving Deepwater Horizon. Please see the attached Claim Summary / Determination Form for an explanation regarding this denial.

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 N10036-0507.

Mail reconsideration requests to:

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

Sincerely,



Claims Manager
U.S. Coast Guard

Encl: Claim Summary / Determination Form

09/14/11

FOIA2011-3380-0001999

CLAIM SUMMARY / DETERMINATION FORM

Date	: 1/25/2011
Claim Number	: N10036-0507
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$5,395.25

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 was discharged from an offshore facility associated with the Deepwater Horizon and located on the Mississippi Canyon, Block 252 (the Deepwater Horizon incident). This area was leased by BP Exploration and Production, Inc. (BP). The Coast Guard designated the offshore facility as the source of the discharge and BP as the responsible party (RP) for the discharge. BP accepted the designation, advertised its OPA claims process, and compensated claimants. On 23 August 2010, the Gulf Coast Claims Facility (GCCF) began accepting and adjudicating claims on behalf of BP.

CLAIM AND CLAIMANT

On 19 January 2011, Ms. [REDACTED] (Claimant) presented a lost profits & earnings claim in the amount of \$5,395.25 to the National Pollution Funds Center (NPFC) for reimbursement. Ms. [REDACTED] asserted that she was terminated from her position with [REDACTED] because of the Deepwater Horizon incident.

The Claimant worked at [REDACTED] previous to the Deepwater Horizon incident.¹ She asserted that she was terminated because her employer, [REDACTED] had to close down due to the Deepwater Horizon incident.

APPLICABLE LAW

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a). Damages include the loss of profits or impairment of earning capacity due to the injury, destruction or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant. 33 U.S.C. § 2702(b)(2)(E).

The OSLTF, which is administered by the NPFC, 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. With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

¹ Letter from employer dated October 12, 2010.

Pursuant to the claims regulations, 33 C.F.R. § 136.233, a claimant must establish the following to prove loss of profits or impairment of earning capacity:

- (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.
- (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.

DETERMINATION OF LOSS

Claimant's Submission

To support her claim, the Claimant submitted the NPFC OSLTF Claim Form dated January 5, 2011, a copy of a letter from her employer dated October 12, 2010, and a copy of her 2009 1099-MISC form from [REDACTED]. Claimant stated on her OSLTF Claim Form that she presented her claim to the Responsible Party on November 13, 2010 and no action has been taken.

NPFC Determination

Under 33 CFR 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 CFR § 136.233, a claimant must establish loss of profits or impairment of earning capacity. The NPFC considered all the documentation submitted by the Claimant.

The claim is denied because the alleged loss in the amount of \$5,395.25 is not due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat

of a discharge of oil. Claimant's alleged loss of profits is the result of her employer's business decision to terminate her employment. Additionally, the Claimant has failed to provide an explanation as to how she derived at her loss amount.

Claim Supervisor: 

Date of Supervisor's review: *1/25/11*

Supervisor Action: *Denial approved*

Supervisor's Comments:

U.S. Department of
Homeland Security

**United States
Coast Guard**

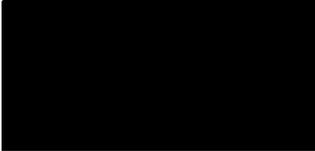


Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd, Suite 1000

Fax: 202-493-6937
5890
1/25/2011

VIA MAIL and EMAIL: [REDACTED]



RE: Claim Number: N10036-0508

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number N10036-0508 involving Deepwater Horizon. Please see the attached Claim Summary / Determination Form for the details regarding this denial.

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 N10036-0508.

Mail reconsideration requests to:

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

Sincerely,



Claims Manager
U.S. Coast Guard

Encl: Claim Summary / Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Date	: 1/25/2011
Claim Number	: N10036-0508
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$8,000.00

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 was discharged from an offshore facility associated with the Deepwater Horizon and located on the Mississippi Canyon, Block 252 (the Deepwater Horizon incident). This area was leased by BP Exploration and Production, Inc. (BP). The Coast Guard designated the offshore facility as the source of the discharge and BP as the responsible party (RP) for the discharge. BP accepted the designation, advertised its OPA claims process, and compensated claimants. On 23 August 2010, the Gulf Coast Claims Facility (GCCF) began accepting and adjudicating claims on behalf of BP.

CLAIM AND CLAIMANT

On 24 January 2011, [REDACTED] (Claimant), presented a lost profits & earnings claim in the amount of \$8,000.00 to the National Pollution Funds Center (NPFC) for reimbursement. Claimant asserted that she experienced lost income due to the oil-spill which led to stress and embarrassment. [REDACTED] is requesting \$8,000.00 for stress and embarrassment as a direct result of the Deepwater Horizon incident.¹

APPLICABLE LAW

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a). Damages include the loss of profits or impairment of earning capacity due to the injury, destruction or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant. 33 U.S.C. § 2702(b)(2)(E).

The OSLTF, which is administered by the NPFC, 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. With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

Pursuant to the claims regulations, 33 C.F.R. § 136.233, a claimant must establish the following to prove loss of profits or impairment of earning capacity:

¹ See Personal statement provided by Claimant dated December 31, 2010.

- (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.
- (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.

DETERMINATION OF LOSS

Claimant's Submission

To support her claim, Claimant submitted the Optional NPFC OSLTF Claim Form undated, a letter from her employer, [REDACTED] dated December 17, 2010 which provides her dates of employment and total income earned, a personal statement from [REDACTED] dated December 31, 2010, illegible copies of identification cards, illegible copy of the first page of her 2009 Form 1040 income tax, illegible copy of the first page of her 2008 Form 1040 income tax, and a copy of ten miscellaneous pay stubs from [REDACTED]

Claimant previously submitted an Emergency Advance payment claim with the GCCF with Claimant Identification number # [REDACTED] although it is unknown the amount she requested or whether the claim was denied.

NPFC Determination

The claim is denied because the evidence provided by Claimant, as described above, does not establish either that she has incurred a loss or that the alleged loss (if one had occurred) was due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil. Further, to the extent that the Claimant alleges personal injuries (stress and embarrassment) as a result of the Deepwater Horizon incident, such injuries or conditions are not compensable under OPA.

Claim Supervisor: 

Date of Supervisor's review: *1/25/11*

Supervisor Action: *Denial approved*

Supervisor's Comments:

U.S. Department of
Homeland Security

United States
Coast Guard



Director
National Pollution Funds Center
United States Coast Guard

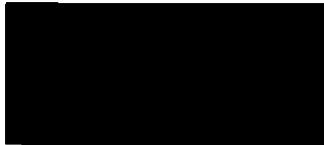
NPFC CA MS 7100
US COAST GUARD



Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: [REDACTED]

5890/DWHZ
Claim # N10036-0509
18 March 2011



Dear [REDACTED]

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 claim number N10036-0509 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination Form for further explanation.

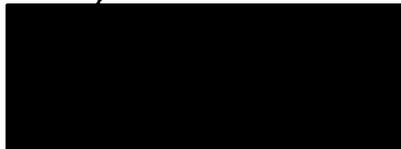
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-0509.

Mail reconsideration requests to:

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

Sincerely,



Claims Manager
U.S. Coast Guard

Enclosure: Claim Summary/Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Date	: 3/17/2011
Claim Number	: N10036-0509
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$20,000.00

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 was 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 claims for certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT:

On 18 January 2011, [REDACTED] presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form seeking \$20,000.00 in lost profits and earnings capacity, allegedly resulting from the Deepwater Horizon oil spill, to the National Pollution Funds Center (NPFC).

Claimant asserts that she “was employed as a certified [sic] CNA when the spill occurred. . . .”¹ She alleges that the Deepwater Horizon oil spill impacted her employer, and as a result of this impact, she was laid off.

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 waters or adjoining shorelines or the exclusive economic zone, as described in Section 2702(b) of OPA.

The OSLTF which is administered by the NPFC, is available, pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136, to pay claims for uncompensated damages. 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

¹ OSLTF claim form. Claimant does not define CNA. In light of receipts of income history she presents for sitting service, it appears the acronym stands for certified nursing assistant.

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.

- (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.

DETERMINATION OF LOSS:

Claimant's Submission to the OSLTF

To support her claim, Claimant submitted the following documentation to the NPFC:

- OSLTF claim form dated 18 January 2011;
- (6) Receipts of Income History dated 4 April 2010 to 9 May 10.
 - Gross Earnings: \$750 per receipt, a total of \$4,500
- 2009 1040A & 1040X.
 - Gross Earnings: \$12,606
- 2009 AL Income Tax Return.
 - Gross earnings: \$10,687.00

Claimant seeks \$20,000.00 in lost earnings allegedly resulting from the Deepwater Horizon oil spill.

On 18 October 2010, Claimant filed a six-month Emergency Advance Payment claim for \$15,000.00 in lost earnings with the GCCF. She was assigned GCCF Claimant ID [REDACTED] and Claim [REDACTED]. On 04 November 2010, her claim was denied by the GCCF.²

NPFC Determination

The claim is denied because the alleged loss in the amount of \$20,000.00 is not due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil.

² GCCF denial letter Re: Claimant's Emergency Advance Payment claim, dated 04 November 2010.

In connection with a review of this claim, the NPFC sent Claimant a letter requesting additional information in order to further evaluate her claim. The letter requested, among other things, financial documentation for an accurate accounting of Claimant's losses.³ This letter was sent by email and certified registered mail on 16 February 2011. To date no response has been received by the NPFC.

The NPFC accordingly proceeded to evaluate the claim with the sparse evidence Claimant had originally submitted. This evidence does not establish that Claimant lost \$20,000.00 in earnings as a result of the Deepwater Horizon oil spill.

In light of the foregoing, this claim is denied.

Claim Supervisor:	
Date of Supervisor's Review:	<u>3/18/11</u>
Supervisor Action:	Approved.
Supervisor's Comments:	Claim is denied.

³ The Letter specifically requested Claimant tax documentation, pay stubs and/or earnings statements, and copies of unemployment benefits.

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

[REDACTED]
Fax: 202-493-6937
5890
2/1/2011

VIA MAIL AND EMAIL: [REDACTED]

[REDACTED]

RE: Claim Number: N10036-0510

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number N10036-0510 involving Deepwater Horizon. Please see the attached Claim Summary / Determination Form for an explanation regarding this denial.

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 N10036-0510.

Mail reconsideration requests to:

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

Sincerely,

[REDACTED]

Claims Manager
U.S. Coast Guard

CLAIM SUMMARY / DETERMINATION FORM

Date	: 2/1/2011
Claim Number	: N10036-0510
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$8,275.00

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 was discharged from an offshore facility associated with the Deepwater Horizon and located on the Mississippi Canyon, Block 252 (the Deepwater Horizon incident). This area was leased by BP Exploration and Production, Inc. (BP). The Coast Guard designated the offshore facility as the source of the discharge and BP as the responsible party (RP) for the discharge. BP accepted the designation, advertised its OPA claims process, and compensated claimants. On 23 August 2010, the Gulf Coast Claims Facility (GCCF) began accepting and adjudicating claims on behalf of BP.

CLAIM AND CLAIMANT:

On 24 January 2011, [REDACTED] (Claimant) presented a lost profits & earnings claim in the amount of \$8,275.00 to the National Pollution Funds Center (NPFC) for reimbursement. [REDACTED] asserted that he ultimately left his employment with [REDACTED] to work in oil-spill response recovery because his hours were reduced with [REDACTED] and he was hoping to be employed for a lengthy amount of time in oil-spill recovery as originally promised when he was hired. [REDACTED] was hired from June 2010 to August 2010 and then was laid off from his oil-spill recovery position. [REDACTED] had already left his job at [REDACTED] when he was terminated from the oil-spill recovery work. [REDACTED] presently receives \$182.00 a week from unemployment benefits.

APPLICABLE LAW

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a). Damages include the loss of profits or impairment of earning capacity due to the injury, destruction or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant. 33 U.S.C. § 2702(b)(2)(E).

The OSLTF, which is administered by the NPFC, is available to pay claims for uncompensated damages pursuant to 33 USC §§ 2712(a)(4) and 2713 and the OSLTF claims adjudication regulations at 33 CFR Part 136. With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

Pursuant to the claims regulations, 33 CFR § 136.233, a claimant must establish the following to prove loss of profits or impairment of earning capacity:

- (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.
- (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 CFR 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 CFR 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.

DETERMINATION OF LOSS:

Claimant's Submission

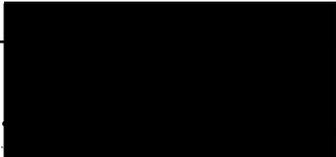
To support his claim, the Claimant submitted the NPFC OSLTF Claim Form dated January 15, 2011, a copy of his Monetary Benefit Determination for unemployment compensation, a letter dated January 15, 2011 explaining his situation, a copy of his Tax Return Transcript for tax period ending December 31, 2008 and 2009, a copy of a power of attorney to transfer his vehicle title to a loan company for a loan he received, a copy of a letter from Mississippi Gulf Coast Community College showing completion of a 160 hour Project Rebuild-Heating and Air Conditioning class dated February 20, 2008, a copy of a letter from [REDACTED] dated January 4, 2011 which states he was employed with them since March 9, 2008 as a Dairy Manager and it states he voluntarily left his employment with them on May 5, 2010 to pursue other employment, and a copy of pay stub from [REDACTED] for period ending April 11, 2010.

NPFC Determination

Under 33 CFR 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 CFR § 136.233, a claimant must establish loss of profits or

impairment of earning capacity. The NPFC considered all the documentation submitted by the Claimant.

The claim is denied because the alleged loss in the amount of \$8,275.00 is not due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil. Claimant's termination from oil-spill recovery employment and alleged financial loss is the result of business decision made by his employer, and not the result of the Deepwater Horizon incident. Such a loss as the one claimed in this case, is not a damage that may be compensated from the OSLTF.

Claim Supervisor: 

Date of Supervisor's review: *2/1/11*

Supervisor Action: *Denial approved*

Supervisor's Comments:

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

5890
3/9/2011

VIA ELECTRONIC MAIL AND FIRST CLASS MAIL

[REDACTED]

[REDACTED]

RE: Claim Number: N10036-0511

Dear [REDACTED]

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 claim number N10036-0511 involving the Deepwater Horizon oil spill. Please see the enclosed 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 N10036-0511.

Mail reconsideration requests to:

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

[REDACTED]

Claims Manager
U.S. Coast Guard

Encl: Claim Summary / Determination Form
(1) Calculation of Potential Lost Earnings

09/14/11

FOIA2011-3380-00002015

CLAIM SUMMARY / DETERMINATION FORM

Date	: March 9, 2011
Claim Number	: N10036-0511
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$18,000.00

FACTS:

On or about April 20, 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 was 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 August 23, 2010, the Gulf Coast Claims Facility (GCCF) began accepting and adjudicating claims for certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On January 25, 2011, [REDACTED] (Claimant) presented a lost profits & earnings claim in the amount of \$18,000.00 to the National Pollution Funds Center (NPFC) for reimbursement. The Claimant asserted that he lost wages from his job as a commercial diver as a result of the Deepwater Horizon incident.

The Claimant has been working as a commercial diver since 2006. At the time of the Deepwater Horizon incident, the Claimant was working for [REDACTED] performing dives for various underwater construction and inspection projects. The Claimant noted that he worked with [REDACTED] from October 2008 through April 2010. The Claimant asserted that work slowed down significantly because of the Deepwater Horizon incident and that he left to pursue work with another company. After April 2010, the Claimant worked with at least three different dive companies.

The Claimant stated that he filed a claim with the GCCF and was compensated \$16,000.00. The Claimant provided no correspondence between himself and the GCCF.

APPLICABLE LAW:

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a). Damages include the loss of profits or impairment of earning capacity due to the injury, destruction or loss of real property, personal property, or natural resources, which shall be recoverable by any Claimant. 33 U.S.C. § 2702(b)(2)(E).

The OSLTF, which is administered by the NPFC, 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. With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person

by payment within 90 days after the date on which it was presented, the Claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(e).

Pursuant to the claims regulations, 33 C.F.R. § 136.233, a Claimant must establish the following to prove loss of profits or impairment of earning capacity:

- (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.
- (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.

DETERMINATION OF LOSS

Claimant's Submission

To support the claim, the Claimant submitted the following documentation:

1. Optional OSLTF Claim Form;
2. Form 1099-G from the Texas Workforce Commission for the year 2010;
3. IRS e-file Signature Authorization form for the year 2009;
4. Earnings statements from [REDACTED] dated August 30, 2009, November 29, 2009, and September 28, 2010 and January 17, 2010 (including year to date earnings);
5. Earnings statement from [REDACTED] dated December 6, 2009 (including year to date earnings);
6. Earnings statement from [REDACTED] dated August 27, 2010 and November 5, 2010 (including year to date earnings);

7. Earnings statement from [REDACTED] for the pay period of July 12 through July 25, 2010 (including year to date earnings);
8. Copy of his current resume;
9. Diving depth pay chart;
10. Diver certificate;
11. Bank statements.

NPFC Determination

Under 33 CFR 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 CFR § 136.233, a Claimant must establish loss of profits or impairment of earning capacity. The NPFC considered all the documentation submitted by the Claimant.

Based on the documentation provided by the Claimant, the NPFC understands that the Claimant has been working as a commercial diver since 2006. Although the Claimant noted that he worked with [REDACTED] until April 2010, the Claimant only provided an earnings statement dated January 17, 2010 totaling \$476. Additionally, the Claimant provided an earnings statement for \$0 dated September 28, 2010 with year-to-date earnings totaling \$850. Based on this information, it is unclear if the Claimant provided complete earnings statements from [REDACTED] and the actual last date of service is unknown. Furthermore, the Claimant did not provide any documentation to confirm the reason(s) for his separation from [REDACTED]. Earnings from [REDACTED] in 2009 (through December 13, 2009 totaled \$45,927). Based on this information, his average weekly earnings based on 50 weeks of pay during 2009 total \$919 a week. As shown in the attached exhibit, projected earnings for the 27.70 week period of April 20, 2010 through October 31, 2010 totals \$25,444.00 which is \$919 a week average weekly earnings.

After April 2010, the Claimant worked for at least three different dive companies. Between April 2010 and October 31, 2010, it appears the Claimant earned at least \$19,610 from the three employers based on the information provided. The Claimant noted that he worked for [REDACTED] from April through May 2010; however, no earnings statements were provided. Accordingly, actual earnings after April 2010 may be understated which would subsequently overstate any potential loss. The Claimant also noted that he worked at [REDACTED] through at least December 2010; however, the last earnings statement provided was through October 31, 2010 therefore that information has not been considered.

In addition to the earnings described above, the Claimant provided a 2010 1099G from the Texas Workforce Commission, which shows unemployment compensation totaling \$9,051. The Claimant noted that he received unemployment compensation from May through October 2010. Also, the Claimant informed the NPFC by telephone and in a handwritten note that he received an emergency payment of \$16,000 from the responsible party (RP).

Based on all available information, it does not appear that the Claimant's lost earnings would exceed payments already received through unemployment compensation and the emergency payment made by the RP. Our computation is detailed in Exhibit 1. Projected earnings are computed for the period of April 20 through October 31, 2010. No information was made available after October 31, 2010. It should be noted that the combined total of the Claimant's 2010 earnings (based on available documentation), unemployment compensation, and the apparent emergency payment are consistent with the Claimant's total 2009 earnings before any

consideration of possible earnings received before April 2010 or after October 2010 which negates an existing loss of profits and earnings:

The claim is denied because the evidence provided by the Claimant, as described above, does not demonstrate that the loss claimed exceeds the amount compensated by the RP. Therefore, the NPFC has determined that the Claimant has failed to demonstrate a loss larger than the compensation already received.

Claim Supervisor: 

Date of Supervisor's review: *3/9/11*

Supervisor Action: *Denial approved*

Supervisor's Comments:

CALCULATION OF POTENTIAL LOST EARNINGS

Exhibit 1

Description	Period Employed (A)	Check Date (B)	Amount
2009 Earnings From Chet Morrison Diving (C) (D) (E)	October 2008 through April 2010	12/13/09	\$ 45,927.40
Average Weekly Earnings (50 weeks)			918.55
Project Earnings - 27.70 Weeks (April 20, 2010 through October 31, 2010)			\$ 25,443.84
<u>Less Actual Earnings (D)</u>			
Blackwater	August through December (F)	10/31/10	17,959.50
Seamar		07/25/10	1,650.00
DivCon	April through May 2010 (G)		-
Total Actual Earnings			19,609.50
Potential Earnings Shortfall			\$ 5,834.34
<u>Less Other Income Received</u>			
Emergency Payment (H)			\$ 16,000.00
Texas Workforce Commission Form 1099G	May through October 2010		9,051.00
Total			25,051.00
Potential Loss			\$ -

Notes:

- (A) Based on the claimant's answers to questions asked in prior request letter.
- (B) Date of last available earnings statement.
- (C) Adjusted gross income from the claimant's 2009 federal tax return totaled \$42,887 (IRS e-file authorization).
- (D) Actual earnings are based on year-to-date information from the available earnings statements.
- (E) The claimant noted that he worked at Chet Morrison Diving through April 2010; however, the claimant only provided an earnings statement for January 17, 2010 totaling \$476. Additionally, the claimant provided an earnings statement for \$0 dated 9/28/10 with year-to-date earnings totaling \$850. Accordingly, it is unclear if the claimant provided complete earnings statements and the last date of service. Furthermore, the claimant did not provide any documentation to confirm the reason for his separation.
- (F) Although the claimant noted that he worked with Blackwater through at least December 2010, the last earnings statement provided by the claim is dated October 31, 2010.
- (G) The claimant noted that he worked for DivCon from April through May 2010; however, no earnings statements were provided. Accordingly, actual earnings from April 20 through October 31, 2010 may be understated.
- (H) Based on a handwritten note in the claimant's original submission.

U.S. Department
of Homeland Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center
Natural Resource Damage (NRD)
Claims Division

U.S. Coast Guard Stop 7100

16480

15 February 2011

CERTIFIED MAIL Number: [REDACTED]

RE: Claim Number: N10036- 0512

Dear [REDACTED]

The National Pollution Funds Center (NPFC) has reviewed your claim for lost subsistence use of natural resources resulting from the Deepwater Horizon oil spill. We have determined that you have not met your burden of proving a subsistence use 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 20 April 2010, the Mobile Offshore Drilling Unit Deepwater Horizon (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 and advertised its OPA claims process. On 23 August 2010, the Gulf Coast Claims Facility (GCCF) began accepting and adjudicating individual and business claims on behalf of BP.

Facts

You submitted a \$2,400 request to the GCCF for a six month Emergency Advanced Payment to replace lost fish, the cost of gas for your travel to purchase fish, and the purchase of mineral supplements following the Deepwater Horizon incident, which was denied on 29 November 2010. On 24 January 2011, you presented your claim to the NPFC, seeking \$4,200 as subsistence use damages.

Applicable Law

OPA provides that the Oil Spill Liability Trust Fund (OSLTF) is available to pay claims for 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)). 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, including those for lost subsistence use of natural resources, 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 after 90 days before submission to the NPFC for payment (except as noted in 33 C.F.R. §136.103(a)). Your claim meets the general claim requirements.

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; and
- 5) be based on the reasonable cost to replace the lost subsistence use of natural resources.

Claim Submission and Documentation

The claim you submitted to the NPFC on 24 January 2011, included the following supporting documents: an Optional OSLTF Claim Form seeking \$4,200 for lost subsistence use of natural resources, your letter to the GCCF seeking \$2,400 for lost fish, gas/travel expenses, and purchase of minerals, and a denial letter from the GCCF.

NPFC Determination

The NPFC finds that you have not met your burden of proving a subsistence use 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). Specifically, you have not:

- (1) demonstrated that you are a subsistence user. You have not provided supporting information that attests to your subsistence use, such as statements/affidavits that address the frequency and amount of subsistence catch that you and/or your family relied upon to meet the minimum necessities of life. Also, you have not provided evidence indicating that you are not required to have a license in the state of Louisiana, which would demonstrate that you are legally entitled to catch fish in the state.
- (2) demonstrated a loss of subsistence use. Your address indicates that you live in St. Joseph, Louisiana, over 200 miles from the nearest waters affected by the oil spill. Thus, without further information from you about how the oil spill affected your ability catch and eat fish, it appears that your claimed loss, to the extent that it occurred, resulted from a decision not to fish, rather than the oil spill.
- (3) documented the dollar amount of subsistence use claimed. Your claim to the GCCF was for \$2,400 for losses incurred during a six month period, while your claim to the NPFC totals \$4,200 for subsistence use damages. Your claim to the NPFC does not provide any information on how this claimed amount was determined, and, without further information, we cannot reconcile these claimed amounts.

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 (N10036-0512) 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 me at the above address or by phone at 202-493-6856.



U.S. Coast Guard

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
National Pollution Funds Center
United States Coast Guard

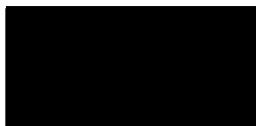
NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim # N10036-0513
4 April 2011



Re: Claim Number: N10036-0513

Dear [REDACTED]

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 claim number N10036-0513 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination Form for further explanation.

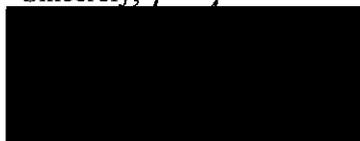
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-0513.

Mail reconsideration requests to:

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

Sincerely, [REDACTED]



Claims Manager
U.S. Coast Guard

Enclosure: Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00002024

CLAIM SUMMARY / DETERMINATION FORM

Date	: 3/31/2011
Claim Number	: N10036-0513
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$14,000.00

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 was 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 claims for certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT:

On 24 January 2011, [REDACTED] (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Funds Center (NPFC). The OSLTF claim form alleged \$14,000.00 in lost profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

Claimant asserted that she worked at [REDACTED] restaurant in Kenner, Louisiana, where she earned \$10.00 an hour plus tips.¹ Claimant characterized [REDACTED] as “primarily a seafood restaurant. . . .”² Claimant’s documentation indicated that the restaurant closed on 07 July 2010 “as a result of the April 2010 Gulf Oil Spill and its effect on the local restaurant industry . . .” and Claimant lost her job.³

Claimant stated that she found alternative employment at the New Orleans Airport Hilton Hotel at \$5.50 an hour plus tips, which she indicated were far smaller than the tips she earned at Le Parvenu.⁴

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

The OSLTF which is administered by the NPFC, is available, pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136, to pay claims for uncompensated damages. 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.

¹ Untitled letter from Claimant to the NPFC. [REDACTED] Restaurant’s letterhead includes the slogan “Innovative [REDACTED]”

² Untitled letter from Claimant to the NPFC.

³ Letter from [REDACTED] Restaurant Chef/Owner, dated January 2011.

⁴ OSLTF claim form; Untitled letter from Claimant to the NPFC.

- (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.
- (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.

DETERMINATION OF LOSS:

Claimant's Submission to the OSLTF

To support her claim, Claimant submitted the following documentation to the NPFC:

- OSLTF claim form, dated 21 January 2011;
- Pay Statements from Hilton;
 - o 7/25/2010 to 8/7/2010.
 - o 8/8/2010 to 8/21/2010.
 - o 8/22/2010 to 9/4/2010.
 - o 9/5/2010 to 9/18/2010.
- Pay Statement from [REDACTED];
 - o 1/12/2010 to 1/25/2010.
 - o 4/26/2010 to 5/9/2010.
 - o 5/24/2010 to 6/6/2010.
 - o 5/24/2010 to 6/6/2010
- Letter from [REDACTED] dated 09 July 2010;
- Letter from [REDACTED] dated January 2011;
- 2009 W-2 Wage and Tax Statement from [REDACTED]

On 01 March 2011, the NPFC sent the Claimant a letter requesting additional information to further evaluate her claim. On 31 March 2011, the Claimant responded to the request and provided the following documentation to the NPFC:

- GCCF denial letter Re: Claimant's Emergency Advance Payment claim, dated 06 December 2010;
- Copy of Claimant's U. S. Social Security card and LA Driver's License; and
- Claimant 2009 & 2008 1040.⁵

⁵ Claimant's response included many documents that she had originally submitted with her claim. Those documents are not listed in the response list.

Claimant seeks \$14,000.00 in lost earnings allegedly resulting from the Deepwater Horizon oil spill due to being laid off by her employer.

On 13 October 2010, Claimant presented a six-month Emergency Advance Payment (EAP) claim to GCCF in the amount of \$10,000. She was issued Claimant ID [REDACTED] and Claim [REDACTED]. On 06 December 2010, the GCCF denied Claimant's EAP claim.

NPFC Determination

Under 33 CFR 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 CFR § 136.233, a claimant must establish loss of profits or impairment of earning capacity. The NPFC considered all the documentation submitted by the Claimant.

The claim is denied because the evidence provided by the Claimant does not demonstrate her alleged loss of \$14,000.00, as claimed, or the correlation, if any, between this alleged loss and the Deepwater Horizon oil spill.

After the initial review of the claim submission, the NPFC sent the claimant a letter requesting additional information in order to further evaluate the claim. The letter specifically requested detailed calculations for the Claimant's loss, including any assumptions made in the process of calculating the loss. The Claimant responded by summarily stating that she estimated the difference in her earnings in 2009 versus 2010 to be \$14,000.00. Without providing the requested calculations, the Claimant has failed to demonstrate her alleged damages.

Additionally, there is no empirical evidence in the Claimant's submission supporting the allegation that [REDACTED] closed as a result of the Deepwater Horizon oil spill. Claimant submitted a letter from the owner/chef of the restaurant, which stated that the restaurant closed "as a result of the April 2010 Gulf Oil Spill and its effect on the local restaurant industry. . . ." ⁷ The Claimant alleged that the restaurant could not receive seafood at the time of the spill and therefore closed. ⁸ These statements, tying the closure of the restaurant to the oil spill, are not supported by any corroborating evidence in the Claimant's submission therefore the claim is denied because (1) the Claimant has failed to meet her burden to demonstrate a loss of profits in the amount requested and (2) the Claimant has failed to demonstrate that any alleged loss was a result of the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil.

Claim Supervisor [REDACTED]

Date of Supervisor's Review: 4/2/11

Supervisor Action: *Denial approved*

Supervisor's Comments:

⁶ GCCF Claimant status report.

⁷ Letter from [REDACTED], dated January 2011.

⁸ OSU claim form.

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

Fax: 202-493-6937
5890
2/2/2011

VIA MAIL AND EMAIL: [REDACTED]



RE: Claim Number: N10036-0514

Dear [REDACTED]

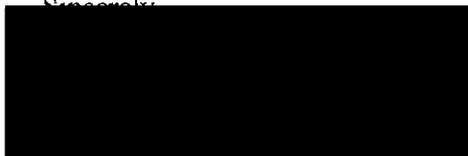
The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number N10036-0514 involving Deepwater Horizon. Please see the attached Claim Summary / Determination Form for an explanation regarding this denial.

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 N10036-0514.

Mail reconsideration requests to:

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

Sincerely,



Claims Manager
U.S. Coast Guard

Encl: Claim Summary / Determination Form

09/14/11

FOIA2011-3380-00002028

CLAIM SUMMARY / DETERMINATION FORM

Date	: 2/1/2011
Claim Number	: N10036-0514
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$10,000.00

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 was discharged from an offshore facility associated with the Deepwater Horizon and located on the Mississippi Canyon, Block 252 (the Deepwater Horizon incident). This area was leased by BP Exploration and Production, Inc. (BP). The Coast Guard designated the offshore facility as the source of the discharge and BP as the responsible party (RP) for the discharge. BP accepted the designation, advertised its OPA claims process, and compensated claimants. On 23 August 2010, the Gulf Coast Claims Facility (GCCF) began accepting and adjudicating claims on behalf of BP.

CLAIM AND CLAIMANT

On 25 January 2011, [REDACTED] (Claimant) presented a lost profits & earnings claim in the amount of \$10,000.00 to the National Pollution Funds Center (NPFC) for reimbursement. [REDACTED] asserted that due to the oil spill his hours at [REDACTED] were decreased and he was ultimately laid off on or about June 18, 2010. The Claimant indicated on his OSLTF claim form that he presented a claim to the RP and was denied although no further information was provided.

APPLICABLE LAW

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a). Damages include the loss of profits or impairment of earning capacity due to the injury, destruction or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant. 33 U.S.C. § 2702(b)(2)(E).

The OSLTF, which is administered by the NPFC, 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. With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

Pursuant to the claims regulations, 33 C.F.R. § 136.233, a claimant must establish the following to prove loss of profits or impairment of earning capacity:

(a) That real or personal property or natural resources have been injured, destroyed, or lost. FOIA 2011-3380-0003029

- (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.
- (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.

DETERMINATION OF LOSS:

Claimant's Submission

To support his claim, the Claimant presented the Optional NPFC OSLTF Claim Form dated January 22, 2011 and three pay stubs from [REDACTED] for the period of May 11, 2010 through June 22, 2010.

NPFC Determination

Under 33 CFR 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 CFR § 136.233, a claimant must establish loss of profits or impairment of earning capacity. The NPFC considered all the documentation submitted by the Claimant.

The claim is denied because the alleged loss in the amount of \$10,000 is not due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil. Claimant's alleged loss of profits is the result of his employer terminating his employment. Additionally, the Claimant has not met his burden in demonstrating he has a loss of profits and earnings.

Claim Supervisor



Date of Supervisor's review: *2/2/11*

Supervisor Action: *Denial approved*

Supervisor's Comments:

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

Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ

Claim # N10036-0515

22 March 2011

Re: Claim Number: N10036-0515

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with 33 C.F.R. Part 136, denies payment on the claim number N10036-0515 involving Deepwater Horizon. Please see the enclosed 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 Claimant, be deemed final agency action. All correspondence should include claim number N10036-0515.

Mail reconsideration requests to:

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

Sincerely,

[REDACTED]

U.S. Coast Guard
Claims Manager

Enclosure(s): (1) Claim Summary/Determination Form
(2) Schedules 1-3

09/14/11

FOIA2011-3380-00002032

CLAIM SUMMARY / DETERMINATION FORM

Date	: 3/19/2011
Claim Number	: N10036-0515
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$17,692.96

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 was 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 claims for certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On 25 November 2010, [REDACTED] Esq., on behalf of [REDACTED] (Claimant) presented a lost profits and earnings claim to the responsible party, BP/GCCF. That claim was denied. The Claimant subsequently presented a claim to the National Pollution Funds Center (NPFC) for \$17,692.96 on 01 January 2011. Claimant is asserting that the business lost profits as a result of the Deepwater Horizon Oil spill.

Claimant is a full service realty company located in Punta Gorda, Florida. A portion of the company's income is derived from Property Management Income. The Claimant has indicated that the sum certain is based solely on that source of income.

This claim is based on lost gross revenue (income) with no deduction for any saved variable expenses. Although the Claimant has indicated that direct cost Rental Commissions are incurred in connection with Property Management Income, no amount was deducted in arriving at the sum certain.

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

The OSLTF, which is administered by the NPFC, is available, pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136, to pay claims for uncompensated damages. 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 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 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.
- (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.

DETERMINATION OF LOSS

Claimant's Submission

To support the claim, Claimant submitted:

1. NPFC Optional (OSLTF) Claim Form, dated 19 December 2010
2. GCCF claim denial letter, dated 07 December 2010
3. Affidavit of [REDACTED] Claim Exhibit "I", dated 22 November 2010
4. Affidavit of [REDACTED] dated 11 January 2011.
5. Claim Exhibit "J", correspondence from [REDACTED] 23 November 2010
6. Amended Affidavit of [REDACTED], 23 November 2010
7. Claim Exhibit "A", Florida Department of State, Division of Corporations, limited liability corporation filing information, date filed, 01 November 2005.
8. Claim Exhibit "B", state map of Florida by county.
9. Claim Exhibit "C", Tourist Tax revenue for Charlotte County, April 2006 to August 2010
10. Claim Exhibit "D", Y Partnership Gulf Oil Spill Research Report, 18 June 2010
11. Claim Exhibit "E", Visit Florida blog, article by [REDACTED] "Impact of Deepwater Horizon Oil Spill...", dated 26 August 2010
12. Claim Exhibit "F", Bloomberg, article by [REDACTED] "BP Oil Leak Avoids Florida...", dated 29 July 2010.
13. Claim Exhibit "G", loss statement / calculation of loss.
14. U.S. Return of Partnership Income, Form 1065, 2007, 2008 and 2009.
15. Monthly Profit & Loss Statements, January 2007 to October 2010.

NPFC Determination

This claim is denied. Under 33 U.S.C. § 2702(b)(2)(E) and 33 C.F.R. Part 136, a claimant must prove that the loss of income was due to the injury or destruction or loss of real or personal property or 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 to the NPFC all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim. The NPFC considered all of the documentation presented by Claimant.

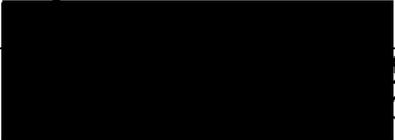
Analysis in support of our determination is shown on the attached schedules (Schedules 1 through 3). As shown on Schedule 2, we have used a sales trend factor of 90% to project income during the months of May through November 2010. This trend was established based on the actual trends experienced by the business during the six to nine months immediately preceding the oil spill. That trend analysis is shown on Schedule 2A.

As shown on Schedules 1 and 2, projected revenue (from Property Management Income) is \$84,004.00 for the seven claimed months ending November 2011. As shown, actual income during that period was greater than the projected amount by \$1,795.00. As such, we have not calculated any amount of lost Property Management Income during the period claimed.

As shown on Schedule 1, had any amount of lost revenue (Property Management Income) been determined, saved variable expenses for Rental Commissions and Franchise Costs would have been deducted at 71.2% and 2.9%, respectively. The Claimant did not deduct any amount for these direct costs in their claim.

Direct causal connection of the claimed loss amount to the Deepwater Horizon oil spill has not been established. Had any amount of lost net profit been determined, this connection would have been required in order to satisfy the rules and regulations governing compensable claims.

Based on the above analyses, no amount of calculable loss or causation has been established as being due to the injury, destruction or loss of property or natural resources, as a result of a discharge or substantial threat of a discharge of oil. Therefore, this claim is denied.

Claim Supervisor: 

Date of Supervisor's Review: 3/22/11

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

CALCULATION OF LOST NET PROFIT

Schedule 1

Description	As Claimed	RGL Calculation	
		Schedule Reference	Amount
Property Management Income:			
Projected	\$ 94,852	2	\$ 84,004
Actual	(77,159)	2	(85,799)
Lost Property Management Income, May-Nov-10	17,693		(1,795)
Non-Continuing (Saved) Expenses:			
Rental Commissions at 71.2%	-	3	(1,278)
Franchise Costs at 2.88%	-	3	(52)
Total Non-Continuing Expenses	-		(1,330)
Lost Net Profit	17,693		-
Less Actual Payments made by GCCF	-		-
Lost Net Profit, net of Payments	\$ 17,693		\$ -

CALCULATION OF LOST NET PROFIT

Schedule 2

Description	Property Management Income (A)				
	Actual 2009	Trend Factor (B)	Projected 2010	Actual 2010	Difference
Property Management Income:					
May	\$ 12,373	90.0%	\$ 11,136	\$ 12,646	\$ (1,510)
June	13,979	90.0%	12,581	9,547	3,034
July	20,093	90.0%	18,084	12,002	6,082
August	11,485	90.0%	10,336	10,899	(562)
September	15,091	90.0%	13,582	11,932	1,650
October	8,440	90.0%	7,596	12,735	(5,138)
November	11,876	90.0%	10,688	16,039	(5,351)
Total	\$ 93,338		\$ 84,004	\$ 85,799	\$ (1,795)
			<i>To Schedule 1</i>		

NOTES:

- (A) The claim is based on the alleged loss of property management income only. Other income categories have not been claimed.
- (B) Based on our review of the trends shown on Schedule 2A, we note that the average trend during the 6 to 9 months prior to the claimed period was approximately 90%.

ANALYSIS OF MONTHLY INCOME FROM PROPERTY MANAGEMENT
 Source: Monthly Income Statements provided by the Claimant.

Schedule 2A

Month	Monthly Income		Year-over-Year Change	Trend	Aggregate Sales - Pre-Loss		Change	Trend	Months Pre-Loss	Monthly Moving Average	
	2008/09	2009/10			2008/09	2009/10				2008/09	2009/10
April	\$ 15,368	\$ 14,101	-8.25%	91.8%	\$ 176,389	\$ 178,512	1.20%	101.2%	12	\$ 14,699	\$ 14,876
May	7,918	12,373	56.26%	156.3%	161,020	164,411	2.11%	102.1%	11	14,638	14,946
June	10,558	13,979	32.41%	132.4%	153,102	152,038	-0.70%	99.3%	10	15,310	15,204
July	9,443	20,093	112.78%	212.8%	142,544	138,059	-3.15%	96.9%	9	15,838	15,340
August	8,794	11,485	30.60%	130.6%	133,101	117,965	-11.37%	88.6%	8	16,638	14,746
September	25,158	15,091	-40.01%	60.0%	124,307	106,481	-14.34%	85.7%	7	17,758	15,212
October	13,207	8,440	-36.09%	63.9%	99,149	91,390	-7.83%	92.2%	6	16,525	15,232
November	15,068	11,876	-21.18%	78.8%	85,943	82,949	-3.48%	96.5%	5	17,189	16,590
December	11,812	12,653	7.12%	107.1%	70,875	71,073	0.28%	100.3%	4	17,719	17,768
January	16,526	17,939	8.55%	108.6%	59,063	58,420	-1.09%	98.9%	3	19,688	19,473
February	23,480	22,379	-4.69%	95.3%	42,537	40,481	-4.83%	95.2%	2	21,269	20,241
March	19,058	18,102	-5.02%	95.0%	19,058	18,102	-5.02%	95.0%	1	19,058	18,102
Total	\$ 176,389	\$ 178,512	1.20%	101.2%							
Monthly Average	\$ 14,699	\$ 14,876									
Monthly Seasonality Correlation R ² = 0.47											

SUMMARY OF MONTHLY PROFIT AND LOSS STATEMENTS, 2009
 Source: Monthly Income Statements provided by the Claimant.

Schedule 3

Description	Jan-09	Feb-09	Mar-09	Apr-09	May-09	Jun-09	Jul-09	Aug-09	Sep-09	Oct-09	Nov-09	Dec-09	Total	% of Sales
Income:														
Commission	\$ 58,580	\$ 72,917	\$ 93,483	\$ 62,047	\$ 113,953	\$ 81,541	\$ 90,754	\$ 88,748	\$ 71,054	\$ 116,507	\$ 122,554	\$ 195,234	\$ 1,167,371	72.17%
Property Management Income	16,526	23,480	19,058	14,101	12,373	13,979	20,093	11,485	15,091	8,440	11,876	12,653	179,155	11.08%
Other Income	17,240	18,039	17,564	13,977	21,052	18,722	20,660	22,762	19,833	24,237	27,774	49,050	270,911	16.75%
Total Income	92,345	114,436	130,105	90,125	147,378	114,243	131,507	122,994	105,978	149,185	182,205	256,936	1,617,437	100.00%
Direct Costs:														
Agent Commission	51,830	71,643	93,483	62,047	112,696	80,933	89,385	88,568	69,516	106,547	119,893	189,372	1,135,903	97.30%
Rental Commissions Paid	13,954	15,178	13,665	9,749	9,200	9,417	13,533	8,279	9,288	7,159	9,230	8,942	127,596	71.22%
Outside Brokers	6,750	1,274	-	-	1,255	608	1,369	180	1,558	9,980	2,656	5,861	31,452	2.69%
Total Direct Costs	72,534	88,095	107,148	71,796	123,153	90,958	104,287	97,027	80,342	123,667	131,769	204,176	1,294,951	80.06%
Gross Profit	19,811	26,341	22,957	18,329	24,225	23,285	27,220	25,967	25,636	25,518	30,435	52,760	322,486	19.94%
Operating Expenses:														
Equipment Rental	916	1,108	1,351	847	704	396	42	89	376	382	377	378	6,965	0.43%
Rent & Occupancy	7,989	5,372	6,930	6,682	7,171	6,846	6,822	7,479	7,484	1,058	6,866	6,989	77,688	4.80%
Licenses & Insurance	121	106	640	69	397	36	117	122	1,078	206	1,614	(343)	4,163	0.26%
Selling Expenses	1,923	80	-	240	300	-	120	190	297	120	898	150	4,318	0.27%
Advertising	1,548	1,089	733	864	298	192	589	1,164	1,495	658	1,108	126	9,863	0.61%
Franchise Costs	3,200	3,302	3,764	3,873	3,008	3,890	3,481	3,059	3,588	3,747	4,604	7,028	46,553	2.88%
Payroll Expenses	7,514	5,121	5,385	5,049	4,856	2,103	7,597	4,667	4,860	3,747	4,707	5,858	62,542	3.87%
Bank Charges	147	302	292	209	208	209	401	162	215	48	55	-	2,189	0.14%
Communications	808	1,360	1,633	-	1,383	1,295	1,378	1,310	1,136	1,928	669	1,391	14,290	0.88%
Office Expense & Supplies	2,958	1,894	2,190	40,860	1,724	1,469	1,550	2,138	3,152	1,883	3,141	4,478	67,437	4.17%
Professional Fees	3,264	4,752	5,609	3,434	3,179	4,381	3,587	4,525	3,891	(1,038)	10,997	3,600	50,180	3.10%
Depreciation	-	-	-	-	-	-	-	-	-	-	-	14,239	14,239	0.88%
Total Operating Expenses	30,389	24,485	28,467	62,127	23,229	20,815	25,685	24,905	27,563	13,816	35,033	43,893	360,426	22.28%
Net Operating Income	\$ (10,578)	\$ 1,856	\$ (5,510)	\$ (43,798)	\$ 996	\$ 2,470	\$ 1,535	\$ 1,062	\$ (1,947)	\$ 11,702	\$ (4,598)	\$ 8,868	\$ (37,940)	-2.35%

U.S. Department of
Homeland Security

United States
Coast Guard



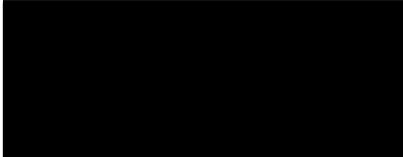
Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937
5890
3/08/2011

CERTIFIED MAIL — RETURN RECEIPT REQUESTED

Number: [REDACTED]



RE: Claim Number: N10036-0516

Dear [REDACTED]

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 claim number N10036-0516 involving the Deepwater Horizon oil-spill. Please see the enclosed 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 Claimant, be deemed final agency action. All correspondence should include claim number N10036-0516.

Mail reconsideration requests to:

Director (ca)
NPFC CA MS 7100
US COAST GUARD



Claims Manager
U.S. Coast Guard

Encl: Claim Summary / Determination Form

09/14/11

FOIA2011-3380-00002040

CLAIM SUMMARY / DETERMINATION FORM

Date	: 3/08/2011
Claim Number	: N10036-0516
Claimant	: [REDACTED]
Type of Claimant	: Corporate
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$30,000.00

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 was 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 claims for certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On 24 January 2011, [REDACTED] (Claimant) presented a lost profits & earnings claim in the amount of \$30,000.00 to the National Pollution Funds Center (NPFC) for reimbursement. Claimant asserted that he incurred lost wages because many students canceled or dropped enrollment at his school, [REDACTED] as a direct result of the Deepwater Horizon incident.

APPLICABLE LAW:

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a). Damages include the loss of profits or impairment of earning capacity due to the injury, destruction or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant. 33 U.S.C. § 2702(b)(2)(E).

The OSLTF, which is administered by the NPFC, 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. With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

Pursuant to the claims regulations, 33 C.F.R. § 136.233, a claimant must establish the following to prove loss of profits or impairment of earning capacity:

- (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.

- (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.

DETERMINATION OF LOSS

Claimant's Submission

To support his claim, Claimant submitted the following documentation:

1. NPFC OSLTF Claim form, dated 24 January 2011;
2. Newspaper article and pictures of Pensacola, FL (8 pages);
3. Correspondence from [REDACTED] claim description, no date;
4. Correspondence from [REDACTED] hardship letter, no date;
5. 2009-2010 School attendance records;
6. US Individual Income Tax return, Form 1020, Schedule C, Profit and Loss from Business, page 1;
7. Invoices for advertizing claim;
8. Receipts for rental expenses;
9. GCCF Denial Letter, dated 07 December 2010.

NPFC Determination

Under 33 CFR 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 CFR § 136.233, a claimant must establish loss of profits or impairment of earning capacity. The NPFC considered all the documentation submitted by Claimant.

Based on the documentation provided by Claimant, he indicated that his earnings were reduced as a result of the Deepwater Horizon incident. On 09 February 2011, the NPFC sent via certified mail a request for additional information to the Claimant in order to obtain the necessary

information to be able to adjudicate the claim.¹ To date, the Claimant has failed to respond to the request for additional information in support of his claim.

Since Claimant has not provided additional documentation as requested by the NPFC nor has he answered any of the questions to support his claim in order to demonstrate he has a loss of profits and earnings, the claim is denied. Furthermore, Claimant has failed to meet his burden of establishing a loss of profits and earnings demonstrating that his income was reduced due to the injury to, destruction of, or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil.

Claim Supervisor: 

Date of Supervisor's review: *3/8/11*

Supervisor Action: *Denial approved*

Supervisor's Comments:

¹ See USPS Certified Mail Receipt Number 
09/14/11

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

Fax: 202-493-6937

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim# N10036-0517
31 March 2011

RE: Claim Number: N10036-0517

Dear [REDACTED]

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 claim number N10036-0517 involving the Deepwater Horizon oil spill. Please see the enclosed 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 N10036-0517.

Mail reconsideration requests to:

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

Sincerely, [REDACTED]

U. S. Coast Guard
Claims Manager

Enclosure: Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00002044

CLAIM SUMMARY / DETERMINATION FORM

Date	25 March 2011
Claim Number	N10036-0517
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
Claim Manager	[REDACTED]
Amount Requested	\$19,176.00

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 was 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 claims for certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On 25 January 2011, [REDACTED] (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Funds Center (NPFC). The OSLTF claim form alleged \$19,176.00 in lost profits and earning capacity resulting from the Deepwater Horizon oil spill.

Claimant asserted that he works as real estate sales agent for [REDACTED] in Pensacola, FL. Claimant alleged that as a result of the Deepwater Horizon oil spill, he lost potential real estate commissions from five listings that he was showing in Pensacola, Florida. Claimant further alleged damages for incurred startup costs for [REDACTED], a business he started to mitigate his alleged real-estate damages.¹

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 waters or adjoining shorelines or the exclusive economic zone, as described in Section 2702(b) of OPA.

The OSLTF which is administered by the NPFC, is available, pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136, to pay claims for uncompensated damages. 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.

¹ Correspondence to the GCCF, dated 27 Oct 2010.

- (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.
- (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.

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support his claim, Claimant submitted the following documentation to the NPFC:

1. OSLTF claim form, submitted 25 Jan 2011;
2. Correspondence to the NPFC, dated 25 Jan 2011;
3. Correspondence to the GCCF, dated 27 Oct 2010;
4. Correspondence from the GCCF, dated 21 Oct 2010 and 01 Dec 2010;
5. Copy of Florida Driver License;
6. Copy of Florida State Real Estate License;
7. Individual Sales Summaries and Full Agent Reports for 2004, 2005, 2006, and 2009;
8. Forms 1099-Misc, Miscellaneous Income for 2006 from Exit Realty;
9. Federal Income Tax Return, including all supporting schedules for 2006;
10. Form 1099-Misc, Miscellaneous Income for 2007 from [REDACTED];
11. Form 1099-Misc, Miscellaneous Income for 2009 from [REDACTED];
12. Supplemental Claim from [REDACTED] DBA [REDACTED];
13. Copy of Business License for [REDACTED];
14. Copies of Rent Checks for August, September and October for [REDACTED];
15. Correspondence to NPFC representative, dated 25 Jan 2011;
16. Full Agent Reports for Lost Commissions Claimed on Active Listings for 2010;
17. H&R Block Tax Return Summary for 2008;
18. TurboTax Tax Return Summary for 2007;

19. Form 1099-Int, Interest Income from USAA Federal Savings Bank for 2008.

Claimant seeks \$19,176.00 in lost profits and earnings capacity allegedly resulting from the Deepwater Horizon oil spill.

On 26 October 2010, Claimant filed a six-month Emergency Advance Payment claim for \$19,176.22 in lost profits and earnings with the GCCF. He was issued GCCF Claimant ID # [REDACTED] and Claim [REDACTED]. On 01 December 2010, this claim was denied by the GCCF.²

NPFC Determination

Under 33 CFR 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 CFR § 136.233, a claimant must establish loss of profits or impairment of earning capacity. The NPFC considered all the documentation submitted by the Claimant.

The claim is denied because the alleged loss in the amount of \$19,176.00 is not due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil.

In connection with a review of this claim, the NPFC sent the Claimant a letter requesting additional information in order to further evaluate his claim. The letter requested, among other things, listing agent agreements for the five active listings and cancellation letters or contracts from buyers for the five listings to verify lost commission from the oil spill. The letter was sent on 20 February 2011 and was received at Claimant's address of record on 01 March 2011.³ To date, no response has been received by the NPFC.

The NPFC proceeded to evaluate the claim with the evidence Claimant had submitted. The evidence does not demonstrate the Claimant's alleged loss of \$19,176.00, or any correlation between this alleged loss and the Deepwater Horizon oil spill.

The claim is denied because (1) the Claimant failed to meet his burden to support his claim by providing the requested additional information and (2) the Claimant failed to demonstrate that he has a loss and that the 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: [REDACTED]

Date of Supervisor's Review: *3/31/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

² GCCF denial letter Re: Claimant's Emergency Advance Payment claim dated 03 December 2010.

³ The letter was sent Certified Mail Return Receipt Requested. The USPS Tracking site showed Claimant received the letter 01 March 2011.

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

Fax: 202-493-6937

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim# N10036-0518
29 March 2011

C/O: [REDACTED]

RE: Claim Number: N10036-0518

Dear [REDACTED]

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 claim number N10036-0518 involving the Deepwater Horizon oil spill. Please see the enclosed 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 N10036-0518.

Mail reconsideration requests to:

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

Sincerely,

[REDACTED]
U. S. Coast Guard
Claims Manager

Enclosure: Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00002048

CLAIM SUMMARY / DETERMINATION FORM

Date	: 3/28/2011
Claim Number	: N10036-0518
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$8,207.00

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 was 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.

CLAIM AND CLAIMANT

On 24 January 2011, [REDACTED] (Claimant) through his legal representative presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Funds Center (NPFC). The OSLTF claim form alleged \$8,207.00 in lost profits and earnings capacity resulting from the Deepwater Horizon oil spill.¹

Claimant owns and rents unit #506 at the [REDACTED] Condominiums in Fort Walton Beach, Florida.² The Claimant alleged that as a result of the Deepwater Horizon oil spill, rental reservations for his unit were cancelled and he lost rental income from May through December 2010.³

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 waters or adjoining shorelines or the exclusive economic zone, as described in Section 2702(b) of OPA.

The OSLTF which is administered by the NPFC, is available, pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136, to pay claims for uncompensated damages. 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.
- (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

¹ This amount represents the remainder of Claimant's \$11,607.00 Emergency Advance Payment claim after the GCCF paid \$3,400.00 to compensate the claimed loss.

² Letter from Claimant dated 06 December 2010.

³ Interim claim submission; Oil Spill Impact Statement; Summary of Interim Claim for 1st Quarter.

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.

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support his claim, Claimant through his legal representative presented the following documentation to the NPFC:

- NPFC Optional OSLTF Claim Form, 20 January 2011;
- Attorney Authorization Form dated and signed 14 January 2011;
- GCCF Claims Facility Claims Form, undated;
- Claim Reimbursement Summary;
- [REDACTED] invoice;
- Agreed Upon Procedures Report prepared by [REDACTED] dated 04 October 2010, and including Attachments A-R.

On 02 February 2011, the NPFC sent the Claimant's legal representative a letter requesting additional information on his claim. In response, the NPFC received the following documentation:

- Claimant's GCCF interim claim submission, including
 - Summary of Interim Claim for 1st Quarter
 - GCCF Interim claim application
 - [REDACTED] invoice, summarized factors and lost income calculation
 - Oil spill impact statement

Claimant seeks \$8,207.00 in lost rental income allegedly as a result of the Deepwater Horizon oil spill.

On 11 November 2010, Claimant filed a six-month Emergency Advance Payment claim for \$11,607.00 in lost earnings with the GCCF. He was assigned GCCF Claimant ID # [REDACTED] and Claim # [REDACTED]. Claimant received \$3,400.00 as compensation for this claim from the GCCF.⁴

On 24 January 2011, Claimant filed this claim with the NPFC for the remainder of his EAP claim.

NPFC Determination

Under 33 CFR 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.

⁴ OSLTF claim form.

Under 33 CFR § 136.233, a claimant must establish loss of profits or impairment of earning capacity. The NPFC considered all the documentation submitted by the Claimant.

The claim is denied because the evidence submitted does not demonstrate that the Claimant has a loss of profits and earnings in the amount of \$8,207.00 as claimed. The Claimant relied upon a [REDACTED] report to establish his losses. This report projects the Claimant's 2010 monthly rent for unit #506 in May through December and subtracts these projections from the accrual rent earned. To make these projections, the report takes the average of the Claimant's 2008 & 2009 monthly rent for May through December. These averages become the projected 2010 figures.

This method of projecting rental earnings assumes that 2010's earnings would fall between 2008 and 2009. However, the evidence submitted does not support this assumption. The Claimant's 2007, 2008 & 2009 Form 1040 Schedule E indicated a decline in rental earnings from the subject property: (2007) \$30,007.00, (2008) \$23,752.00, and (2009) 20,947.00. The Claimant has provided no evidence to support a reversal in this decline in rental earnings for 2010.⁵

Additionally, even by the Claimant's own method of loss calculation, the Claimant would not have suffered a loss. The NPFC calculated the Claimant's loss (this is the difference between projected earnings in May to December 2010 from actual earnings) to be \$6,225.00.⁶ To date, the Claimant has received \$3,400.00 from the GCCF, which leaves a remaining potential loss of \$2,825.00, although the Claimant has failed to provide detailed itemized information with respect to the saved variable expenses which calculate to more than the noted potential loss therefore this claim is denied.⁷

Claim Supervisor: [REDACTED]

Date of Supervisor's Review: *3/29/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

⁵ The NPFC questioned the Claimant about this decline in rental earnings in its 02 February 2011 letter requesting additional information. Claimant's response does not address this three-year decline in earnings.

⁶ In his interim claim submission, Claimant calculates his loss from May to December to be \$8,775.00. This figure does not account for months when Claimant received more rent in 2010 (actual figures) than the average of 2008 & 2009 (projected 2010 rent). The NPFC's figure accounts for losses and gains in 2010 vis-à-vis the projected 2010 figures.

⁷ Claimant's saved variable expenses include advertising, cleaning and maintenance, a management fee of 20% of gross rents for rental reservations under 30 days, and utilities to name a few. Because Claimant did not have to pay for these expenses as a result of cancelled reservations, they are in that sense "saved" expenses, which must be subtracted from Claimant's net loss.

U.S. Department of
Homeland Security

United States
Coast Guard

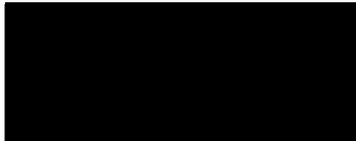


Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd. Suite 1000
Arlington, VA 20598-7100
Staff Symbol: (CA)



CERTIFIED MAIL - RETURN RECEIPT REQUESTED
Number: [REDACTED]



C/O: [REDACTED]



5890/DWHZ
Claim# N10036-0518
31 March 2011

RE: Claim Number: N10036-0520

Dear [REDACTED]:

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 claim number N10036-0520 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination Form for further explanation.

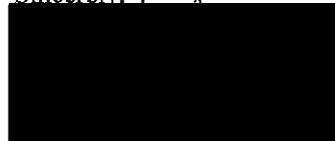
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-0520.

Mail reconsideration requests to:

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

Sincerely, [REDACTED]



U. S. Coast Guard
Claims Manager

CLAIM SUMMARY / DETERMINATION FORM

Date	: 3/28/2011
Claim Number	: N10036-0520
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$11,882.00

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 was 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 claims for certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On 24 January 2011, [REDACTED] (Owner) through her legal representative presented an Optional Oil Spill Liability Trust Fund (OSLTF) claim form on behalf of [REDACTED] (Claimant) to the National Pollution Funds Center (NPFC). The OSLTF claim form alleged 11,882.00 in lost profits and earnings capacity resulting from the Deepwater Horizon oil spill.¹

The Owner asserted that in January 2010, she started her own hair salon business in Santa Rosa Beach, Florida (Claimant business).² Prior to this opening, the Owner worked as a hair stylist in Santa Rosa Beach. The Owner alleged that as a result of the Deepwater Horizon oil spill, tourism in Santa Rosa Beach declined tremendously, leaving many of the Claimant's regular customers out of work. The Owner further asserted that these customers have chosen not to get haircuts, resulting in reduced revenues for the Claimant.³

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 waters or adjoining shorelines or the exclusive economic zone, as described in Section 2702(b) of OPA.

The OSLTF which is administered by the NPFC, is available, pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136, to pay claims for uncompensated damages. 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

¹ This amount represents the remainder of Claimant's \$14,182.00 Emergency Advance Payment claim after the GCCF paid \$2,300.00 to compensate the claimed loss.

² Claimant interim claim submission, summarized factors; original submission, attachment X—Oil Spill Impact Statement.

³ Interim claim submission, summarized factors.

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.

- (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.

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support this claim, the Claimant through its legal representative submitted the following documentation to the NPFC:

- Original submission, including
 - NPFC Optional OSLTF Claim Form, 20 January 2011;
 - Attorney authorization for [REDACTED];
 - Claim reimbursement summary;
 - GCCF Claims Facility Claim Form, undated;
 - Attorney authorization for [REDACTED];
 - [REDACTED] invoice;
 - Agreed-Upon Procedures Report prepared by [REDACTED] dated 17 November 2010, and including attachments A-Y.

On 02 February 2011, the NPFC sent the Claimant's legal representative a letter requesting additional information on this claim. In response, the NPFC received the following documentation:

- Claimant's GCCF interim claim submission, including
 - Summary of Interim Claim for 1st Quarter.
 - GCCF Interim claim application.
 - CRI invoice which summarized factors and lost income calculation.
 - Oil spill impact statement.
 - Sales and use tax return & Claimant FL Corporation detail.

Claimant seeks \$11,882.00 in revenues lost allegedly as a result of the Deepwater Horizon oil spill.

On 19 November 2010, Claimant filed a six-month Emergency Advance Payment (EAP) claim for \$14,182.00 in lost profits with the GCCF. Claimant was assigned GCCF Claimant ID # [REDACTED] and Claim # [REDACTED]. Claimant received \$2,300.00 as compensation for this claim from the GCCF.⁴

On 24 January 2011, Claimant filed this claim with the NPFC for the remainder of its EAP claim.

NPFC Determination

Under 33 CFR 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 CFR § 136.233, a claimant must establish loss of profits or impairment of earning capacity. The NPFC considered all the documentation submitted by the Claimant.

The claim is denied because the Claimant failed to demonstrate its alleged loss of \$11,882.00 as claimed. In an attempt to establish the claimed loss, the Claimant provided a [REDACTED], which projects the Claimant's 2010 annual gross revenues and subtracts this projection from actual revenues generated in 2010. The report arrived at these projected revenues by taking the Claimant's 2009 gross receipts of sale (\$45,707.00) and dividing this total into peak months (March through October) and off-peak months (January, February, November and December).⁵ Peak months, according to this report, account for 95% of total gross receipts (equating to \$5,428.00 a month) and the remainder is divided equally into the non-peak months (resulting in \$571.00 per month).⁶ By this method, the report established the Claimant's projected earnings per month from which actual revenues are subtracted to create a loss.

It is important to note that in 2009, the Owner was not operating an independent hair salon (Claimant business). It appears that she may have been working as a hair stylist in another salon. Therefore, her gross receipts of sale from 2009 do not necessarily constitute a comparable financial basis for projecting revenues into 2010 for an independent hair salon. In a letter, dated 02 February 2011, the NPFC challenged the Claimant to explain how "her [Owner's] 2009 gross sales and cost of goods sold [are] relevant to valuing the 2010 gross sales and cost of goods sold for [REDACTED]."⁷ In response, the Claimant does not address this critical question which underlies the methodology for estimating its losses.⁸ Additionally, the issue of saved expenses is not addressed by the Claimant.

Claimant, in short, is a start-up business. It therefore has no prior historical financial data to estimate its losses in 2010.

Even assuming that the Claimant could demonstrate a loss of profits, there is no evidence supporting the allegation 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 a discharge of oil.

This claim is accordingly denied.

Claim Supervisor: [REDACTED]
Date of Supervisor's Review: 3/31/11
Supervisor's Actions: <i>Denial approved</i>
Supervisor's Comments:

⁵ Original submission, attachment R—budget.

⁶ Original submission, attachment R—budget.

⁷ NPFC letter requesting additional information.

⁸ Claimant's response is nothing more than its GCCF interim claim submission.

U.S. Department of
Homeland Security

United States
Coast Guard



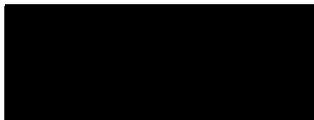
Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937

CERTIFIED MAIL - RETURN RECEIPT REQUESTED
Number: [REDACTED]

5890/DWHZ
Claim# N10036-0521
07 March 2011



RE: Claim Number: N10036-0521

Dear [REDACTED]

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 claim number N10036-0521 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination Form for further explanation.

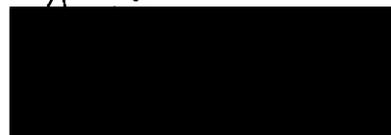
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-0521.

Mail reconsideration requests to:

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

Sincerely,



U. S. Coast Guard
Claims Manager

Enclosure: Claim Summary/Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Date	02 March 2011
Claim Number	N10036-0521
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
Claim Manager	[REDACTED]
Amount Requested	\$14,000.00

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 was 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 claims for certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On 25 January 2011, [REDACTED] (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Funds Center (NPFC) seeking \$14,000.00 in lost profits and earning capacity allegedly resulting from the Deepwater Horizon oil-spill.

Claimant asserted that he works for [REDACTED] in New Orleans, Louisiana. He is paid by the shift and receives tips. He alleged that as a result of the Deepwater Horizon oil-spill, tourism declined which resulted in reduced business for his employer. He further alleged that as a result of this reduced business, he lost his customary shifts and tips. He estimates his total lost income from the oil-spill to be \$14,000.00.

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 waters or adjoining shorelines or the exclusive economic zone, as described in Section 2702(b) of OPA.

The OSLTF which is administered by the NPFC, is available, pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136, to pay claims for uncompensated damages. 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.

- (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.

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support his claim, the Claimant submitted his OSLTF claim form, undated; copies of his Form 1099-MISC for 2009 from the [REDACTED] and a Form 1099-MISC for 2009 from [REDACTED]; a utility bill from Entergy New Orleans for \$610.39; two earnings statements from [REDACTED] for October 2009; a statement of accounts from the [REDACTED] Federal Credit Union for August 2009; and a letter to the NPFC explaining his claim.

Claimant seeks \$14,000.00 in lost shift pay and tips allegedly resulting from the Deepwater Horizon oil-spill.

On 26 October 2010, Claimant filed a six-month Emergency Advance Payment claim for \$12,000.00 with the GCCF. He was issued GCCF Claimant ID [REDACTED] and Claim [REDACTED]. On 07 December 2010, his claim was denied by the GCCF.¹

NPFC Determination

This claim is denied because the alleged loss in the amount of \$14,000.00 is not due to the injury, destruction of or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil.

After an initial review, the NPFC sent the Claimant a letter, dated 01 February 2010, requesting additional information in order to further evaluate his claim. The letter requested financial documentation to verify Claimant's alleged loss and a statement from the Claimant's employer explaining how his reduction in earnings resulted from the Deepwater Horizon oil-spill. To date,

¹ This information is assumed to be correct by the NPFC.

no response has been received.² The NPFC proceeded to evaluate the claim with the evidence presented by the Claimant.

The claim is denied because the alleged loss in the amount of \$14,000.00 is not due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil. Additionally, the Claimant has failed to meet his burden to demonstrate a loss of profits and earnings because the Claimant failed to respond to the NPFC's request for additional information in order to properly support his claim.

Claim Supervisor 

Date of Supervisor's Review: 3/4/11

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

² The letter was sent Certified Mail Return Receipt Requested to Claimant's address on record. It was also emailed to the Claimant. On 02 February 2010, Claimant confirmed receipt of the emailed letter and indicated that he will try to comply.

CLAIM SUMMARY / DETERMINATION FORM

Date	:	3/07/2011
Claim Number	:	N10036-0522
Claimant	:	[REDACTED]
Type of Claimant	:	Corporate
Type of Claim	:	Loss of Profits and Earning Capacity
Claim Manager	:	[REDACTED]
Amount Requested	:	\$48,000.00

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 was 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 claims for certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On 26 January 2011, [REDACTED] (Claimant), owner of [REDACTED] (Advantage) presented a lost profits & earnings claim in the amount of \$48,000.00 to the National Pollution Funds Center (NPFC) for reimbursement. Claimant asserted that her real estate closing business, [REDACTED] suffered due to a declining number of real estate sales and refinances as a result of the oil-spill.

APPLICABLE LAW:

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a). Damages include the loss of profits or impairment of earning capacity due to the injury, destruction or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant. 33 U.S.C. § 2702(b)(2)(E).

The OSLTF, which is administered by the NPFC, 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. With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

Pursuant to the claims regulations, 33 C.F.R. § 136.233, a claimant must establish the following to prove loss of profits or impairment of earning capacity:

- (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.
- (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.

DETERMINATION OF LOSS:

Claimant's Submission

To support her claim, the Claimant presented the NPFC OSLTF Claim form, a copy of the GCCF Emergency Advance Payment denial for claimant [REDACTED], a copy of the GCCF Interim Claim form dated 1/03/2011, an explanation of her claim and copies of the Account QuickReport for Advantage from January through August, 2010

NPFC Determination

Under 33 U.S.C. § 2702(b)(2)(E) and 33 C.F.R. Part 136, a claimant must prove that his loss of income was due to injury or destruction or loss of real or personal property or 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 to the NPFC all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim. The NPFC considered all documentation presented by the Claimant.

Claimant alleged the reduction of real estate listings and refinances are due to the Deepwater Horizon oil-spill. After a thorough review of the Claimant's financial information as well as her prior work history, it is clear that the Claimant has had variable financials as far back as 2006 and has not shown that her loss is a result of the oil-spill and not some other economic factor.

This claim is denied because based on the documentation presented, the Claimant has failed to demonstrate that the alleged loss is due to injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of discharge of oil.

Claim Supervisor: [REDACTED]

Date of Supervisor's review: *3/5/11*

Supervisor Action: *Denial approved*

Supervisor's Comments:

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

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
Fax: 202-493-6937

CERTIFIED MAIL - RETURN RECEIPT REQUESTED
Number:

5890/DWHZ
07 March 2011



N10036-0522

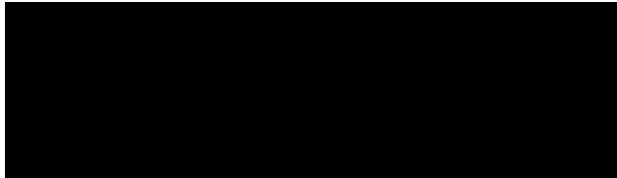
Dear [REDACTED]

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 claim number N10036-0522 involving the Deepwater Horizon oil-spill. Please see the enclosed 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 N10036-0522.

Mail reconsideration requests to:

Director (ca)
NPFC CA MS 7100
US COAST GUARD



U.S. Coast Guard

Encl: Claim Summary / Determination Form

U.S. Department of
Homeland Security

**United States
Coast Guard**



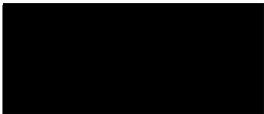
Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100

5890
3/7/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]



RE: Claim Number: N10036-0523

Dear [REDACTED]

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 claim number N10036-0523 involving the Deepwater Horizon oil-spill. Please see the enclosed 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 N10036-0523.

Mail reconsideration requests to:

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

Sincerely,



Claims Manager
U.S. Coast Guard

Encl: Claim Summary / Determination Form

09/14/11

FOIA2011-3380-00002064

CLAIM SUMMARY / DETERMINATION FORM

Date	: March 7, 2011
Claim Number	: N10036-0523
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$24,000.00

FACTS

On or about April 20, 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 was 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 August 23, 2010, the Gulf Coast Claims Facility (GCCF) began accepting and adjudicating claims for certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On January 10, 2011, [REDACTED] owner of [REDACTED] (Claimant) presented a claim to the National Pollution Fund Center (NPFC) on an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form seeking \$24,000.00 in lost profits and earning capacity resulting from the Deepwater Horizon incident.

Claimant asserted that her business, [REDACTED] which specializes in real estate closings, settlements, and real estate loan closings, was unable to continue due to damages sustained as a result of the Deepwater Horizon incident.

The Claimant filed an Emergency Advance Payment (EAP) claim (Claim [REDACTED]) with the GCCF and was subsequently denied.

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 waters or adjoining shorelines or the exclusive economic zone, as described in Section 2702(b) of OPA.

The OSLTF which is administered by the NPFC, is available, pursuant to 33 U.S.C. § 2712(a)(4) and 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136, to pay claims for uncompensated damages. 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.
- (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.

DETERMINATION OF LOSS

Claimant's Submission

To support the claim, the Claimant submitted the following documentation:

- Optional OSLTF Claim Form dated 01 January 2011;
- Claimant's letter of explanation, date unspecified;
- Email from claimant to GCCF dated November 24, 2010;
- Interim Payment Claim Form dated 03 January 2011;
- Monthly profit and loss statements from January 2008 through December 2010.

NPFC Determination

Under 33 U.S.C. § 2702(b)(2)(E) and 33 C.F.R. Part 136, a claimant must prove that his loss of income was due to injury or destruction or loss of real or personal property or 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 to the NPFC all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim. The NPFC considered all documentation presented by the Claimant.

Based on the documentation provided by the Claimant, the Claimant indicated that income was reduced as a result of the Deepwater Horizon incident.

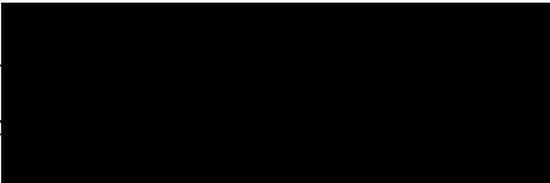
On February 3, 2011, the NPFC sent, via certified mail, a request for additional information to the Claimant in order to obtain the necessary information to adjudicate the claim. The documentation requested consisted of the following:

- U.S. Federal Income Tax Returns (1120S) for the years 2007, 2008, and 2009 including all attachments and schedules.
- HUD-1 Settlement Forms pertaining to all closings from January 2009 through December 2010.
- Please identify and provide any and all correspondence pertaining to any cancelled transactions.
- Please provide any and all documents supporting revenue earned from January 2009 through December 2010.
- Lease agreements for the years 2008, 2009 and 2010.

The NPFC also requested the Claimant answer the following questions:

- Provide a detailed description of each of your businesses including the following:
 - Physical addresses
 - Number of employees
 - Operating hours and days of week open for business
 - Description of your business
 - Please explain how you are paid for each job (commissions or a flat fee?)
- Describe why you believe your business was negatively impacted by the Deepwater Horizon incident.
- Have you personally filed for unemployment at any time during 2009 through the current period? If so, provide the dates of unemployment and the amount of unemployment benefits received.
- Describe your current employment/ work status.
- Have you obtained employment/ additional employment since 20 April 2010? If so identify all employment held and compensation received.
- Please provide a detailed breakdown and description of your claim totaling \$24,000.
- Please identify any other factors that may have contributed to a decline of your business.
- Please explain contract labor expenses. Do these costs vary with revenue?
- Please explain the significant decline in car/truck expense between 2009 and 2010.

The Claimant has not provided the additional documentation nor answered any of the questions to support the claim in order to demonstrate a loss of profits and earnings. Therefore, this claim is denied because the Claimant has failed to meet the burden to demonstrate that the loss of income was due to the injury to, destruction of, or loss of property or natural resources. Furthermore, it is important to note that the Claimant also submitted another claim to the NPFC under her Business name for double the amount of this claim. Her prior submission is identified as NPFC claim # N10036-0522 which was also denied.

Claim Supervisor: 
Date of Supervisor's review: <i>March 7, 2011</i>
Supervisor Action: <i>Denial approved</i>
Supervisor's Comments:

U.S. Department of
Homeland Security

United States
Coast Guard



Director
National Pollution Funds Center
United States Coast Guard

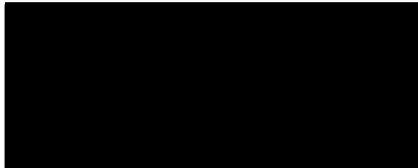
NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Number [REDACTED]

5890/DWHZ
Claim# N10036-0524
07 March 2011



RE: Claim Number: N10036-0524

Dear [REDACTED]

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 claim number N10036-0524 involving the Deepwater Horizon oil spill. Please see the enclosed 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 N10036-0524.

Mail reconsideration requests to:

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

Sincerely,



U. S. Coast Guard
Claims Manager

Enclosure: Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00002068

CLAIM SUMMARY / DETERMINATION FORM

Date	01 March 2011
Claim Number	N10036-0524
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
Claim Manager	[REDACTED]
Amount Requested	\$26,000.00

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 was 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.

CLAIM AND CLAIMANT

On 26 January 2011, Kevin P. Sibille (Claimant) presented an Optional Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Funds Center (NPFC) seeking \$26,000 in lost profits and earnings, allegedly resulting from the Deepwater Horizon oil-spill.

The Claimant is a licensed veterinarian in the state of Florida and the sole owner of [REDACTED] Animal Hospital, a Subchapter-S Corporation operating in Navarre, FL. He indicated that his business derives a large amount of yearly revenue from providing veterinary services to visiting tourists during the summer months.¹

Claimant further indicated that from November 2009 to April 2010, his business revenues increased slightly over the prior year. He also stated that revenues then declined between May and October 2010, followed by another increase in November which continued through to the end of the year. Claimant attributed the six-month decrease over the summer to the Deepwater Horizon oil-spill. He alleged that the oil-spill caused seasonal tourism in the region to decline, which in turn led to decreased business from prospective tourists and locals.

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 waters or adjoining shorelines or the exclusive economic zone, as described in Section 2702(b) of OPA.

The OSLTF which is administered by the NPFC, is available, pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136, to pay claims for uncompensated damages. One type of damages available pursuant to 33 C.F.R. §136.231 is a

¹ Letter from Claimant explaining his claim, undated.

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.
- (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.

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support his claim, Claimant presented the following documentation to the NPFC:

- OSLTF claim form, signed by Claimant and dated 26 January 2011;
- Letter from Claimant explaining his claim, undated;
- GCCF Denial Letter, dated 23 November 2010;
- Schedule K-1 for IRS Form 1120S for 2008 and 2009;
- Google Map printout displaying Claimant's location in relation to Navarre Beach;
- State of Florida Board of Veterinary Medicine licenses;
- State of Florida Stock Certificate;
- Claimant's monthly income statements for January 2008 through January 2011.

Claimant seeks \$26,000 in lost profits allegedly resulting from the Deepwater Horizon oil-spill.

On 22 October 2010, Claimant filed a six-month Emergency Advance Payment claim for \$75,000.00 with the GCCF. He was assigned Claimant ID [REDACTED] and Claim [REDACTED]. On 23 November 2010, his claim was denied by the GCCF.²

NPFC Determination

Under 33 U.S.C. § 2702(b)(2)(E) and 33 C.F.R. Part 136, a claimant must prove that his loss of income was due to injury or destruction or loss of real or personal property or 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 to the NPFC all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim. The NPFC considered all documentation presented by the Claimant.

During the course of reviewing this claim, NPFC sent a letter to the Claimant, requesting additional information regarding the seasonal nature of his business and volume of tourist clientele. That letter also stated that if the Claimant did not provide the requested information to the NPFC within 14 days, the claim would be adjudicated based only on the information available. The NPFC confirmed that the US Postal Service delivered the request on 10 February 2011. As of the date of this determination, the NPFC has not received any response from the Claimant.

The claim is denied because the Claimant failed to meet his burden to demonstrate that his alleged loss in the amount of \$26,000.00 is due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil.

Claim Supervisor [REDACTED]

Date of Supervisor's Review: *3/6/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

² The NPFC assumes the information to be accurate. Claimant has an Interim Payment claim under review with the

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

Fax: 202-493-6937

5890
03 February 2011

VIA MAIL and EMAIL: [REDACTED]

RE: Claim Number: N10036-0525

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number N10036-0525 involving Deepwater Horizon. Please see the attached Claim Summary / Determination Form for the rationale regarding this denial.

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 N10036-0525.

Mail reconsideration requests to:

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

[REDACTED]
Claims Manager
U.S. Coast Guard

Encl: Claim Summary / Determination Form

09/14/11

FOIA2011-3380-00002072

CLAIM SUMMARY / DETERMINATION FORM

Date	03 February 2011
Claim Number	N10036-0525
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
Claim Manager	[REDACTED]
Amount Requested	\$10,000.00

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 was discharged from an offshore facility associated with the Deepwater Horizon and located on the Mississippi Canyon, Block 252 (the Deepwater Horizon incident). This area was leased by BP Exploration and Production, Inc. (BP). The Coast Guard designated the offshore facility as the source of the discharge and BP as the responsible party (RP) for the discharge. BP accepted the designation, advertised its OPA claims process, and compensated claimants. On 23 August 2010, the Gulf Coast Claims Facility (GCCF) began accepting and adjudicating claims on behalf of BP.

CLAIM AND CLAIMANT

On 26 January 2011, [REDACTED] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$10,000.00 in lost profits and earning capacity resulting from the Deepwater Horizon incident. Claimant worked for the [REDACTED] in Baldwin County, AL and asserted that "due to the oil-spill further cutbacks with job and insurance higer [sic] co-pays" and that the "incident caused further budget cuts (proration) Health Services have been affected also...job cuts and freezes on raises has resulted."¹

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

The OSLTF which is administered by the NPFC, is available, pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136, to pay claims for uncompensated damages. 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.

¹ See NPFC Optional OSLTF Claim Form dated 14 January 2011.

- (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.
- (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.

DETERMINATION OF LOSS

Claimant's Submission

To support her claim, Claimant presented the NPFC Optional OSLTF Claim Form on 26 January 2011, pay documents including stubs and statement from [REDACTED] 2010 W2 wage report, email correspondence relaying pre-existing budget shortcomings and necessary actions including information regarding classified salaries with a "Financial Crisis Management Plan" which discussed the "significant additional funding shortages," dated 11 August 2009.

Claimant submitted a claim with the for an Emergency Advance Payment Claimant ID [REDACTED] Claim [REDACTED] which was denied in a letter dated 16 December 2010 as provided by Claimant.

Claimant asserted that she is not receiving expected raises/pay increases and the cost for health services, including co-payments, has increased, due to the oil-spill.

NPFC Determination

The claim is denied. Under 33 U.S.C. § 2702(b)(2)(E) and 33 C.F.R. Part 136, a claimant must prove that his loss of income was due to injury or destruction or loss of real or personal property or 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 to the NPFC all evidence, information, and documentation deemed necessary by the Director, NPFC, to support his claim.

The NPFC reviewed the evidence presented by the Claimant and spoke with a representative from the [REDACTED] Board of Education, [REDACTED]. During this conversation it was determined that both the frozen wages and the increased health service costs were a result of the strained financial situation. [REDACTED] further explained that there had been no pay increases in several years and that this was not a new occurrence, and that this is the first time in several years that the co-payments have been increased, "but it was about time for an increase as we haven't had one in years."²

² Telephone conversation with [REDACTED] Board of Education,
09/14/11

The Claimant has failed to meet her burden of proof in establishing her loss of profits and earnings as a direct result of the Deepwater Horizon incident and her claim is denied.

Claim Supervisor: 

Date of Supervisor's Review: 2/3/11

Supervisor's Action: *Denial approved*

Supervisor's Comments:

U.S. Department of
Homeland Security

United States
Coast Guard



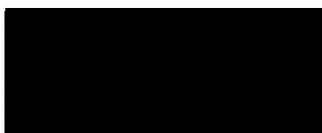
Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937
5890
2/8/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]



RE: Claim Number: N10036-0526

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number N10036-0526 involving Deepwater Horizon. Please see the attached Claim Summary / Determination Form for an explanation regarding this denial.

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 N10036-0526.

Mail reconsideration requests to:

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

Sincerely,



Claims Manager
U.S. Coast Guard

Encl: Claim Summary / Determination Form

09/14/11

FOIA2011-3380-00002076

CLAIM SUMMARY / DETERMINATION FORM

Date	: 2/2/2011
Claim Number	: N10036-0526
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$50,400.00

FACTS

On or about 20 April 2010, the Mobile Offshore Drilling Unit Deepwater Horizon exploded and sank in the Gulf of Mexico. As a result of the explosion and sinking, oil was discharged from an offshore facility, located on the Mississippi Canyon, Block 252 (the Deepwater Horizon incident). This area was leased by BP Exploration and Production, Inc. (BP). The Coast Guard designated the offshore facility as the source of the discharge and BP as the responsible party for the discharge. BP accepted the designation, advertised its OPA claims process and compensated claimants.

On 28 May 2010, The U.S. Department of the Interior (DOI) issued a six-month moratorium on deepwater drilling, citing concerns over the safety of deepwater drilling and directing lessees and operators to cease drilling all new deepwater wells and related activities effective 30 May 2010. Lessees and operators conducting current drilling operations were directed to secure the wells and to take all necessary steps to cease operations and temporarily abandon or close the wells.

On 12 July 2010 the Department of the Interior issued a new decision to suspend deepwater drilling activities. Applicability of this suspension order is based on drilling configuration and technology, not depth of water. As such, it applied to both deepwater and shallow water drilling. This suspension order was lifted on 12 October 2010 for those operators who certified compliance with all existing rules and regulations, including those that recently went into effect, and demonstrated the availability of adequate blowout containment resources. DOI's verification of new permit applications and equipment testing for applicants through the Bureau of Ocean Energy Management, Regulation, and Enforcement (BOEMRE) continues.¹

On 23 August 2010 the Gulf Coast Claims Facility (GCCF) began accepting and adjudicating claims on behalf of BP. BP subsequently established a \$100 million Rig Workers Assistance Fund to help compensate rig workers impacted by the moratorium on deepwater well activities. The Assistance Fund is administered by the Gulf Coast Restoration and Protection Foundation (GCRPF).

CLAIM AND CLAIMANT

On 11 January 2011, the Claimant presented an Oil Spill Liability Trust Fund (OSLTF) claim form seeking \$50,400.00 in lost profits and earnings capacity resulting from the Deepwater Horizon incident.

¹ U.S. Department of the Interior, MINERALS MANAGEMENT SERVICE, MORATORIUM NOTICE TO LESSEES AND OPERATORS, NTL No. 2010-N04, Effective 30 May 2010. See Decision Memo dated 12 July 2010, From Secretary of the Interior To Director, Bureau of Ocean Energy Management, Regulation and Enforcement, Subject Decision Memorandum regarding the suspension of certain offshore permitting and drilling activities on the Outer Continental Shelf. See also U.S. Department of the Interior, Minerals Management Service, NATIONAL NOTICE TO LESSEES AND OPERATORS OF FEDERAL OIL AND GAS LEASES, OUTER CONTINENTAL SHELF (OCS) NOTICE TO LESSEES AND OPERATORS, NTL No. 2010-N05, Effective 08 June 2010 (US DOI MMS MORATORIUM).

At the time of the Deepwater Horizon incident, the Claimant was working for Fluid Check, Inc. as a drilling fluid auditor for the shipping and receiving of drilling fluids. The Claimant asserted his job ended as a result of the Deepwater Horizon because his company went out of business.

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

The OSLTF which is administered by the NPFC, is available, pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136, to pay claims for uncompensated damages. 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.
- (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.

DETERMINATION OF LOSS

Claimant's Submission

To support his claim, the claimant provided the following documentation:

1. The Claimant's NPFC OSLTF Claim form submitted 11 January 2011;
2. Handwritten statement to BP which is undated;
3. Copies of miscellaneous identification cards (i.e., LA Drivers License and TWIC ID card);
4. Copy of GCCF informational letter dated August 23, 2010;
5. Copy of GCCF claim filing form printed out;
6. Handwritten statement dated September 29, 2010;
7. Copies of 2008 & 2009 W2s from Fluid Check;

8. Copies of miscellaneous handwritten documents on company letterhead.

NPFC Determination

This claim is denied. Under 33 C.F.R. 136.105(a) and 136.105(e)(6), the claimant bears the burden of proving to the NPFC all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim. Under 33 C.F.R. 136.233, a claimant must establish loss of profits or impairment of earning capacity. The NPFC considered all the documentation submitted by the Claimant.

Before the Deepwater Horizon incident, the Claimant was the drilling fluid auditor for [REDACTED]. The claim is denied because the evidence presented by the Claimant does not prove that his 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. To the contrary, the evidence presented indicates that the Claimant was terminated as a result of his employer's business decision and not the direct result of the Deepwater Horizon incident.

Claim Supervisor: [REDACTED]

Date of Supervisor's review: 2/2/11

Supervisor Action: ***Denial approved***

Supervisor's Comments:

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

Fax: 202-493-6937
5890
3/30/2011

BY ELECTRONIC MAIL AND FIRST CLASS MAIL

[REDACTED]

[REDACTED]

RE: Claim Number: N10036-0527

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number N10036-0527 involving Deepwater Horizon. Please see the attached Claim Summary / Determination Form for an explanation regarding the denial.

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 N10036-0527.

Mail reconsideration requests to:

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

Sincerely,

[REDACTED]

Claims Manager
U.S. Coast Guard

Encl: Claim Summary / Determination Form

09/14/11

FOIA2011-3380-00002080

CLAIM SUMMARY / DETERMINATION FORM

Date	: March 24, 2011
Claim Number	: [REDACTED]
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$40,000.00

FACTS:

On or about April 20, 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 was 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 August 23, 2010, the Gulf Coast Claims Facility (GCCF) began accepting and adjudicating claims for certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT:

On January 28, 2011, the National Pollution Funds Center (NPFC) received a claim from Kathy Snow (Claimant) for lost profits and earnings in the amount of \$40,000.00. The Claimant asserted that her earnings decreased as result of the Deepwater Horizon incident.

As the NPFC understands it, the Claimant's submission is for hourly wage cuts experienced while working at [REDACTED] and for wages lost from her past employment at [REDACTED] Properties. The NPFC contacted [REDACTED] and was able to confirm that the Claimant's last day was on May 3, 2010. The Claimant stated that she was unemployed for part of May 2010 through July 2010. A daily breakdown of time worked at Harry A's by the Claimant shows that her first day was on or about August 4, 2010.

The Claimant filed a claim with the GCCF and was given claim [REDACTED]. The claim was denied. A copy of the denial letter has not been provided by the Claimant.

APPLICABLE LAW:

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a). Damages include the loss of profits or impairment of earning capacity due to the injury, destruction or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant. 33 U.S.C. § 2702(b)(2)(E).

The OSLTF, which is administered by the NPFC, 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. With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

Pursuant to the claims regulations, 33 C.F.R. § 136.233, a claimant must establish the following to prove loss of profits or impairment of earning capacity:

- (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.
- (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.

DETERMINATION OF LOSS:

Claimant's Submission

To support the claim, the Claimant submitted the following documents:

- NPFC OSLTF Claim form, submitted 24 Jan 2011;
- Letter of explanation by claimant dated 1 Dec 2010;
- Letter requesting additional information by GCCF dated 28 Oct 2010;
- Claim denial letter by GCCF dated 14 Dec 2010;
- 2008 W-2s by [REDACTED] and [REDACTED];
- Copies of pay stubs by [REDACTED] for dates 15 Jan 2009, 12 Feb 2009, 26 Feb, 2009, 12 Mar 2009, 7 May 2009, 16 Jul 2009, 30 Jul 2009, 13 Aug 2009, 27 Aug, 2009, 10 Sep 2009, 24 Sep 2009, 8 Oct 2009, 22 Oct 2009, and 5 Nov 2009;
- Payroll Summary by [REDACTED] for the period Jan to May 2010;
- Letter by [REDACTED] verifying employment and earnings in 2010, dated 3 Nov 2010;
- Labor report for the period 01 Jan to 04 Oct 2010 by [REDACTED];
- Copies of pay stubs by [REDACTED] for dates 20 Oct 2010, 3 Nov 2010, 17 Nov 2010, 1 Dec 2010, 15 Dec 2010, and 29 Dec 2010.

NPFC Determination

Under 33 CFR 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 CFR § 136.233, a claimant must establish loss of profits or impairment of earning capacity. The NPFC considered all the documentation submitted by the Claimant.

On February 9, 2011 the NPFC requested the following documentation from the Claimant in order to assist in determining the loss of profits and earnings requested by the Claimant:

1. Income Tax Return Filings for 2008 and 2009 including all attachments, Schedule C's, W-2's and form 1099's (W-2's for 2008 have been provided for [REDACTED] and [REDACTED])
2. Copies of all 2010 1099's.
3. Provide copies of pay stubs, pay checks and earnings statements for all employment held during 2009 and 2010 (these have been provided for [REDACTED] for January 2009 through May 2010 and [REDACTED] for January through December 2010)
 - a. If the above is not available, provide copies of bank statements to support your earnings. Specifically identify on the bank statements, any deposits that are related to your employment.
4. If your claim is based on reduced work hours, provide the following documents:
 - a. Copies of you work schedules prior to and after the Deepwater Horizon incident to showing your decline in scheduled hours.
5. If your claim is based on reduced pay rate, provide the following documents:
 - a. Written confirmation from your former employer(s), verifying that your pay rate was decreases due direct impacts of the Deepwater Horizon incident to your employer's business.
6. If your claim is based on being terminated from existing employment, provide written confirmation from your former employer(s), including your termination notice, verifying that your employment was terminated due direct impacts of the Deepwater Horizon incident to your employer's business.
7. Has your employer(s) filed a claim associated with the Deepwater Horizon incident? If so, please provide underlying support from your employer(s) that will support their business being impacted by the Deepwater Horizon incident.
8. If you have received unemployment benefits from 2009 through the present, provide copies of payments received and statements of benefits.

In response to the NPFC's request for additional information the Claimant only provided an explanation of the claim and her 2010 W-2's.

When reviewing the documentation provided by the Claimant for wages lost at [REDACTED], the NPFC is unable to validate a reduction in hours worked. From the start of her employment in August 2010, the Claimant averaged 35 hours per week, to which the Claimant has provided nothing else to compare that to. There are some weeks in the following months that showed a reduction in hours worked but the Claimant failed to prove that is was due to the injury, destruction or loss of real property, personal property, or natural resources and not other issues.

Furthermore, the NPFC contacted [REDACTED] and spoke to the Human Resources Director, [REDACTED] who stated that no employees at [REDACTED] were

terminated due to the Deepwater Horizon incident. She went on to state that the company was not affected by the oil spill.

After reviewing the documentation provided by the Claimant, the NPFC has determined that the Claimant has failed to demonstrate a loss of earnings and profits. The Claimant also failed to demonstrate that any loss, had there been one, was due to the injury, destruction or loss of real property, personal property, or natural resources. As such, the claim for lost profits or earnings capacity is denied.

Claim Supervisor: 

Date of Supervisor's review: *3/30/11*

Supervisor Action: *Denial approved*

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100

Fax: 202-493-6937
5890
2/2/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number [REDACTED]

[REDACTED]

RE: Claim Number: N10036-0528

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number N10036-0528 involving Deepwater Horizon. Please see the attached Claim Summary / Determination Form for an explanation regarding this denial.

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 N10036-0528.

Mail reconsideration requests to:

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

Sincerely,

[REDACTED]

Claims Manager
U.S. Coast Guard

CLAIM SUMMARY / DETERMINATION FORM

Date	: 2/2/2011
Claim Number	: N10036-0528
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$10,000.00

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 was discharged from an offshore facility associated with the Deepwater Horizon and located on the Mississippi Canyon, Block 252 (the Deepwater Horizon incident). This area was leased by BP Exploration and Production, Inc. (BP). The Coast Guard designated the offshore facility as the source of the discharge and BP as the responsible party (RP) for the discharge. BP accepted the designation, advertised its OPA claims process, and compensated claimants. On 23 August 2010, the Gulf Coast Claims Facility (GCCF) began accepting and adjudicating claims on behalf of BP.

CLAIM AND CLAIMANT

On 27 January 2011, [REDACTED] (Claimant) presented a lost profits & earnings claim in the amount of \$10,000.00 to the National Pollution Funds Center (NPFC) for reimbursement. [REDACTED] asserted that due to the oil spill she lost her job. The Claimant indicated on her OSLTF claim form that she presented a claim to the RP and was denied although no further information was provided.

APPLICABLE LAW

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a). Damages include the loss of profits or impairment of earning capacity due to the injury, destruction or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant. 33 U.S.C. § 2702(b)(2)(E).

The OSLTF, which is administered by the NPFC, 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. With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

Pursuant to the claims regulations, 33 C.F.R. § 136.233, a claimant must establish the following to prove loss of profits or impairment of earning capacity:

- (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.
- (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.

DETERMINATION OF LOSS:

Claimant's Submission

To support her claim, the Claimant presented the Optional NPFC OSLTF Claim Form that is unsigned and undated, a copy of her 2008 and 2009 income tax filings, and a copy of her 2009 W-2 transcript history showing a total annual income earned of \$5,569.00.

NPFC Determination

Under 33 CFR 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 CFR § 136.233, a claimant must establish loss of profits or impairment of earning capacity. The NPFC considered all the documentation submitted by the Claimant.

The claim is denied because the alleged loss in the amount of \$10,000 is not due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil. Claimant's alleged loss of profits is the result of her employer terminating her employment. Additionally, the Claimant has not met her burden in demonstrating she has a loss of profits and earnings. Finally, the Claimant's OSLTF Claim Form is not signed therefore the Claimant has not met the requirements of 33 CFR § 136.105(c) which states..." each claim must be signed in ink by the claimant certifying to the best of the claimant's knowledge and belief that the claim accurately reflects all material facts."

Claim Supervisor



Date of Supervisor's review: *2/2/11*

Supervisor Action: *Denial approved*

Supervisor's Comments:

U.S. Department of
Homeland Security

United States
Coast Guard



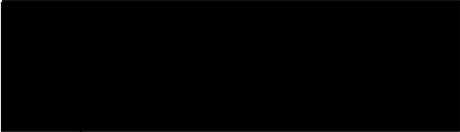
Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd, Suite 1000
Arlington, VA 20598-7100
Staff Symbol: (CA)



CERTIFIED MAIL - RETURN RECEIPT REQUESTED
Number: [REDACTED]

5890/DWHZ
Claim# N10036-0529
4 April 2011



RE: Claim Number: N10036-0529

Dear [REDACTED]

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 claim number N10036-0529 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination Form for further explanation.

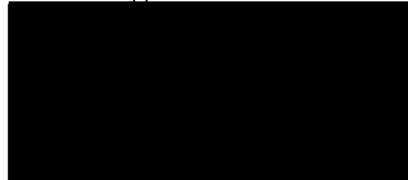
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-0529.

Mail reconsideration requests to:

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

Sincerely,



U. S. Coast Guard
Claims Manager

Enclosure (1): Claim Summary/Determination Form
Enclosure (2): Claimant Documentation before the NPFC

FOIA2011-3380-00002089

Date	28 March 2011
Claim Number	N10036-0529
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
Claim Manager	[REDACTED]
Amount Requested	\$570,211.00

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 was 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 claims for certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On 28 January 2011, J [REDACTED] (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Funds Center (NPFC). The OSLTF claim form alleged \$535,320.00 in lost profits and earnings capacity and \$34,891.00 in real or personal property damage resulting from the Deepwater Horizon oil spill. Claimant's total damages amount to \$570,211.00.

Claimant asserted that it operates a business managing oil and gas wells for small energy companies.¹ The Claimant indicated that prior to the Deepwater Horizon oil spill, it was managing oil and gas facilities for [REDACTED] and [REDACTED]. These facilities were located on the shore lines of various waterways in Louisiana. The Claimant's employees would drive boats to these facilities to check and maintain equipment there.

Claimant asserted that in June 2010, it was informed by [REDACTED], which by this time had merged with [REDACTED], that the Claimant's services were no longer needed.² The Claimant alleged that this loss amounted to 75% of its work, leaving the Claimant to manage just one facility, which necessitated scaling back the Claimant's operations.

Claimant estimated its losses from the termination of its [REDACTED] contract to be \$156,135.00 for seven months.³ The Claimant also alleged personal property damage in the amount of \$34,891.00 for the replacement value of two Evinrude outboard engines, which the Claimant alleged had been ruined by oiling from the Deepwater Horizon oil spill.

¹ Letter from Claimant, dated 30 December 2010, describing business and claim.

² *Id.*

³ Claimant estimates its monthly net profits to be \$22,305.00 and multiplied by 7 yields to estimated loss above. Any portion of Claimant's alleged loss dealing with prospective damage is not properly before the NPFC for the purpose of this determination. Prospective losses are not covered under OPA and the associated regulations at 33

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 waters or adjoining shorelines or the exclusive economic zone, as described in Section 2702(b) of OPA.

The OSLTF which is administered by the NPFC, is available, pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136, to pay claims for uncompensated damages. 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.
- (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.

Damages include damages for injury to natural resources, injury to or economic losses from the destruction of real or personal property, loss of subsistence use of natural resources, Government loss of revenues, loss of profits or earning capacity as a result of loss or destruction of real or personal property or natural resources, and costs of increased public services. 33 USC §2702(b).

Damages are further defined to include the costs of assessing the damages.

“(5) “damages” means damages specified in section 2702(b) of this title, and includes the cost of assessing these damages;” 33 USC §2701(5).

Damage claims must be presented within 3 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. 33 USC §2712(h)(2).

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support the claim, Claimant submitted the documentation listed in Enclosure 2 to the NPFC.

On 10 February 2011, the NPFC sent the Claimant a letter requesting additional information in order to further evaluate the claim. On 23 March 2011, Claimant e-mailed typewritten answers to the questions in the letter.

Claimant seeks lost profits and property damage totaling \$570,211.00.

On 23 August 2010, Claimant filed a six-month Emergency Advance Payment claim for \$174,000.00 for lost profits and earnings with the GCCF. Claimant was issued GCCF Claimant ID # [REDACTED] and Claim # [REDACTED]. On 29 November 2010, the GCCF denied the claim.⁴

NPFC Determination

Under 33 CFR 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 CFR § 136.233, a claimant must establish loss of profits or impairment of earning capacity. The NPFC considered all the documentation submitted by the Claimant.

Claimant's lost profits claim is denied for lack of evidentiary support. The Claimant alleged that it lost its contract with [REDACTED] as a result of the Deepwater Horizon oil spill. To verify this assertion, the NPFC requested evidence of service contracts and termination notice from [REDACTED], and a contact person at [REDACTED] who could speak to any alleged service contracts and termination notice for the the Claimant.⁵ The Claimant could not provide this documentation.⁶ Claimant furthermore indicated that for personal reasons, the Claimant would rather that the NPFC not attempt to contact Energy Quest/Texas Petroleum.⁷

As a result, the NPFC could not verify that Claimant's termination and subsequent alleged loss of profits resulted from the Deepwater Horizon oil spill. Therefore, the lost profits portion of the claim is denied since the Claimant has failed to meet his burden to demonstrate he experienced a loss due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil.

The Claimant's personal property damage claim is also denied. The Claimant indicated that two Evinrude outboard motors repeatedly broke down, requiring repairs, because these engines were

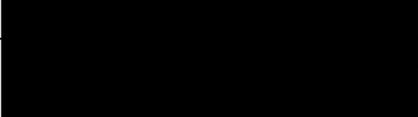
⁴ GCCF denial letter Re: Claimant's Emergency Advance Payment claim, dated 29 November 2010.

⁵ NPFC letter requested additional information, dated 10 February 2011.

⁶ Claimant indicates that it never had any service contacts with any of its customers.

⁷ Email from Claimant representative to NPFC representative, dated 23 March 2011. FOIA2011-3380-00002092

driven daily through oily water due to the Deepwater Horizon oil spill.⁸ The damage to the Claimant's engines resulted from Claimant's own decision to repeatedly operate its boats through oily water and expose the engines to oil. The Claimant failed to demonstrate that the damage to the engines was due strictly to the oil spill as opposed to his choice to operate the engines in adverse conditions which is exactly why the Claimant was told by the repair shop that the warranty would not honor future repairs due to continued damage as a result of the Claimant knowingly operating his boats in such conditions therefore the property damage component of this claim is denied.

Claim Supervisor: 

Date of Supervisor's Review: *4/3/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

Enclosure (2): Claimant Documentation before the NPFC:

- OSLTF claim form, dated 08 December 2010;
- GCCF claim status forms;
- GCCF claim denial letter, dated 29 November 2010;
- Photocopies of driver's license for business owners;
- Letter from Claimant, dated 30 December 2010, describing the business and the claim;
- Letter from Claimant verifying accuracy of submission, dated 30 December 2010;
- Letter from Claimant, dated 31 December 2010, further describing the business and the claim, boat motor repair invoices;
- Purchase invoice for two Evinrude outboard motors from Delta Outboard;
- Checking register for Claimant from 01-31 December 2009;
- Three pictures of boat and motors;
- Correspondence from claimant detailing other income derived from painting jobs, total painting income showing \$8,110 and supporting invoices also supplied;
- Map showing oil well facilities managed;
- Worksheets showing claimant's calculation of average monthly total income;
- Saved labor costs;
- Calculations of claimed losses for various time periods;
- Income by customer detail from January 2007 through December 2010;
- Summary balance sheets for the years ended December 31st 2006 through 2010;
- Employee earnings statements for July 2008 through June 2010 and July 2010 through January 2011;
- Profit and Loss Detail January 2007 through December 2010;
- Sales by month graph, January 2010 through January 11, 2011;
- Monthly business bank statements, January 2009 through November 2010;
- U.S. Return of Partnership Income for 2007, 2008 and 2009;
- Correspondence from claimant to NPFC adjuster dated 17 February 2011 (response to AI); and
- United Marine Survey Report dated 06 January 2006.

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

Fax: 202-493-6937

BY MAIL AND EMAIL

5890/DWHZ
Claim# N10036-0530
2/17/2011

RE: Claim Number: N10036-0530

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number N10036-0530 involving Deepwater Horizon. Please see the attached Claim Summary / Determination Form for an explanation regarding the denial.

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 N10036-0530.

Mail reconsideration requests to:

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

Sincerely,

Claims Manager
U.S. Coast Guard

CLAIM SUMMARY / DETERMINATION FORM

Date	: February 16, 2011
Claim Number	: N10036-0530
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$30,000.00

FACTS

On or about April 20, 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 was discharged from an offshore facility associated with the Deepwater Horizon and located on the Mississippi Canyon, Block 252 (Deepwater Horizon incident). This area was leased by BP Exploration and Production, Inc. (BP). The Coast Guard designated the offshore facility as the source of the discharge and BP as the responsible party (RP) for the discharge. BP accepted the designation, advertised its OPA claims process, and compensated claimants. On August 23, 2010, the Gulf Coast Claims Facility (GCCF) began accepting and adjudicating claims on behalf of BP.

CLAIM AND CLAIMANT

On January 28, 2011, [REDACTED] (Claimant) presented an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form seeking \$30,000.00 in lost profits and earning capacity resulting from the Deepwater Horizon incident.

Claimant asserted that she has worked as a massage therapist at [REDACTED] and [REDACTED] in Panama City Beach, Florida since January 31, 2009.

Prior to the Deepwater Horizon incident, Claimant earned total gross pay of \$10,842.33 from January 1, 2010 to April 25, 2010, or an average daily pay rate of \$86.05.

Claimant alleged that her employer had "thousands of cancellations, including three major fishing tournaments, golf tournaments, and various events through the summer." The Claimant also stated that she was part-time in 2009 and was moved to full-time in 2010. She seeks alleged lost earnings as a result of the Deepwater Horizon incident.

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

The OSLTF which is administered by the NPFC, is available, pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136, to pay claims for uncompensated damages. 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.
- (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.

DETERMINATION OF LOSS

Claimant's Submission

To support her claim, Claimant presented the following documents to the NPFC:

- NPFC Optional (OSLTF) Claim Form dated December 21, 2010;
- Correspondence from Claimant explaining her claim, dated December 9, 2010;
- Claimant status page print-out from GCCF website;
- Correspondence from employer explaining her claim, dated December 11, 2010;
- Employment verification letter, dated November 12, 2010;
- W-2 Wage and Tax Statement, 2008;
- I.R.S. Account Transcript, 2009. Adjusted Gross Income of \$25,352.00
- GCCF claim denial, dated November 9, 2010;
- Earnings statements from BISSO Marine for pay periods ending 2/01/09 through 11/07/10;

On August 25, 2010, Jason Seay (Claimant) filed a 6-month Emergency Advance Payment (EAP) claim for \$30,000.00 in lost earnings with the GCCF. GCCF assigned her Claimant ID [REDACTED] to her EAP claim. On November 9, 2010, the GCCF denied her claim. This

NPFC Determination

This claim is denied. 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. The NPFC considered all the documentation presented by the Claimant. This evidence does not support Claimant's allegation she lost \$30,000.00 in earnings as a result of the Deepwater Horizon incident.

Based on a review of the financial information provided, the NPFC determined the Claimant earned a total gross pay of \$10,842.33 from January 1, 2010 to April 25, 2010. This equates to an average daily pay rate of \$86.05. In the months following the Deepwater Horizon incident, the NPFC determined the Claimant earned a total gross pay of \$17,328.42 from the pay period ending on May 9, 2010 to the pay period ending November 7, 2010. This equates to an average daily pay rate of \$90.26. As such, the claimant's average daily pay rate in 2010 actually increased during the seven month period following the Deepwater Horizon incident.

Based on consideration of all documents and information supplied, the claimant has not demonstrated that any loss of profits or earnings capacity occurred as a direct result of the Deepwater Horizon incident. Additionally, the amount the Claimant alleged as her loss of profits is more than she earned the entire year before when considering the amount of money made thus far for 2010 therefore it is not clear how the Claimant arrived at her loss value. As such, the claim for lost profits or earnings capacity is denied.

Claim Supervisor:

Date of Supervisor's Review: 2/17/11

Supervisor's Action: *Denial approved*

U.S. Department
of Homeland
Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd., Suite 1000
Arlington, VA 20598-7100

Fax: 202-493-6937

5890
03 February 2011

VIA CERTIFIED MAIL

Number: [REDACTED]



RE: Claim Number: N10036-0531

Dear Mr. Arnold:

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies your claim. The NPFC is unable to establish that the loss of profits and earnings real or personal property damages you presented in your claim were a result of the Deepwater Horizon oil spill. Please see the attached claim summary 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 N10036-0531.

Mail reconsideration requests to:

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

Sincerely,



Claims Manager
U. S. Coast Guard

Encl: Claim Summary/Determination Form

09/14/11

FOIA2011-3380-0002099

CLAIM SUMMARY / DETERMINATION FORM

Date	03 February 2011
Claim Number	N10036-0531
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
Claim Manager	[REDACTED]
Amount Requested	\$28,000.00

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 was discharged from an offshore facility associated with the Deepwater Horizon and located on the Mississippi Canyon, Block 252 (the Deepwater Horizon incident). This area was leased by BP Exploration and Production, Inc. (BP). The Coast Guard designated the offshore facility as the source of the discharge and BP as the responsible party (RP) for the discharge. BP accepted the designation, advertised its OPA claims process, and compensated claimants. On 23 August 2010, the Gulf Coast Claims Facility (GCCF) began accepting and adjudicating claims on behalf of BP.

CLAIM AND CLAIMANT

On 28 January 2011, [REDACTED] (Claimant) presented a claim for lost profits and earnings capacity in the amount of \$28,000.00 to the National Pollution Funds Center (NPFC) for reimbursement. Claimant asserted that he moved "to the Gulf Coast from San Diego for work during the summer in early June 2010" but once he was settled in Alabama "the oil spill happens" and he was unable to find employment.¹ Claimant advised that in October 2010 he was able to find employment at [REDACTED] Restaurant but "it has been so slow because of the oil spill" and therefore he is not making the money that others who work at the same location have historically averaged for the last few years.²

Claimant further added, "basically I feel that I am entitled to money from BP because of the oil spill" as he moved to the Gulf Coast with "promises of best pay and lots of tips and money" and "if the oil spill had never happened then I would not be struggling or stressing about money now."³

APPLICABLE LAW

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a). Damages include the loss of profits or impairment of earning capacity due to the injury, destruction or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant. 33 U.S.C. § 2702(b)(2)(E).

¹ See, typed letter explaining his situation, undated, received on 28 January 2011.

² See, typed letter explaining his situation, undated, received on 28 January 2011.

³ See, typed letter explaining his situation, undated, received on 28 January 2011.

The OSLTF, which is administered by the NPFC, 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. With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

Pursuant to the claims regulations, 33 C.F.R. § 136.233, a claimant must establish the following to prove loss of profits or impairment of earning capacity:

- (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.
- (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.

DETERMINATION OF LOSS

Claimant's Submission

To support his claim, Claimant presented a typed letter with a sum certain amount of \$28,000.00. Claimant also provided a letter from [REDACTED] dated 15 November 2010 explaining that he was employed as "a part-time seasonal server at the restaurant" and that his hire date was 14 October 2010.⁴ Claimant provided minimal financial documents for himself, but rather several documents from another employee in an effort to demonstrate potential lost earnings. Claimant also provided a flight ticket online receipt supporting that a flight was scheduled from Pensacola, FL to San Diego, CA on 14 July 2010, although he failed to establish its relevancy to the claim.⁵

⁴ See, letter from [REDACTED]

⁵ See, internet printout from [REDACTED] email, dated 10 July 2010.

The GGCF issued a denial letter to Claimant for his Emergency Advance Payment claim, dated 06 December 2010, Claimant Identification Number: [REDACTED]

NPFC Determination

Under 33 CFR 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 CFR § 136.233, a claimant must establish loss of profits or impairment of earning capacity. The NPFC considered all the documentation submitted by the Claimant.

The claim is denied because the alleged loss in the amount of \$28,000.00 is not due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil. Claimant did not gain employment until October 2010 and hasn't substantiated an individual historical annual income calculable to the sum certain requested. Based on the documentation provided, the Claimant has failed to meet his burden in demonstrating he has experienced a loss of profits and earnings as a direct result of the Deepwater Horizon incident.

Claim Supervisor: [REDACTED]

Date of Review: *2/3/11*

Supervisor's Comments: *Denial approved*

U.S. Department of
Homeland Security

United States
Coast Guard



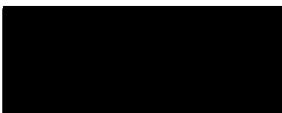
Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937
5890
3/24/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]



RE: Claim Number: N10036-0532

Dear [REDACTED]

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 claim number N10036-0532 involving the Deepwater Horizon oil spill. Please see the enclosed 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 N10036-0532.

Mail reconsideration requests to:

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

Sincerely,



Claims Manager
U.S. Coast Guard

CLAIM SUMMARY / DETERMINATION FORM

Date	: March 22, 2011
Claim Number	: N10036-0532
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$31,375.00

FACTS

On or about April 20, 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 was 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 August 23, 2010, the Gulf Coast Claims Facility (GCCF) began accepting and adjudicating claims for certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On January 28, 2011, [REDACTED] (Claimant) presented a claim to the National Pollution Fund Center (NPFC) on an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form seeking \$31,375.00 in lost profits and earning capacity resulting from the Deepwater Horizon incident.

Claimant asserted that she was unable to lease her bay home in Grand Isle, LA due to the oil spill. The Claimant stated that BP has used the dock at the property to tie boom off and that has had a major affect on leasing it.

The Claimant filed an Emergency Advance Payment (EAP) claim ([REDACTED]) with the GCCF and was compensated \$4,400.00 in October 2010.

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 waters or adjoining shorelines or the exclusive economic zone, as described in Section 2702(b) of OPA.

The OSLTF which is administered by the NPFC, is available, pursuant to 33 U.S.C. § 2712(a)(4) and 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136, to pay claims for uncompensated damages. 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.

- (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.

DETERMINATION OF LOSS

Claimant's Submission

To support the claim, the Claimant submitted the following documentation:

- Letter regarding wire transfer by GCCF dated 8 Oct 2010;
- Claim denial letter by GCCF dated 6 Dec 2010;
- Cover sheet to NPFC by Claimant dated 29 Nov 2010;
- Cover sheet to NPFC by Claimant dated Jan 2011;
- Cover sheet to NPFC by Claimant dated 26 Jan 2011;
- Copy of Leasing Agreement to Obtain Tenant with Century 21 by Claimant, for the period 3 May 2010 through 3 Nov 2010;
- Occupancy License and receipt by Town of Grand Isle Tax Collector dated 31 Dec 2010;
- Photographs of the subject property dock.

NPFC Determination

Under 33 U.S.C. § 2702(b)(2)(E) and 33 C.F.R. Part 136, a claimant must prove that his loss of income was due to injury or destruction or loss of real or personal property or 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 to the NPFC all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim. The NPFC considered all documentation presented by the Claimant.

Based on the documentation provided by the Claimant, the Claimant indicated that income was reduced as a result of the Deepwater Horizon incident.

On February 9, 2011, the NPFC sent, via certified mail, a request for additional information to the Claimant in order to obtain the necessary information to adjudicate the claim. The documentation requested consisted of the following:

- Proof of ownership of subject property through documents such as most recent property taxes, original purchase settlement, and deed.
- Monthly mortgage statements of subject property for January through December 2010, supporting that payments are current and have not previously been delinquent.
- Documentation for prior and current rentals of the property from January 2008 through the current period (signed lease agreements including term of rental and amount).
- Support for any inquiries or cancellations from potential tenants including actual signed lease agreements.

The NPFC also requested the Claimant answer the following questions:

- How long have you owned the subject property?
- How long have you been renting the subject property?
- Prior to May 2010, when was the last time the property was rented? What was the length of the lease term? How much was the property rented for? Provide the supporting signed lease agreement.
- Is the property currently leased? If so, what is the length of the lease term? How much is the property rented for? Provide the supporting signed lease agreement.
- Prior to the agreement with Century 21 dated 3 May 2010, have you used a third party company to locate tenants for the subject property? Provide the supporting signed leasing agreements.
- Please describe any compensation (if any) received from BP or GCCF.

The Claimant has not provided the additional documentation nor answered any of the questions to support the claim in order to demonstrate a loss of profits and earnings. Therefore, this claim is denied because the Claimant has failed to meet the burden to demonstrate that she had a loss of profits and that the alleged loss was due to the injury to, destruction of, or loss of property or natural resources as a result of a discharge or substantial threat of discharge of oil.

Claim Supervisor: 

Date of Supervisor's review: *March 24, 2011*

Supervisor Action: *Denial approved*

Supervisor's Comments:

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

Fax: 202-493-6937
5890
2/2/2011

VIA MAIL and EMAIL: [REDACTED]

RE: Claim Number: N10036-0533

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number N10036-0533 involving Deepwater Horizon. Please see the attached Claim Summary / Determination Form for the explanation regarding this denial.

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 N10036-0533.

Mail reconsideration requests to:

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

Sincerely,

[REDACTED]
Claims Manager
U.S. Coast Guard

Encl: Claim Summary / Determination Form
09/14/11

FOIA2011-3380-0002107

CLAIM SUMMARY / DETERMINATION FORM

Date : 2/1/2011
Claim Number : N10036-0533
Claimant : [REDACTED]
Type of Claimant : Private (US)
Type of Claim : Loss of Profits and Earning Capacity
Claim Manager : [REDACTED]
Amount Requested : \$448.23

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 was discharged from an offshore facility associated with the Deepwater Horizon and located on the Mississippi Canyon, Block 252 (the Deepwater Horizon incident). This area was leased by BP Exploration and Production, Inc. (BP). The Coast Guard designated the offshore facility as the source of the discharge and BP as the responsible party (RP) for the discharge. BP accepted the designation, advertised its OPA claims process, and compensated claimants. On 23 August 2010, the Gulf Coast Claims Facility (GCCCF) began accepting and adjudicating claims on behalf of BP.

CLAIM AND CLAIMANT:

On January 30, 2011, [REDACTED] (Claimant), presented a lost profits & earnings claim in the amount of \$448.23 to the National Pollution Funds Center (NPFC) for reimbursement of his vacation rental cancellation located in Miramar Beach, FL.¹ The claim consists of an Oil Spill Liability Trust Fund (OSLTF) Claim Form, a copy of the denial letter from the Gulf Coast Claims Facility (GCCCF) dated August 23, 2010, a copy of cancellation letter from [REDACTED] a copy of the [REDACTED] cancellation policy, a copy of signature form of the rented home through [REDACTED] copy of vacation payment deposit, a copy of GCCCF Claim Submission Form, and a copy of Michigan Driver's License.

On July 6, 2010, the claimant made presentment of the initial claim to BP in the amount of \$448.23 for a lost deposit as a result of a vacation rental cancellation. BP took no action on the initial claim as GCCCF took over. On August 23, 2010, the GCCCF assigned claimant identification [REDACTED] to [REDACTED] claim submission and advised in his letter that all of his information was transferred to the GCCCF. To date, Claimant states the GCCCF has taken no action on his submission.

[REDACTED] claimed a lost deposit that was placed on a vacation rental located in Miramar Beach, Florida. [REDACTED] who resides in Clinton Township, MI, had a reservation to rent a vacation property from 14 August 2010 through 21 August 2010. A deposit of \$448.23 was placed on or about 15 April 2010.² Subsequent to the Deepwater Horizon incident, [REDACTED] decided to cancel his reservations due to oil on the beaches as a result of the Deepwater Horizon. The terms of the rental agreement state that refunds will only be provided if reservations are cancelled within 7 days of the execution of the rental agreement³ [REDACTED] provided the date in which he

¹ See, OSLTF Claim Form dated January 29, 2011.

² See, undated Oil Spill Cancellation Notice provided by the Claimant.

³ See, [REDACTED] rental policy obtained from the Claimant.

cancelled the reservation as on or about June 5, 2010 which was more than 7 days after making the reservation therefore he was not able to receive a refund of his deposit due to the terms of the rental agreement. Due to the loss of his deposit on the vacation property, [REDACTED] has presented a claim to the NPFC in the amount of \$488.23.

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

The OSLTF which is administered by the NPFC, is available, pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136, to pay claims for uncompensated damages. 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.
- (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.

DETERMINATION OF LOSS:

Analysis:

The NPFC Claims Manager has reviewed the documentation submitted by the Claimant and has determined that the documentation supports the Claimant's allegation that he voluntarily lost his deposit of \$448.23 on his vacation rental property in Miramar Beach, Florida scheduled for August 14, 2010 through August 21, 2010. The Claimant's rental policy provisions state that in order to obtain a full refund when terminating a rental agreement, the cancellation must be made within seven days following the executed rental agreement. The Claimant cancelled his rental reservation on or about June 5, 2010 therefore based on the rental policy provisions, the NPFC

has determined that the reservation cancellation occurred sometime following the Deepwater Horizon incident which occurred on or about April 20, 2010.

The NPFC also notes that the Claimant's allegation that he cancelled his reservation because there was BP oil on the area beaches was his personal decision to cancel his vacation. The vacation rental was available for use as reserved although [REDACTED] decided not to take his vacation.

Lastly, under the Oil Pollution Act (OPA), the types of damages entitled to compensation by the OSLTF as identified in the Interim Claims Regulations located at 33 CFR § 136 are as follows:

- 136.303 Natural Resource Damage claims;
- 136.305 Real or personal property damage claims;
- 136.311 Claims for lost profits, impairment of earning capacity, and economic loss resulting from property damage.

Based on the types of compensable damages under OPA, the loss claimed does not meet the requirements for compensation under OPA therefore the claim is denied.

Determination

In accordance with 33 USC § 2702(b) and 33 CFR § 136, the Claimant bears the burden of proving that their loss resulted from an incident which the Claimant has failed to prove. Additionally, the lost rental deposit does not meet the requirements of the types of damages compensable under the Oil Pollution Act (OPA) and its governing claims regulations therefore this claim is also denied because it is not a valid OPA damage claim.

Claim Supervisor: [REDACTED]

Date of Supervisor's review: *February 1, 2011*

Supervisor Action: *Denial approved*

Supervisor's Comments:

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: [REDACTED]
E-mail: [REDACTED]

Fax: 202-493-6937
5890
1/31/2011

BY MAIL AND EMAIL

[REDACTED]

[REDACTED]

Mobile, AL 36603

RE: Claim Number: N10036-0534

Dear Mr. [REDACTED]:

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number N10036-0534 involving Deepwater Horizon. Please see the attached Claim Summary / Determination Form for an explanation regarding the denial.

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 N10036-0534.

Mail reconsideration requests to:

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

Sincerely, [REDACTED]

[REDACTED]

Claims Manager
U.S. Coast Guard

Encl: Claim Summary / Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Date	: January 31, 2011
Claim Number	: N10036-0534
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$22,000.00

FACTS:

On or about April 20, 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 was discharged from an offshore facility associated with the Deepwater Horizon and located on the Mississippi Canyon, Block 252 (the Deepwater Horizon incident). This area was leased by BP Exploration and Production, Inc. (BP). The Coast Guard designated the offshore facility as the source of the discharge and BP as the responsible party (RP) for the discharge. BP accepted the designation, advertised its OPA claims process, and compensated claimants. On August 23, 2010, the Gulf Coast Claims Facility (GCCF) began accepting and adjudicating claims on behalf of BP.

CLAIM AND CLAIMANT

On January 27, 2011, Mr. [REDACTED] (Claimant) presented a loss of profits & earnings claim in the amount of \$22,000.00 to the National Pollution Funds Center (NPFC). The Claimant asserted that he was laid off from his position with [REDACTED] and unable to generate income as a direct result of the Deepwater Horizon incident.

On an unknown date, the Claimant submitted a Quick Payment Final Claim to the GCCF. The Claimant was compensated \$5,000.00 on January 11, 2011 after signing the Quick Payment Final Claim and Release.

APPLICABLE LAW:

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a). Damages include the loss of profits or impairment of earning capacity due to the injury, destruction or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant. 33 U.S.C. § 2702(b)(2)(E).

The Oil Spill Liability Trust Fund (OSLTF), which is administered by the NPFC, 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. With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c). Finally, payment of any claim from the Fund is subject to the

United States Government acquiring all rights of the claimant to recover from the responsible party. 33 U.S.C. § 2712(f).

DETERMINATION OF LOSS

In this case, the Claimant has settled the claim with GCCF, acting on behalf of the responsible party. Claimant has been compensated for its claim under the GCCF Quick Payment Final Claim process and has released its rights to recover further from the responsible party. The Fund is not available to pay any additional amount for the compensated claim and therefore the claim is denied.

Claim Supervisor: 

Date of Supervisor's review: *1/31/11*

Supervisor Action: *Denial approved*

Supervisor's Comments:

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

Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim # N10036-0535
14 March 2011



RE: Claim Number: N10036-0535

Dear [REDACTED]

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 CFR Part 136, denies payment on the claim number N10036-0535 involving the Deepwater Horizon oil spill. Please see the enclosed 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 N10036-0535.

Mail reconsideration requests to:

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

Sincerely,

[REDACTED]
Claims Manager
U.S. Coast Guard

Enclosure: Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00002114

CLAIM SUMMARY / DETERMINATION FORM

Date	: 3/9/2011
Claim Number	: N10036-0535
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$63,123.78

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 was 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 claims for certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On 31 January 2011, [REDACTED] (Claimant) presented a claim for \$63,123.78 in lost profits and earnings capacity to the National Pollution Funds Center¹ allegedly resulting from the Deepwater Horizon oil-spill.

Claimant is a Louisiana (LA) commercial fisherman who holds crab trap licenses for 2010 and 2011. Claimant's 2009 LA trip ticket landings data indicate that he caught blue crabs primarily from Vermillion and West Cote Blanche Bay. Claimant alleged that as a result of the Deepwater Horizon oil-spill, areas he fished were closed and he subsequently lost income and crab traps.²

APPLICABLE LAW

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a). Damages include the loss of profits or impairment of earning capacity due to the injury, destruction or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant. 33 U.S.C. § 2702(b)(2)(E).

The OSLTF, which is administered by the NPFC, is available to pay claims for uncompensated damages pursuant to 33 USC § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 CFR Part 136. With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

Pursuant to the claims regulations, 33 CFR § 136.233, a claimant must establish the following to prove loss of profits or impairment of earning capacity:

- (a) That real or personal property or natural resources have been injured, destroyed, or lost.

¹ Claimant's optional Oil Spill Liability Trust Fund (OSLTF) claim form dated 14 January 2011.

- (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.
- (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 CFR § 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 CFR § 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.

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support his claim, Claimant submitted the following documentation to the NPFC:

- OSLTF claim form, dated 14 January 2011;
- Untitled letter from Claimant explaining his claimed loss amount, dated 17 January 2011;
- Copy of Claimant's 2010 & 2011 LA resident license for commercial fishing, set line, crab traps, vessel;
- Copy of Claimant's LA driver's license & U.S. Social Security card;
- Copy of Claimant's boat registration certificate (expires 04 May 2012);
- GGCF notice of Emergency Advance Payment Determination with check for \$9,300.00, dated 17 September 2010;
- GCCF notice of Emergency Advance Payment Determination with check for \$14,700.00, dated 02 October 2010;
- LA trip ticket landings data from 22 May through 29 December 2009; and
- Claimant 2009 1040 with Schedule C.

Claimant seeks \$63,123.78 in lost profits and earnings capacity, allegedly resulting from the Deepwater Horizon oil-spill.

On 18 May 2010, Claimant filed a claim with BP and received \$10,000.00. On 01 September 2010, Claimant then filed a six-month Emergency Advance Payment claim for \$24,000.00 in lost

profits with the GCCF. He was assigned GCCF Claimant ID [REDACTED] and Claim [REDACTED]. Claimant received \$24,000.00 in compensation in two separate installments from the GCCF.³

On 31 January 2011, Claimant presented a lost profits claim for \$63,123.78 to the NPFC. In his submission to the NPFC, Claimant admitted receiving \$24,000.00 from the GCCF, but he stated that “[it is] not enough to live by.”⁴

NPFC Determination

Under 33 CFR 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 CFR § 136.233, a claimant must establish loss of profits or impairment of earning capacity. The NPFC considered all the documentation submitted by the Claimant.

The claim is denied because the alleged loss in the amount of \$63,123.78 is not due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil.

Upon initial review of the claim submission, the NPFC sent the Claimant a letter requesting additional information to further evaluate his claim.⁵ The letter requested, among other things, financial documentation to verify the Claimant’s alleged losses and identification of closures affecting areas that the Claimant fished and/or crabbed. To date, the Claimant has not responded to the NPFC’s request.⁶

The NPFC proceeded to adjudicate the claim with the existing documentation submitted by the Claimant. The evidence does not demonstrate that the Claimant lost \$63,123.78 in profits as a result of the Deepwater Horizon oil-spill. Additionally, the evidence does not address how the Claimant calculated his losses nor does it indicate what closures impacted his fishing/crabbing operations. The NPFC cannot verify Claimant’s allegations therefore this claim is denied.⁷

Claim Supervisor [REDACTED]

Date of Supervisor’s review: *3/11/11*

Supervisor Action: ***Denial approved***

Supervisor’s Comments:

³ GGCF notice of Emergency Advance Payment Determination with check for \$9,300.00, dated 17 September 2010; GCCF notice of Emergency Advance Payment Determination with check for \$14,700.00, dated 02 October 2010.

⁴ OSLTF claim form.

⁵ The letter was dated 03 February 2011. It was sent on that date.

⁶ The NPFC called Claimant on 03 February and 18 February 2011 at the contact number he provides, but on both occasions, there was no answer and no voicemail to take a message.

⁷ With respect to Vermillion and West Cote Blanche Bay—the areas Claimant primarily crabbed in 2009—no closures affected state waters inside these bays. EMAIL from NPFC to LA Department of Wildlife and Fisheries, dated 07 February 2011.

U.S. Department of
Homeland Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937

5890
4/4/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]



RE: Claim Number: N10036-0536

Dear [REDACTED]

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 claim number N10036-0536 involving the Deepwater Horizon incident. Please see the enclosed Claim Summary/Determination Form for further explanation.

Disposition of this reconsideration constitutes final agency action.

If you have any questions or would like to discuss the matter, you may contact me at the above address and phone number.

Sincerely,



Chief, Claims Adjudication Division
U.S. Coast Guard

ENCL: Claim Summary / Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Date	: 4/3/2011
Claim Number	: N10036-0536
Claimant	[REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	[REDACTED]
Amount Requested	: \$5,000.00

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 was 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 claims for certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT:

On 31 January 2011 [REDACTED] (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Funds Center (NPFC) seeking \$5,000.00 in lost profits and earnings capacity allegedly resulting from the Deepwater Horizon oil spill.

Claimant asserted that he worked in receiving and shipping for [REDACTED] in Gramercy, Louisiana. He stated that Imperial closed down on 31 December 10 and he was laid off. He alleged that production slowed down at Imperial and he lost earnings in October 2010 as a result of the Deepwater Horizon oil spill.¹

Claimant also alleged that his "side job" detailing cars "came to a stop" as a result of the Deepwater Horizon oil spill.²

REQUEST FOR RECONSIDERATION:

On March 31, 2011, the Claimant sent a letter via facsimile requesting reconsideration of the NPFC's initial denial dated March 14, 2011. The NPFC denied the claim originally because the Claimant failed to demonstrate he had a loss of profits and earnings associated with his primary position with [REDACTED] since his gross wages for 2010 far exceeded what he had made with Imperial the previous year. Additionally, the NPFC also denied his request for loss of profits and earnings associated with his "side job" detailing cars because the Claimant had only provided a copy of his 2008 income tax return which showed a net profit loss of \$9,277.00 for that year but no other information therefore because the Claimant provided no other comparable financial records, the NPFC was unable to determine he had a loss of profits and earnings in 2010 associated with this business venture and the alleged loss was subsequently also denied.

¹ OSLTF claim form.

² *Id.*

In the Claimant's written request for reconsideration, he has provided no new information in support of his request for loss of profits and earnings associated with the Claimant's side business. The Claimant requested that the NPFC look into his business loss profits as a result of the Deepwater Horizon oil spill incident but other than written arguments, the Claimant has provided no new information to support his request.

RECONSIDERATION CLAIM ANALYSIS:

The claimant requested reconsideration via a letter sent via facsimile dated March 31, 2011. To support his request for reconsideration, the claimant provided no new information.

NPFC Determination on Reconsideration

Under 33 U.S.C. § 2702(b)(2)(E) and 33 C.F.R. Part 136, a claimant must prove that his loss of income was due to the injury, destruction or loss of real or personal property or 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 to the NPFC all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim. The NPFC considered all of the documentation presented by the Claimant.

The Claimant provided no new information associated with his side business in order for the NPFC to perform an economic analysis of whether the Claimant's side business has experienced a loss nor has the Claimant provided any details regarding his clientele and how his reduction in business is due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil.

The NPFC again denies the claim because (1) the Claimant has not provided comparable business financial information that demonstrates a loss of profits and (2) the Claimant has failed to demonstrate that had he proven a loss of profits and earnings, that the loss was due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil.

Claim Supervisor 

Date of Supervisor's review: *4/4/11*

Supervisor Action: ***Denial on reconsideration approved***

Supervisor's Comments:

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

Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]

DWHZ/5890

09 May 2011

RE: Claim Number: N10036-0537

Dear [REDACTED]

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 claim number N10036-0537 involving the Deepwater Horizon oil spill. Please see the enclosed 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 N10036-0537.

Mail reconsideration requests to:

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

[REDACTED]
U. S. Coast Guard
Claims Manager

Enclosure: (1) Claim Summary/Determination Form
(2) List of Documentation Provided by Claimant, N10036-0537

09/14/11

FOIA2011-3380-00002121

CLAIM SUMMARY / DETERMINATION FORM

Date	: 5/4/2011
Claim Number	: N10036-0537
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$78,967.00

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 was 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 claims for certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On 31 January 2011, [REDACTED] (Claimant) presented a loss of profits and earnings claim to the National Pollution Funds Center (NPFC) in the amount of \$78,967.00 for damages resulting from the Deepwater Horizon oil spill.¹

Claimant provides sales, installations, and services for Security and Surveillance Systems, Land-based Satellite and Offshore Communications Systems and Audio/Video Electronic Solutions.² Damages claimed are based on lost profits and earnings primarily from decreased business in the Marine Division of the Claimant's three divisions (commercial, marine and residential). Claimant calculated the damages by measuring the difference in gross profits from 21 April 2010 through 20 October 2010 for the Marine Division, versus the corresponding period of time in the previous year (2009).³

The provided documentation indicated that all sales in the Marine Division were from two customers: [REDACTED] (Hornbeck Offshore [REDACTED]). Claimant indicated that their Marine Division customers "could not perform their normal operations in the Gulf because of damage to the natural resource, the Gulf of Mexico waters, caused by the BP Oil Spill."⁴ Claimant asserted that "the bottom fell out as of the spill day" and vigorously argued that very little, if any, of their loss can be attributed to the Deepwater Drilling Moratorium.⁵

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 31 January 2011, received at NPFC on 31 January 2011.

² Digital Designers web home page [REDACTED] last accessed 29 April 2011.

³ Claim calculation for six months lost gross profit from marine division customers.

⁴ Letter of claim explanation in response to NPFC's request for additional information, dated 23 March 2011.

⁵ Id.

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

The OSLTF, which is administered by the NPFC, is available, pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136, to pay claims for uncompensated damages. 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.
- 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.

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

Documentation provided by Claimant is listed in Enclosure (2).

On 06 July 2010, Claimant presented a claim to the responsible party, BP, and was assigned claim number [REDACTED]. On 23 August 2010, Claimant presented a six-month Emergency Advance Payment (EAP) claim to GCCF in the amount of \$81,702.00 and was assigned GCCF Claimant ID [REDACTED] and Claim [REDACTED]. This EAP claim was denied on 23 October 2010.⁷

⁶ GCCF Filing Report to the NPFC, dated 04 May 2011.

⁷ GCCF denial letter to Claimant Re: EAP claim dated 23 October 2010.

On 31 January 2011, Claimant presented this claim for \$78,967.00 in lost profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

NPFC Determination

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. § 136.233, a claimant must establish loss of profits or impairment of earning capacity. The NPFC considered all the documentation submitted by the Claimant and conducted independent investigation of the claim.

Claimant's financial documentation that was provided to the NPFC, including profit and loss statements, sales records, and tax returns, indicated that the Claimant did experience a decline in earnings subsequent to the Deepwater Horizon oil spill. However, the Claimant has failed to demonstrate that this decline in earnings was due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil.

Despite the voluminous amount of documentation provided by the Claimant, there was ultimately no evidence specifically linking any cancelled contracts or agreements to the Deepwater Horizon oil spill. Additionally, in the course of the investigation of this claim, the NPFC contacted both CalDive and HOS to inquire as to the nature of their business reductions with the Claimant in 2010. Neither party was able to identify the Deepwater Horizon oil spill as the specific cause of any cancelled orders or delayed projects.⁸

The reduction in earnings experienced by the Claimant has not been shown to be due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil.

In light of the foregoing, this claim is DENIED.

Claim Supervisor: [REDACTED]

Date of Review: *5/9/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

⁸ PHONECON between [REDACTED] and NPFC Representative on 5 April 2011; PHONECON between [REDACTED] and NPFC Representative on 6 April 2011.

Claimant provided the following documents in support of his claim:

- Optional OSLTF Claim Form, dated 31 January 2011
- Letter of explanation to NPFC, dated 31 January 2011
- Letter requesting reconsideration of claim to GCCF adjuster, dated 28 September 2010
- Follow up letter requesting reconsideration to GCCF adjuster, dated 29 September 2010
- Follow up reconsideration letter to GCCF adjuster, dated 26 October 2010
- Letter requesting assistance to Senator Mary Landrieu dated 4 November 2010
- Claim calculation for six months lost gross profit from marine division customers
- Job Profitability Summary for Marine Division from
- Sales by Customer, January through December 2008
- Sales by Customer, April 21 through October 20 of 2009 and 2010
- Profit and loss statement by month for April 21-30, May, June, July, August, September, October 1-20 for 2009 and 2010.
- 2008 and 2009 Federal Income Tax Partnership Return
- Articles of Organization
- 2010 Occupational License [REDACTED] Louisiana; Louisiana Resale Certificate; Sales Tax Exemption.
- Copy of Louisiana Driver's License for Owner
- Letter of claim explanation in response to NPFC's request for additional information, dated 23 March 2011
- 2007 Federal Income Tax Partnership Return, including all attachments; as well as a cover page with explanation from Claimant
- Claimant's 2008 & 2009 Federal Income Tax Partnership Return
- Monthly profit and loss statements from the Marine Division for the 2009 and 2010, including a cover page with explanation from Claimant
- Master service agreement with [REDACTED], dated 30 July 2009
- Master service agreement with [REDACTED], dated 3 March 2008
- Monthly sales by division and customer from 2007 through 2010, including a cover page with explanation from Claimant
- Letter of claim explanation in response to NPFC's request for additional information, dated 23 March 2011
- Cover page with explanation regarding Claimant's contracts with Marine Division customers
- Cover page with explanation regarding Claimant's purchases and expenses
- Workers' Compensation Monthly Reports from April 1 through October 31 for both 2009 and 2010, including a cover page with explanation from Claimant
- Copy of QuickBooks "Find Report - All Transactions," including a cover page with explanation from Claimant
- Answers to questions 1 through 6 from NPFC's request for additional information
- 2010 Marine Division sales detail

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

Fax: 202-493-6937

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Number [REDACTED]

5890/DWHZ
Claim# N10036-0538
15 April 2011

RE: Claim Number: N10036-0538

Dear [REDACTED]

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 claim number N10036-0538 involving the Deepwater Horizon oil spill. Please see the enclosed 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 N10036-0538.

Mail reconsideration requests to:

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

Sincerely,

[REDACTED]
U. S. Coast Guard
Claims Manager

Enclosure: Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00002126

CLAIM SUMMARY / DETERMINATION FORM

Date	12 April 2011
Claim Number	N10036-0538
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
Claim Manager	[REDACTED]
Amount Requested	\$18,000.00

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 was 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 claims for certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On 02 February 2011, [REDACTED] (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Funds Center (NPFC). The OSLTF claim form alleged \$24,000.00 in lost profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.¹

Claimant works as [REDACTED] Regional Director of recruiting for the Gulf Coast. In this position, the Claimant asserted that he oversees staffing for all resort positions in three markets (New Orleans, Destin, and Panama City).² Claimant indicated that a substantial portion of his compensation is incentive bonus based on net operating income (NOI) of the resorts he oversees.³ He alleged that as a result of the Deepwater Horizon oil spill, tourism in the Gulf Coast during peak summer months decreased and the Wyndham resorts in this area lost profits.⁴ Claimant alleged that he consequently did not receive his anticipated NOI bonuses from May through September.

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 waters or adjoining shorelines or the exclusive economic zone, as described in Section 2702(b) of OPA.

The OSLTF which is administered by the NPFC, is available, pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136, to pay claims for uncompensated damages. One type of damages available pursuant to 33 C.F.R. § 136.231 is

¹ Claimant has not presented this sum certain to the RP pursuant to 33 C.F.R. § 136.103 (a). The only amount properly before the NPFC pursuant to this regulation is \$18,000.00—the claimed amount of Claimant's denied Emergency Advance Payment claim. This determination addresses only that alleged claimed amount of loss.

² Claimant response to questions and documentation requested.

³ *Id.*; PHONECON between Claimant and the NPFC on 28 March 2011;

⁴ Claimant response to questions and documentation requested.

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.
- (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.

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support the claim, Claimant submitted the following documents to the NPFC:

- OSLTF claim form, signed 24 January 2011;
- Letter from the NPFC to Claimant, dated 18 January 2011;
- Letter from Claimant explaining loss, undated;
- Earnings statements from December 2008 to October 2010 from Wyndham Vacation Resorts, Inc;
- Copy of driver license;
- Copy of social security card;
- Letter on resort letterhead from [REDACTED] VP dated 05 April, 2011 explaining declining occupancy rates;
- GCCF letter, dated 08 October 2010 requesting additional information;
- GCCF denial letter, dated 19 November 2010;
- Letter from attorneys DBKSMN, dated 13 December 2010, to the NPFC;

- Form 1040 US Individual Income Tax Return for 2008, 2009 and 2010;
- W-2 for 2007, 2008, 2009 and 2010 from [REDACTED]

On 28 February 2011, the NPFC sent a letter to the Claimant requesting additional information in order to evaluate his claim. The Claimant responded to the request on 16 March 2011 and provided the following additional information:

- Claimant response to questions and documentation requested;
- Google maps print outs;
- 2007 W-2's;
- 2007 Form 6251;
- 2008 W-2's;
- 2008 Form 1040;
- 2009 W-2's;
- 2008 Form 1040 (partial);
- 2010 W-2's; and
- 2010 Form 1040.

On 29 September 2010, Claimant presented a six-month Emergency Advance Payment claim for \$18,000.00 in lost earnings to the GCCF.⁵ He was issued GCCF Claimant ID [REDACTED] and Claim [REDACTED].⁶ On 19 November 2010, this claim was denied.⁷

On 02 February 2011, Claimant presented this claim for \$24,000.00 in lost profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill. As noted, pursuant to 33 C.F.R. § 136.103 (a), only \$18,000.00 of Claimant's claimed loss amount has been properly to the RP, therefore this determination addresses what was properly presented to the RP and all amounts above \$18,000.00 are denied for failure to make proper present to the RP as required by regulation.

NPFC Determination

Under 33 CFR 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 CFR § 136.233, a claimant must establish loss of profits or impairment of earning capacity. The NPFC considered all the documentation submitted by the Claimant.

Claimant asserted that he did not receive his anticipated bonuses from May through September because the [REDACTED] in the Gulf Coast, which he oversees, did not meet projected profit targets during those months. To support this assertion, Claimant provided a letter from the [REDACTED] confirming the impact of the Deepwater Horizon oil spill on occupancy rates at Destin and Panama City resorts.⁸ Outside of this letter, there is no empirical evidence from Wyndham documenting reduced occupancy rates and profits at these resorts in the wake of the Deepwater Horizon oil spill.

⁵ GCCF Filing Report, dated 12 April 2011.

⁶ Id.

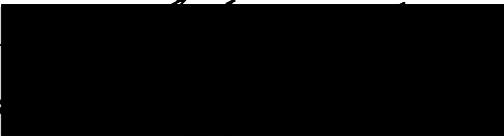
⁷ GCCF Letter denying Claimant's claim, dated 19 November 2010.

⁸ Letter on resort letterhead from [REDACTED] dated 05 April, 2011 explaining declining occupancy rates.

Additionally, the NPFC has requested documentation addressing Claimant's bonus structure to verify the Claimant's alleged losses.⁹ The Claimant has not been able to provide this additional documentation in support of his claim as requested.¹⁰

This claim is denied because the Claimant has not met his burden (1) to demonstrate his alleged financial loss, (2) to establish the correlation, if any, between this alleged loss and the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil, and (3) the claimed amount over and above \$18,000.00 is denied because the Claimant has failed to make proper presentment of costs first to the RP as required by regulation located at 33 C.F.R. § 136.103(a), which states that all claims for removal costs and damages must be presented first to the Responsible Party or guarantor

In light of the foregoing, this claim is denied.

Claim Supervisor 

Date of Supervisor's Review: 4/15/11

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

⁹ NPFC letter requesting additional information, dated 28 February 2011.

¹⁰ Claimant states that his employer considered this information proprietary and refused to provide it. PHONECON between the NPFC and Claimant, dated 28 March 2011.

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

Fax: 202-493-6937

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim# N10036-0540
12 April 2011



RE: Claim Number: N10036-0540

Dear [REDACTED]:

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 claim number N10036-0540 involving the Deepwater Horizon oil spill. Please see the enclosed 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 N10036-0540.

Mail reconsideration requests to:

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

Sincerely,



U. S. Coast Guard
Claims Manager

Enclosure: Claim Summary/Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Date	08 April 2011
Claim Number	N10036-0540
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
Claim Manager	[REDACTED]
Amount Requested	\$5,000.00

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 was 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.

CLAIM AND CLAIMANT

On 04 February 2011, [REDACTED] (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Funds Center (NPFC). The OSLTF claim form alleged \$5,000.00 in lost profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

Claimant is employed by [REDACTED] which operates food, beverage and retail establishments in airports throughout the country.¹ Among these establishments is TGI Friday's in the Tampa International Airport, where the Claimant asserted that he has worked as a bartender since 2005.² The Claimant also alleged that as a result of the Deepwater Horizon oil spill, the amount of traffic through Tampa International Airport noticeably decreased, leading to a reduction in his work hours.³

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 waters or adjoining shorelines or the exclusive economic zone, as described in Section 2702(b) of OPA.

The OSLTF which is administered by the NPFC, is available, pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136, to pay claims for uncompensated damages. 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.

¹ [REDACTED] (last visited 08 April 2011).

² OSLTF claim form.

³ *Id.* The NPFC notes that Claimant calculated that he worked an average of 31.49 hours per week from 23 April 2009 to 12 December 2009 (pre-spill), and 26.87 hours per week from 22 April 2010 to 16 December 2010 (post-spill). Claimant also indicated that that he worked 5 days per week prior to the oil spill and 2 days per week post-spill. Taking these figures together, it appears that Claimant averaged a mere 1.5 hours of work during each of the three lost days.

- (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.
- (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.

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

In support of his claim, Claimant submitted the following documentation to the NPFC:

- OSLTF claim form, signed by Claimant and dated 26 January 2011;
- Claimant Information Page from GCCF website;
- W-2s from [REDACTED] Restaurants for 2010;
- W-2s from [REDACTED] for 2009;
- W-2s from [REDACTED] for 2008;
- 2008 1099 MISC from [REDACTED];
- Letter from Claimant to NPFC in response to request for additional information, undated;
- Various Bank of America checking account statements;
- Loss of hours calculation for 2010;
- Wage and earnings statements from Host International Inc. for January 2009 through December 2010;
- Wage and earnings statements from [REDACTED] for April through August 2010;
- Combined tax statement for 2010 from Bank of America;
- Letter from Darden Dimes to Claimant, dated 19 January 2011;
- GCCF Summary of Options for Submission of Final and Interim Payment Claims, dated 17 December 2010;
- Letter purportedly from [REDACTED] HR, addressed to whom it may concern, detailing the effect of the Deepwater Horizon oil spill on its work force, dated 16 March 2011;

- Various news articles detailing the economic and environmental impact of the oil spill on Florida.

On 15 November 2010, Claimant presented a six-month Emergency Advance Payment (EAP) Claim to the GCCF in the amount of \$5,000, and was assigned Claimant ID [REDACTED] and Claim # [REDACTED]. That claim was denied on 03 December 2010.⁵

The NPFC notes that the Claimant has an outstanding final payment offer of \$7,090.84 from the GCCF; it is unclear if the Claimant has accepted this payment.⁶

NPFC Determination

The claim is denied. 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. The NPFC considered all documentation presented by Claimant.

Under 33 C.F.R. 136.9, falsification of claims, persons submitting false claims or making false statements in connection with claims under this part may be subject to prosecution under Federal law, including but not limited to 18 U.S.C. 287 and 1001. In addition, persons submitting written documentation in support of claims under this part which they know, or should know, is false or omits a material fact may be subject to a civil penalty for each claim. The NPFC considered all of the documentation submitted by the Claimant.

During the course of adjudicating this claim, the NPFC contacted [REDACTED] Inc's Human Resources Department to verify a letter submitted by the Claimant and purportedly from that department, which detailed the impact of the Deepwater Horizon oil spill on [REDACTED] work force. [REDACTED] Inc's HR department denied the authenticity of the letter and declared that "[t]he memo was not written by any member of the Human Resources Staff with [REDACTED] at the Tampa International Airport."⁷

Under 33 C.F.R. 136.9, persons submitting false claims or making false statements in connection with claims under this part may be subject to prosecution under Federal law, including but not limited to 18 U.S.C. 287 and 1001. In addition, persons submitting written documentation in support of claims under this part which they know, or should know, is false or omits a material fact may be subject to a civil penalty for each claim.

This claim is denied because the Claimant has made false statements as well as produced a falsified document allegedly from his employer in connection with this claim submission in order to obtain funds for an alleged loss of profits as a result of the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil.

Claim Supervisor [REDACTED]

Date of Supervisor's Review: 4/12/11

Supervisor's Actions: *Denial approved*

⁴ GCCF Filing Report, dated 05 April 2011.

⁵ GCCF denial letter Re: Claimant's Emergency Advance Payment claim, dated 03 December 2010.

⁶ GCCF Claimant's Status Page.

⁷ Letter from [REDACTED] field Human Resources Manager, dated 07 April 2011.

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

[REDACTED]
Fax: 202-493-6937
5890
3/28/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]

[REDACTED]

RE: Claim Number: N10036-0541

Dear [REDACTED]

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 claim number N10036-0541 involving the Deepwater Horizon oil spill. Please see the enclosed 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 N10036-0541.

Mail reconsideration requests to:

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

[REDACTED]

Claims Manager
U.S. Coast Guard

Encl: Claim Summary / Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Date	: March 28, 2011
Claim Number	: N10036-0541
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$10,000.00

FACTS

On or about April 20, 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 was 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 August 23, 2010, the Gulf Coast Claims Facility (GCCF) began accepting and adjudicating claims for certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On February 4, 2011, [REDACTED] (Claimant) presented a claim to the National Pollution Fund Center (NPFC) on an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form seeking \$10,000.00 in lost profits and earning capacity resulting from the Deepwater Horizon incident.

Claimant asserted that his air conditioning repair business was affected by the oil spill because condominium owners and restaurants stopped requesting his services. The Claimant asserted that those businesses were affected by the lack of tourists due to the oil spill.

The Claimant provided no correspondence between himself and the GCCF but stated that his claim was denied.

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 waters or adjoining shorelines or the exclusive economic zone, as described in Section 2702(b) of OPA.

The OSLTF which is administered by the NPFC, is available, pursuant to 33 U.S.C. § 2712(a)(4) and 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136, to pay claims for uncompensated damages. 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.

- (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.

DETERMINATION OF LOSS

Claimant's Submission

To support the claim, the Claimant submitted the following documentation:

- NPFC Optional OSLTF Claim Form dated 19 January 2011;
- Paychecks from Air Conditioning Specialists, Inc. dated as follows: 1/30/09, 3/4/09, 3/25/09, 4/24/09 (2), 5/8/09, 5/13/09, 5/25/09, 9/12/09, 6/18/09, 7/2/09, 7/16/09, 8/4/09, 8/24/09, 8/24/09, 9/7/09 and 9/24/09. Paycheck provided total \$10,015;
- 2008 and 2009 Individual Federal Income Tax Return Filings (Page 1 only). Gross wages reported of \$17,460 and \$17,423, respectively;
- 2008, 2009 and 2010 Form W-2's from [REDACTED];
- Printout of "[REDACTED]" Expenses by Vendor Detail report from January 1, 2007 through June 25, 2010;
- Handwritten note stating Claimant was on medical leave from September 2009 through February 2010. States he returned to work on March 1, 2010 but "unable to make payroll" due to reduced tourism;
- Handwritten note stating that work orders come from rental condominiums, rental properties, restaurants, etc...

NPFC Determination

Under 33 U.S.C. § 2702(b)(2)(E) and 33 C.F.R. Part 136, a claimant must prove that his loss of income was due to injury or destruction or loss of real or personal property or 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 to the NPFC all evidence,

information, and documentation deemed necessary by the Director, NPFC, to support the claim. The NPFC considered all documentation presented by the Claimant.

Based on the documentation provided by the Claimant, the Claimant indicated that income was reduced as a result of the Deepwater Horizon incident.

On February 25, 2011, the NPFC sent, via certified mail, a request for additional information to the Claimant in order to obtain the necessary information to adjudicate the claim. The documentation requested consisted of the following:

- Corporate Income Tax Return filings for [REDACTED] from 2007 through 2009, including all schedules and attachments. We understand you are a shareholder or officer of the company.
- On your Individual Income Tax Return filing you noted income from real estate properties, which are recorded on a Schedule E. If your rental income is related to the [REDACTED] or any other properties where you both have ownership and have worked for, provide the corresponding Schedule E's from your tax returns.
- As the corporate filing from [REDACTED] indicates you as being a shareholder or officer, please provide the following:
 - Monthly profit and loss statements from January 2008 through the present, to show your income and expenses from the business.
 - Provide detailed sales ledgers from 2008, 2009 and 2010 showing the actual names of your customers and the associated amount of sales from each customer.
- If you have received unemployment benefits at any time since 2008, state the period where benefits were received and provide copies of your statement of benefits.
- It appears you provided checks from [REDACTED] written to yourself for 2009. Provide copies of payments made during 2010.
- Provide a complete payroll ledger from [REDACTED] from 2009 through 2010.

The NPFC also requested the Claimant answer the following questions:

1. Describe your complete employment history from 2008 through the current period.
 - a. Include a description of dates worked, your position held and job duties.
2. Identify your position, job title and responsibilities for involvement with [REDACTED]
3. Do you have any employees working for your company? If so, how many employees do you have and did your employees continue to work while you were on medical leave during 2009/ 2010?
 - a. In addition, did you release any employees during 2010? If so, when did you release your employees?
4. Identify at any time during 2010 that you were not available to work.
5. You provided a note indicating that you returned to work on March 1, 2010, but you were "unable to make payroll". Explain what you mean by "not making payroll".
 - a. You did not state your position with [REDACTED] but we assume you are an owner and operator of the business, rather than an employee. Are you indicating that you were unable to pay yourself a salary upon return from medical leave or did you have employees who you were unable to pay?
6. Identify any specific periods of time that you were unemployed from 2008 through the current period.
7. Describe how you computed your claimed lost earnings.

The Claimant has not provided the additional documentation nor answered any of the questions to support the claim in order to demonstrate a loss of profits and earnings. Therefore, this claim is denied because the Claimant has failed to meet the burden to demonstrate that he had a loss of profits and that the alleged loss was due to the injury to, destruction of, or loss of property or natural resources as a result of a discharge or substantial threat of discharge of oil.

Claim Supervisor: 

Date of Supervisor's review: *March 28, 2011*

Supervisor Action: *Denial approved*

Supervisor's Comments:

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

Fax: 202-493-6937
5890
2/8/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]



RE: Claim Number: N10036-0542

Dear [REDACTED]

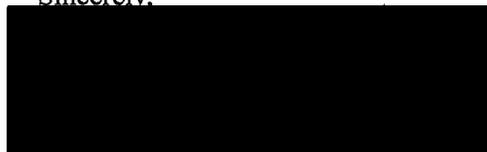
The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number N10036-0542 involving Deepwater Horizon. Please see the attached Claim Summary / Determination Form for an explanation regarding this denial.

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 N10036-0542.

Mail reconsideration requests to:

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

Sincerely,



Claims Manager
U.S. Coast Guard

Encl: Claim Summary / Determination Form

09/14/11

FOIA2011-3380-00002140

CLAIM SUMMARY / DETERMINATION FORM

Date	: 2/8/2011
Claim Number	: N10036-0542
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$54,000.00

FACTS

On or about April 20, 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 was discharged from an offshore facility associated with the Deepwater Horizon and located on the Mississippi Canyon, Block 252 (Deepwater Horizon incident). This area was leased by BP Exploration and Production, Inc. (BP). The Coast Guard designated the offshore facility as the source of the discharge and BP as the responsible party (RP) for the discharge. BP accepted the designation, advertised its OPA claims process, and compensated claimants. On August 23, 2010, the Gulf Coast Claims Facility (GCCF) began accepting adjudicating claims on behalf of BP.

CLAIM AND CLAIMANT

On February 4, 2011, [REDACTED] (Claimant) presented a lost profits & earnings claim in the amount of \$54,000.00 to the National Pollution Funds Center (NPFC) for reimbursement. Claimant provided a blank OSLTF Claim Form with the exception of the amount requested, name and address, date and signature. Claimant has failed to provide any documentation or explanation as to how the Claimant derived at the amount requested or what it was for.

Claimant stated on the OSLTF Claim Form that the claim has not been presented to the Responsible Party.

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

The OSLTF which is administered by the NPFC, is available, pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136, to pay claims for uncompensated damages. 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.
- (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.

DETERMINATION OF LOSS

Claimant's Submission

To support the claim, the Claimant submitted the following documentation:

- NPFC OSLTF Claim form, dated January 24, 2011

NPFC Determination

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. § 136.233, a Claimant must establish loss of profits or impairment of earning capacity. The NPFC considered all the documentation submitted by the Claimant.

The Claimant has failed to provide any documentation and explanation for the amount requested. Additionally, the Claimant's OSLTF Claim Form states a claim has NOT been presented to the Responsible Party (RP) therefore this claim is denied because the Claimant has failed to make proper presentment to the RP in accordance with 33 C.F.R. § 136.103(a), which states that all claims for removal costs and damages must be presented first to the Responsible Party or guarantor and because the Claimant has failed to meet their burden in demonstrating they had a loss of profits and earnings as a direct result of the Deepwater Horizon incident.

Claim Supervisor 

Date of Supervisor's review: *2/8/11*

Supervisor Action: *Denial approved*

Supervisor's Comments:

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

5890
2/8/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]

RE: Claim Number: N10036-0544

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number N10036-0544 involving the Deepwater Horizon incident. Compensation is denied because you are seeking losses that are not payable under the Oil Pollution Act of 1990.

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 or within 30 days of your receipt of this letter, whichever date is earlier, 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 N10036-0544.

Mail reconsideration requests to:

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

Sincerely,

[REDACTED]
Claims Manager
U.S. Coast Guard

CLAIM SUMMARY / DETERMINATION FORM

Date	: 2/8/2011
Claim Number	: N10036-0544
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$18,948.00

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 was discharged from an offshore facility associated with the Deepwater Horizon and located on the Mississippi Canyon, Block 252 (the Deepwater Horizon incident). This area was leased by BP Exploration and Production, Inc. (BP). The Coast Guard designated the offshore facility as the source of the discharge and BP as the responsible party (RP) for the discharge. BP accepted the designation, advertised its OPA claims process, and compensated claimants. On 23 August 2010, the Gulf Coast Claims Facility (GCCF) began accepting and adjudicating claims on behalf of BP.

CLAIM:

Claimant was unemployed and seeks compensation because she says she applied for a job with a security company and was hired, but then not hired due to discrimination. She seeks \$500.00 in travel expenses related to her attempts to gain employment. She seeks \$18,448.00 for the alleged hourly lost wages.

APPLICABLE LAW:

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a). Damages include the loss of profits or impairment of earning capacity due to the injury, destruction or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant. 33 U.S.C. § 2702(b)(2)(E).

The OSLTF, which is administered by the NPFC, 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. With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

Pursuant to the claims regulations, 33 C.F.R. § 136.233, a claimant must establish the following to prove loss of profits or impairment of earning capacity:

- (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.
- (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.

DETERMINATION:

The claimant states that she did not present her claim to BP, but later states that she submitted it to the Gulf Coast Claims Facility, which denied her claim.

The claimant has no losses due to the discharge of oil into navigable waters of the United States. The financial component of the claim in the amount of \$18,448.00 is a result of a prospective employer's decision not to hire her, not a direct result of the Deepwater Horizon incident. Her travel expenses related to this potential job and job search are also not payable. These are not losses compensable under the Oil Pollution Act of 1990. The claim is denied.

Claim Supervisor:	[REDACTED]
Date of Supervisor:	[REDACTED]
Supervisor Action:	Denial Approved
Supervisor's Comments:	

U.S. Department of
Homeland Security

United States
Coast Guard



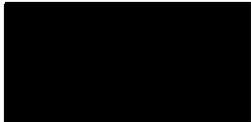
Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937
5890
3/9/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]



RE: Claim Number: N10036-0545

Dear [REDACTED]

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 claim number N10036-0545 involving the Deepwater Horizon oil spill. Please see the enclosed 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 N10036-0545.

Mail reconsideration requests to:

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

Sincerely, [REDACTED]

[REDACTED]
Claims Manager
U.S. Coast Guard

Encl: Claim Summary / Determination Form
09/14/11

FOIA2011-3380-0002147

CLAIM SUMMARY / DETERMINATION FORM

Date	: March 9, 2011
Claim Number	: N10036-0545
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$16,000.00

FACTS:

On or about April 20, 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 was 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 August 23, 2010, the Gulf Coast Claims Facility (GCCF) began accepting and adjudicating claims for certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On February 8, 2011, [REDACTED] (Claimant) presented a lost profits & earnings claim in the amount of \$16,000.00 to the National Pollution Funds Center (NPFC) for reimbursement. The Claimant asserted that her business, Home Health Care Service, lost profits & earnings as a result of the Deepwater Horizon incident.

The Claimant filed a claim with the GCCF and was given claim [REDACTED]. The Claimant did not provide a GCCF denial letter but stated that she was denied.

APPLICABLE LAW:

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a). Damages include the loss of profits or impairment of earning capacity due to the injury, destruction or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant. 33 U.S.C. § 2702(b)(2)(E).

The OSLTF, which is administered by the NPFC, 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. With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

Pursuant to the claims regulations, 33 C.F.R. § 136.233, a claimant must establish the following to prove loss of profits or impairment of earning capacity:

(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.
- (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.

DETERMINATION OF LOSS

Claimant's Submission

To support his claim, the Claimant submitted the following documentation:

- NPFC Optional OSLTF Claim Form dated 07 December 2010;
- Copies of Social Security Card and Alabama State Drivers License;
- 2009 Individual Income Tax Return Filing with reported earnings of \$12,983.00;
- 2009 Form W-2 from [REDACTED] with reported earnings of \$7,329.00;
- 2010 Individual Income Tax Return Filing with reported earnings of \$12,972.00;
- Letter from Claimant dated 07 February 2011 stating that she performs home health care at 3629 First St. Mobile, AL 36605 (presumably Claimant's mailing residence);
- Letter from Claimant dated 07 February 2011 stating her wages were reduced during 2010 as a result of the Deepwater Horizon incident;
- Certificate of attendance at "Saads CAN School" dated March 2002 for Saad's Certified Nursing Assistant Program.

NPFC Determination

Under 33 CFR 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 CFR § 136.233, a claimant must establish loss of profits or

impairment of earning capacity. The NPFC considered all the documentation submitted by the Claimant.

To assist in adjudication of the claim, the NPFC requested the following documentation from the Claimant:

- Income Tax Return Filings for 2007 and 2008 including all attachments, Schedule C's, W-2's and form 1099's.
- Provide copies of pay stubs, pay checks and earnings statements for all employment held during 2009 and 2010.
 - If the above is not available, provide copies of bank statements to support your earnings. Specifically identify on the bank statements, any deposits that are related to your employment.
- If you do not receive payments from a 3rd party/ agency, please provide evidence of all payments received for your home health services during 2009 and 2010. Please note we have not received any documentation regarding your actual earnings other than your year-end tax information.
- Provide all documentation related to licensing and certifications:
 - to conduct business as a CNA and
 - to operate a home health care business from your home.
- If you are contracted through an agency, provide your current contracting agreement.
- Provide a complete list of patients (names may be redacted) indicating the dates of service and your associated earnings from each patient.
- If you have received unemployment benefits from 2009 through the present, provide copies of payments received and statements of benefits.

The NPFC also submitted the following questions:

- Describe your employment history from 2008 through the current period.
 - Include a description of dates worked, your position held and job duties.
- Describe how you are compensated for your services.
- From whom do you receive payments?
- Identify all expenses associated with the home health care services provided out of your home.
- Explain in detail why you believe you were impacted by the Deepwater Horizon incident.
 - Please provide specific examples including references from patients who may have cancelled services.
 - If your patients are contracted through an agency, provide written confirmation from the agency confirming that there was less demand for home healthcare services as a direct result of the Deepwater Horizon incident.
- Identify any specific periods of time that you were unemployed from 2008 through the current period.
- If you have received unemployment benefits during 2009 and 2010 identify the periods of time when you received benefits and the amounts received.
- Identify any other form of employment you held during 2009 and 2010. Please note your W-2 from Bay Nursing, Inc. does not reconcile with your tax return filing, suggesting you have other earnings.
- Has your employer or former employer filed a claim related to the Deepwater Horizon incident? If so, describe the outcome of your employer's claim.
- Describe how you computed your claimed lost earnings.

The only information the Claimant provided in response to our request for additional information was her 2010 Individual Income Tax Return. The claim is denied because the evidence provided by Claimant, as described above, does not establish that she has incurred a loss or that the alleged loss (if one had occurred) was due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil.

Claim Supervisor: 

Date of Supervisor's review: *3/9/11*

Supervisor Action: *Denial approved*

Supervisor's Comments:

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

Fax: 202-493-6937

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim# N10036-0546
07 March 2011

RE: Claim Number: N10036-0546

Dear [REDACTED]

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 claim number N10036-0546 involving the Deepwater Horizon incident. Please see the enclosed 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 N10036-0546.

Mail reconsideration requests to:

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

Sincerely,

[REDACTED]
U. S. Coast Guard
Claims Manager

Enclosure: Claim Summary/Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Date	: 3/1/2011
Claim Number	: N10036-0546
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$24,647.69

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 was 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 claims for certain individual and business claims on behalf of BP.

PRESENTMENT TO THE RESPONSIBLE PARTY/GCCF

On 29 December 2010, Claimant received an Emergency Advance Payment from GCCF of \$4,200.00. The Claimant's GCCF Claimant Identification Number is [REDACTED] and Payment Claim Number is [REDACTED]

On 29 December 2010, the Claimant filed a Quick Payment final claim with the GCCF.

According to the GCCF and confirmed with the Claimant¹, the Claimant received an additional \$5,000.00 payment from the GCCF and executed a Release and Covenant Not to Sue.

CLAIM AND CLAIMANT

On 09 February 2011, the Claimant presented an Optional Oil Spill Liability Trust Fund (OSLTF or Fund) claim form to the National Pollution Funds Center (NPFC) seeking \$24,647.69 in lost profits & earnings resulting from the Deepwater Horizon oil-spill.²

Claimant asserted that he was an employee of [REDACTED] at the time that it was acquired by BAE Systems.³ The claimant asserted that his "wages dropped in the amount of \$24,647.69 due to the lay off that he received in May 2010. The claimant asserted that he was called back only on a part time basis. Work is still slow due to Oil Spill in Gulf by BP."⁴

APPLICABLE LAW:

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a).

¹ Phone conversation between Claimant and [REDACTED], NPFC, of 01 March 2011

² Claimant's OSLTF Claim Form submitted to NPFC on 09 February 2011.

³ BAE Systems News Release of 18 May 2011.

⁴ http://www.baesystems.com/Newsroom/NewsReleases/autoGen_110418152443.html.

⁴ A letter from the Claimant "To whom it may concern," dated February 9, 2011.

Damages include the loss of profits or impairment of earning capacity due to the injury, destruction or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant. 33 U.S.C. § 2702(b)(2)(E).

The Oil Spill Liability Trust Fund (OSLTF), which is administered by the NPFC, 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. With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

Payment of any claim or obligation by the Fund under this Act shall be subject to the United States Government acquiring by subrogation all rights of the claimant or the state to recover from the responsible party. 33 U.S.C. § 2712(f).

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support his claim, Claimant submitted the following:

- OSLTF Claim form dated 09 February 2011;
- Claimant letter "To whom it may concern," providing additional information response to claim form questions 6, 9, and 10, dated 09 February 2011;
- 2008 Claimant W-2 Form from [REDACTED]
- 2009 Claimant W-2 Form from [REDACTED]
- 2009 Claimant W-2 Form from [REDACTED]
- 2010 Claimant W-2 Form from [REDACTED]
- 2010 Claimant W-2 Form from [REDACTED]
- Atlantic Marine Change of Status to the Claimant dated 05/27/2010 documenting layoff and reduction of force (ROF).

Claimant seeks \$24,647.69 in lost profits allegedly as a result of the Deepwater Horizon oil-spill. Claimant does not address the \$9,200.00 in compensation reportedly provided by GCCF.

NPFC Determination

Under 33 U.S.C. § 2702(b)(2)(E) and 33 C.F.R. Part 136, a claimant must prove that his loss of income was due to injury or destruction or loss of real or personal property or 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 to the NPFC all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim. The NPFC considered all documentation presented by the Claimant.

Based on information presented by the Claimant and information available to the NPFC, the GCCF paid a total of \$9,200.00 to the Claimant as compensation for his claim. According to information from the GCCF, Claimant executed a Release and Covenant Not to Sue in return for the Quick Payment.

This claim is denied because it appears from the record that the Claimant has fully settled his claims with BP/GCCF, and that BP and GCCF have compensated the Claimant, including a \$5,000.00 Quick Payment for which GCCF reportedly required a final and full release of rights against any Responsible Party.

The Claimant has not addressed these payments or otherwise provided any information to show the Claimant has any rights to recover any of the amount claimed here from a Responsible Party. The Fund will not pay what has already been compensated and any Fund payment is subject to acquiring all rights to recover from the Responsible Party.

If the Claimant disagrees with this determination to deny the claim based on being compensated and signing a release, he may request reconsideration. Should the Claimant decide to request reconsideration, the Claimant MUST provide any and all documentation of any payments received from BP or GCCF, including any related agreements or releases signed by the Claimant.

If the Claimant disagrees that any payments that have been received from BP or GCCF, or that any payments received are for damages other than those subject of his claim for \$9,200.00 to the NPFC, the Claimant must explain the circumstances in detail.

If the Claimant disagrees that he has signed any release associated with his claims against the Responsible Party, including any release in return for a Quick Payment, the Claimant must fully explain the circumstances in his request for reconsideration. Therefore, this claim is denied as the Claimant has been compensated.

Claim Supervisor 

Date of Supervisor's Review: *3/6/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

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

Fax: 202-493-6872

CERTIFIED MAIL - RETURN RECEIPT REQUESTED
Number: [REDACTED]

5890/DWHZ
Claim# N10036-0547
11 May 2011



RE: Claim Number: N10036-0547

Dear [REDACTED]

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 claim number N10036-0547 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination Form for further explanation.

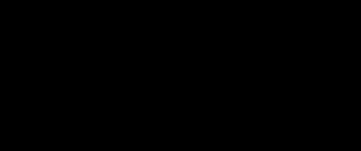
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-0547.

Mail reconsideration requests to:

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

Sincerely,



U. S. Coast Guard
Claims Manager

Enclosures: (1) Claim Summary/Determination Form;
(2) List of Supporting Documentation Presented by Claimant.

09/14/11

FOIA2011-3380-00002156

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

Fax: 202-493-6872

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim# N10036-0547
11 May 2011

RE: Claim Number: N10036-0547

Dear [REDACTED]

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 claim number N10036-0547 involving the Deepwater Horizon oil spill. Please see the enclosed 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 N10036-0547.

Mail reconsideration requests to:

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

Sincerely,

[REDACTED]
U. S. Coast Guard
Claims Manager

Enclosures: (1) Claim Summary/Determination Form;
(2) List of Supporting Documentation Presented by Claimant.

09/14/11

FOIA2011-3380-00002157

CLAIM SUMMARY / DETERMINATION FORM

Date	05 May 2011
Claim Number	N10036-0547
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
Claim Manager	[REDACTED]
Amount Requested	\$318,342.00

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 was 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.

CLAIM AND CLAIMANT

On 10 February 2011, [REDACTED] on behalf of [REDACTED] (Claimant) presented an Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) for \$318,342.00 in lost profits and earning capacity allegedly caused by the Deepwater Horizon oil spill.

In July 2009, the Claimant began operating as a realty firm specializing in Gulf-front condo sales throughout Panama City Beach, FL.¹ Prior to the Claimant's incorporation, [REDACTED] Claimant's President and principal realtor (Owner), was employed with another regional real estate company. In 2007, the Owner acquired the listing to a new 161 unit beachfront condo known as the [REDACTED] prior to the building's completion in 2008.² In March 2009, she gained the listing to another 164 unit high rise development in Panama City known as the [REDACTED]. The Owner stated that she left her prior company and founded [REDACTED] with a view towards exclusively marketing and selling these two developments.³

Claimant's revenue is entirely sales driven, with the Claimant receiving a commission on each unit sold in the [REDACTED] locations. These commissions range from .5% to 6% of each unit's closing price and vary based on a number of factors, including developer specials, external referrals and general negotiation that occurs during the course of sale.⁴ Despite the expectation that 2010 would be a "banner selling year," the Claimant's revenue began to decline in May 2010; the Claimant attributes this decrease to the Deepwater Horizon oil spill, asserting that the public's perception of oil pollution in and around Panama City Beach caused interest in buying at [REDACTED] to wane.⁵

Owner stated that she attempted to mitigate the Claimant's losses by reducing her commission by an additional 2%, while the building-owner reduced unit prices by \$30,000 and offered financing at an interest rate of 2.99%.⁶ The Owner also stated that three sales which were pending at the time of the spill were subsequently cancelled due to "concerns of the effects the spill would have on the value of the condo as well as the [the buyer's ability to generate] rental income in the future."⁷ These three cancelled

¹ Letter from Claimant to GCCF, dated 07 September 2010.

² Letter from Claimant to whom it may concern, dated 02 February 2011.

³ Id.

⁴ Id.

⁵ Id.; Letter from Claimant to GCCF, dated 07 September 2010.

⁶ Letter from Claimant to whom it may concern, dated 02 February 2011.

⁷ Letter from Claimant to NPFC in response in request for additional information, dated 09 March 2011; Purchase

sales comprise \$42,080.00 of the Claimant's total alleged loss, the balance of which (\$428,902) equals the difference in revenue for May through December between 2009 and 2010, for a total alleged loss of \$470,982. The Owner stated that the Claimant previously received \$108,465.00 in compensation from the RP and \$44,175.00 from [REDACTED] yielding \$318,342.00 in alleged uncompensated losses as of the date of submission to NPFC.⁹

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 waters or adjoining shorelines or the exclusive economic zone, as described in Section 2702(b) of OPA.

The OSLTF which is administered by the NPFC, is available, pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136, to pay claims for uncompensated damages. 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.
- (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.

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

purchase agreements stipulate that the contract may be cancelled within 15 days of execution in accordance with FL Stat. 718.503.

⁸ [REDACTED] is a private organization selected by the RP to administer a special allocation of funds dedicated to pay claims brought by real estate professionals throughout the Gulf Coast states; see <http://www.businesswire.com/news/home/20100824006058/en/National-Catastrophe-Adjusters-Partners-State-REALTORS%C2%AE-Associations>.

⁹ OSLTF Claim Form dated 01 February 2011.

FOIA2011-3380-0002159

To Support this claim, the Owner presented the documentation listed in enclosure (2) on behalf of Claimant to the NPFC.

On 09 July, Claimant presented a claim to BP in the amount of \$162,192.00, for which it received payment of \$108,465.00.¹⁰ On 30 November 2010, the Claimant presented an Emergency Advance Payment (EAP) claim to the GCCF for \$107,428.60 in lost profits and earnings. The Claimant received GCCF Claimant ID [REDACTED] and Claim [REDACTED].¹¹ The EAP claim was denied by the GCCF. Claimant then presented three supplemental EAP claims totaling \$159,420.00, all of which were also denied.¹² Combined, these claims total \$266,848.60 presented to the GCCF.

Claimant reportedly also filed a claim with the [REDACTED] and received \$44,175.00 in compensation from that organization.¹³

On 10 February 2011, Claimant presented this claim for \$318,342.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

To date, Claimant has received \$152,640.00 in compensation from the RP.

NPFC Determination

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. The NPFC considered all documentation presented by Claimant.

Under 33 C.F.R. § 136.103(a), all claims for removal costs or damages must be presented first to the responsible party (RP). Claimant has not demonstrated that it presented a loss of profits and impairment of earnings capacity claim for \$318,342.00 to the RP/GCCF. The evidence before the NPFC indicated that the Claimant had presented loss of profits and earnings claims totaling \$266,848.60 to the GCCF. Pursuant to 33 C.F.R. § 136.103(a), a claimed loss of \$266,848.60 is properly before the NPFC, and any amount of loss claimed beyond this amount is DENIED.

The remainder of this claim is also DENIED because the NPFC has determined that the Claimant has received full compensation from the RP/GCCF for the losses claimed from May through December 2010. The NPFC's calculation of total losses for the period of May 2010 through December 2010 came to an amount less than what the RP/GCCF has paid the Claimant to date.

Based on the foregoing analysis, the claim is DENIED.

Claim Supervisor [REDACTED]

Date of Supervisor's Review: 5/11/11

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

¹⁰ Letter from Claimant to GCCF, dated 07 September 2010.

¹¹ GCCF Filing Report, dated 04 May 2011.

¹² *Id.*

¹³ 09/14/11 Claim Form.

Attachment 2: Supporting Documentation Index

1. OSLTF claim form;
2. GCCF Claim Form for Supplemental Emergency Advance Payments, dated 22 October, 09 November, 2010;
3. GCCF Claimant status page;
4. Letter from Claimant to GCCF accompanying Supplemental EAP Claim, dated 09 November 2011;
5. Correspondence from GCCF to Claimant;
6. Calculation of lost commissions (handwritten);
7. Letter from Claimant to GCCF describing business and alleged economic loss, dated 07 September 2010;
8. Letter from Claimant To Whom It May Concern questioning the status of her GCCF claim and reiterating alleged financial loss, dated 02 February 2011;
9. Letter from Claimant to Whom It May Concern describing GCCF claim history and reiterating financial alleged loss;
10. Florida Business License for [REDACTED];
11. Florida Real Estate License for [REDACTED];
12. Florida Driver's License for [REDACTED];
13. Denial Letter from Florida Real Estate Licensee Emergency Fund, dated 25 October 2010;
14. Maps showing the locations of the [REDACTED] condominiums on Panama City Beach, FL;
15. Claimant's Exclusive Right of Sale Listing Agreement for [REDACTED];
16. Claimant's Exclusive Right of Sale Listing Agreement for [REDACTED];
17. Various Listing Change Forms;
18. Various sample advertisements;
19. Profit and Loss statements for January 2009 through February 2011;
20. [REDACTED] Sales Inventory for June 2008 through December 2010;
21. [REDACTED] Sales Inventory for March 2009 through February 2011;
22. Sales and Inventory Report showing statistics for entire MLS, from 01 January 2009 to 31 December 2010;
23. Articles discussing the impact of the oil spill on the Gulf Coast real estate market;
24. Income tax return for an S-Corporation (Form 1120S) for 2008 and 2009 with accompanying W-2s;
25. Letter from NCA awarding Claimant emergency funds out of the Florida Real Estate License Emergency Fund, dated 14 January 2011;
26. Letter from Claimant to NPFC in response to request for additional information, dated 09 March 2011;
27. Reports of Claimant's Commission by source for 2009 and 2010;
28. Diagrams showing size and location of each unit within the [REDACTED];
29. Floor plans for various units within the subject condominiums;
30. Advertising showing price reductions for the subject condominiums;
31. Price history for the subject condominiums, from April 2009 to January 2011;
32. Various articles describing the oil spill's effect on Panama City's environment and tourism industry;
33. Three (3) cancelled purchase agreements for [REDACTED] Condominium Unit 901 and [REDACTED] Condominiums 1301 and 1409, with associated documentation;
34. Exhibits A-I of Claimant's response to the NPFC's request for additional information.

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
National Pollution Funds Center
United States Coast Guard

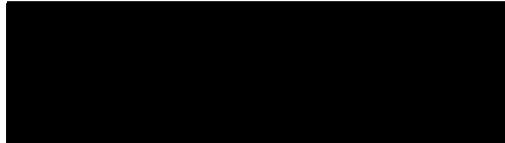
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd. Suite 1000



CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Number: 

5890/DWHZ
Claim# N10036-0548
24 March 2011



RE: Claim Number: N10036-0548

Dear 

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 claim number N10036-0548 involving the Deepwater Horizon oil spill. Please see the enclosed 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 N10036-00548.

Mail reconsideration requests to:

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

Sincerely,


U. S. Coast Guard
Claims Manager

Enclosure: Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00002162

CLAIM SUMMARY / DETERMINATION FORM

Date	18 March 2011
Claim Number	N10036-0548
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
Claim Manager	[REDACTED]
Amount Requested	\$6,500.00

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 was 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 claims for certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On 02 February 2011, [REDACTED] (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Funds Center (NPFC). The OSLTF claim form alleged \$6,500.00 in lost profits and earnings capacity resulting from the Deepwater Horizon oil spill.

Claimant stated that she worked for [REDACTED] in Santa Rosa Beach, Florida, and cleaned rental properties for [REDACTED]. She alleged that as a result of the Deepwater Horizon oil spill, tourism and travel to the Gulf declined, and her income from her employment declined as well.¹ Claimant stated that she had to relocate to Ohio and incur moving-related expenses.²

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 waters or adjoining shorelines or the exclusive economic zone, as described in Section 2702(b) of OPA.

The OSLTF which is administered by the NPFC, is available, pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136, to pay claims for uncompensated damages. 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.

¹ Claimant hardship letter to the GCCF.

² It is unclear if these expenses are included in her claimed loss.

- (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.
- (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.

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support her claim, Claimant submitted an OSLTF claim form, signed 14 January 2011; copies of her W-2 for 2008 and 2009; an earnings statement from [REDACTED] pay, dated 09 June 2010; her hardship letter to GCCF; a copy of her social security card and Florida driver's license.

Claimant seeks lost earnings of \$6,500.00, which she attributed to the Deepwater Horizon oil spill.

On 02 November 2010, Claimant filed a six-month Emergency Advance Payment claim for \$9,700.00 in lost earnings with the GCCF. She was assigned GCCF Claimant ID [REDACTED] and Claim [REDACTED]. On 06 December 2010, her claim was denied by the GCCF.³

NPFC Determination

Under 33 CFR 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 CFR § 136.233, a claimant must establish loss of profits or impairment of earning capacity. The NPFC considered all the documentation submitted by the Claimant.

³ GCCF denial letter Re: Claimant's Emergency Advance Payment claim dated 06 December 2010.

The claim is denied because the alleged loss in the amount of \$6,500.00 is due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil.

After an initial review of the claim, the NPFC sent the Claimant a letter, dated 15 February 2011, requesting additional information to further evaluate her claim. The letter requested, among other things, financial documentation to verify the Claimant's alleged lost earnings and statements from her former employers attesting to the impact of the Deepwater Horizon oil spill on her employment. NPFC records indicate that the Claimant received and signed for the official request for additional information letter, but to date, no response has been received by the NPFC.

The NPFC adjudicated her claim with the evidence she submitted. The claim is denied because the Claimant failed to meet her burden to demonstrate that she has a loss of profits in the amount claimed and 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 a discharge of oil.

Claim Supervisor 

Date of Supervisor's Review: *3/24/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
United States Coast Guard
National Pollution Funds Center

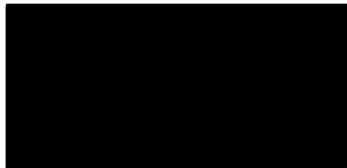
NPFC CA MS 7100
U.S. COAST GUARD

Fax: 202-493-6937

5890
6/29/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number [REDACTED]



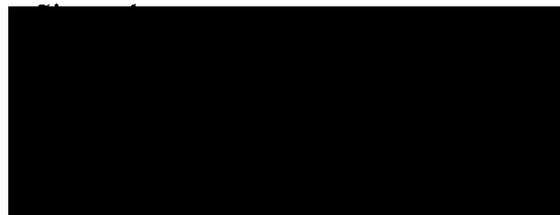
RE: Claim Number: N10036-0550

Dear [REDACTED],

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 claim number N10036-0550 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination Form for further explanation.

Disposition of this reconsideration constitutes final agency action.

If you have any questions or would like to discuss the matter, you may contact me at the above address and phone number.



U.S. Coast Guard

ENCL: Claim Summary / Determination Form
(1) Excel spreadsheet

09/14/11

FOIA2011-3380-0002166

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-0550
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: \$20,860.80

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 was 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 claims for certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT:

On 14 February 2011, [REDACTED] on behalf of [REDACTED] (Claimant) presented an Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC). The OSLTF claim form alleged \$20,860.80 in lost profits and earnings resulting from the Deepwater Horizon oil spill.

Claimant owns a residential property known as [REDACTED] located in Santa Rosa Beach, Florida, which he has rented to vacationers since at least 2007.¹ The property is currently managed by Beaches of [REDACTED] and was previously managed by Beach Rentals of South Walton through the end of 2009.² The property management company records reservations and handles the revenue and expenses associated with the property. Claimant receives payments from the property management company that are net of management fees and commissions.³

Claimant asserted that as a result of the Deepwater Horizon incident, rentals between May and August 2010 decreased from years prior. Claimant quantified his loss by taking the highest number of weeks the property was rented during each respective month over the past three years, subtracting the number of weeks rented in 2010, multiplying by the rental rate, then subtracting saved commissions that would be paid to the property management group had the property been rented.⁴

REQUEST FOR RECONSIDERATION:

On May 25, 2011, the Claimant sent a request for reconsideration to the NPFC stating he would like the NPFC to reconsider his claim.

¹ Monthly rental statements and Income and Expense Statements provided date back to 2007.

² Letter from Claimant to the NPFC in response to request for additional information, dated 16 March 2011.

³ Monthly rental statements from 2010.

⁴ Letter from Claimant to the NPFC in response to request for additional information, dated 16 March 2011 (explaining loss calculation).

The NPFC denied the claim originally on March 31, 2011 because the Claimant failed to establish that any alleged loss of profits was due to the injury, destruction or loss of property or natural resources. Further, the NPFC determined that there appeared to be a reduction in net rental proceeds that is less than what the Claimant had received collectively from BP and GCCF. Therefore, the Claimant had been fully compensated by the RP for any alleged losses Pursuant to 33 C.F.R. § 136.105(b), an OSLTF Claimant may only recover uncompensated damages from the Fund.

On reconsideration, the Claimant provided a written letter along with a copy of his rental management company's webpage showing bookings for the subject rental property for summer 2011, a copy of a spreadsheet showing the rental history for the subject rental property and a copy of a CBS news story from 4/1/11 on pent up demand for rental homes after years of recession. It is important to note that the only new information provided on reconsideration by the Claimant were his arguments and the news article dated 4/1/11 as the other information was provided in the original submission to the NPFC.

The Claimant filed a Final Payment claim with GCCF on September 4, 2010 via GCCF Claimant ID [REDACTED]. The NPFC has confirmed that the claim was denied by the GCCF and only three pages were presented in support of his claim submission.

RECONSIDERATION CLAIM ANALYSIS:

The claimant requested reconsideration which was received by the NPFC first via email dated May 25, 2011 and the hard copy was received by the NPFC on June 3, 2011. To support the request for reconsideration the Claimant submitted a letter that made the following assertions:

1. Claimant asserted that he does not agree with the NPFC's characterization of how he quantified his loss in its initial denial determination. The Claimant stated that the NPFC indicated that he quantified his loss period by taking the highest number of weeks the property was rented in each of the loss months (May, June, July, and August) over the past three years. The Claimant contends on reconsideration that during the four year period for which he provided information (2007-2010), the only year that was not impacted by either a recession or the oil spill was 2007; therefore, Claimant asserts that year is the only appropriate year to use as a comparison for potential loss. Furthermore, the Claimant argued on reconsideration that he is able to obtain and demonstrate by way of confirmed reserved dates for June, July and August 2011, that his property has reservations for every day during these months in 2011 because 2011 is unaffected by a recession or the oil spill which he feels lends credence to why the NPFC should be using his figures from 2007 vice using 2008 and 2009;
2. Claimant stated on reconsideration that no alternative form of income was available other than rental income for his rental property. It is important to note that because the Claimant has presented a claim associated with a rental property, he disagrees with the NPFC considering other employment or income he has made because he is viewing his loss as strictly associated with his rental endeavor excluding any potential income for him as an individual;
3. Claimant asserted that he does not agree with the NPFC's characterization of how the NPFC stated net proceeds are projected based on the Claimant's monthly averages from 2007, 2008, and 2009. The Claimant stated that the monthly averages from 2008 and 2009 are not representative of the 'normal' rental income from his rental property since those two years are representative of a deep recession in the U.S. economy not to mention

that there was a period in the summer of 2009 that his rental property was unavailable due to repairs being completed;

4. Claimant asserted that he does not agree with the NPFC's statement in the initial denial determination that the Claimant did not submit documentation to confirm the correlation between his reduced rental activity and the Deepwater Horizon oil spill incident. The Claimant further asserted that in his March 16, 2011 correspondence to the NPFC, he provided the dates of the rental weeks that were cancelled and included the text of a May 27, 2010 email from his rental company that explained the cancellations being due to the oil spill;
5. Claimant asserted that he does not agree with the NPFC's footnote 11 on page 4 of the original denial that stated saved expenses were not factored into the calculation figures. The Claimant asserted that the circumstance surrounding saved expenses was explained in his March 16 and 20, 2011 letter to the NPFC;
6. Claimant asserted that he does not agree with footnote 12 on page 4 of the original denial that stated 2008 and 2009 are temporally more proximate to 2010 and that indicators suggest that the detrimental effects of the economic recession would have continued through 2010. The Claimant asserted he disagreed and provided two links to news articles referring to pent-up demand for vacations on the Gulf Coast.
7. In closing, the Claimant asserted that saved expenses have been taken into account and he identified his loss for the period of May through August 2010 as \$20,860.80.

NPFC Determination on Reconsideration

Under 33 CFR 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 CFR § 136.233, a Claimant must establish loss of profits or impairment of earning capacity and that the loss was due to the destruction or injury to real or personal property or natural resources. The NPFC considered all the documentation submitted by the Claimant. The request for reconsideration must be in writing and include the factual or legal grounds for the relief requested, providing any additional support for the claim. 33 CFR 136.115(d).

The NPFC performed a *de novo* review of the entire claim submission upon reconsideration.

The NPFC performed a complete review of the documentation presented by the Claimant. The NPFC will first address the Claimant's assertions on reconsideration.

1. The Claimant asserted that he calculated his potential loss for the period of May through August 2010 by using his rental history for 2007 as he stated it was the only year appropriate to use for comparison because that year wasn't affected by either a recession or the oil spill. The NPFC disagrees with the Claimant's rationale and determined that the appropriate periods of consideration are the year affected and the immediate years preceding the spill. Based on the Claims Regulations the NPFC consistently applies this rationale to all loss of profits and earnings claims presented to the NPFC and will continue to do so;
2. Claimant asserted on reconsideration that no alternative form of income was available other than rental income for his rental property. It is important to note that because the Claimant has presented a claim associated with a rental property, he disagrees with the NPFC considering other employment or income he has made because he is viewing his loss as strictly associated with his rental endeavor excluding any potential income for him as an individual. The NPFC disagrees with the Claimant's position pursuant to 33

CFR 136.233 (d) where it states... "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."

This provision in the regulations states that a Claimant must report all income which would include any income he received from other sources. It is important to note that the Claimant only provided Form 8825 which pertains to rental income and expenses for the years 2007 – 2009 associated with his rental property. Because the Claimant failed to provide a complete copy of his business income tax returns for 2007 – 2010 which Form 8825 is part of, there is no way for the NPFC to confirm the overall annual income for this Claimant's LLC for the periods in question because he only provided the one page, IRS Form 8825. IRS instructions associated with Form 8825 provide guidance that the net results from Form 8825 are then reported on Schedules K and K-1, which then gets attached to Form 1065. The Claimant has not provided the remaining documents associated with the LLC tax filings for each year; therefore, the Claimant has failed to meet his burden in providing all documentary evidence required and requested ;

3. Claimant asserted that he does not agree with the NPFC's characterization of how the NPFC stated net proceeds are projected based on the Claimant's monthly averages from 2007, 2008, and 2009. The Claimant stated that the monthly averages from 2008 and 2009 are not representative of the 'normal' rental income from his rental property since those two years are representative of a deep recession in the U.S. economy not to mention that there was a period in the summer of 2009 that his rental property was unavailable due to repairs being completed. As stated in the NPFC's response to the Claimant's first assertion, the years preceding the incident are in fact appropriate and demonstrate rental during similar periods without the effects of the oil spill and the NPFC stands on its original position for comparison purposes;
4. Claimant asserted that he does not agree with the NPFC's statement in the initial denial determination that the Claimant did not submit documentation to confirm the correlation between his reduced rental activity and the Deepwater Horizon oil spill incident. The Claimant further asserted that in his March 16, 2011 correspondence to the NPFC, he provided the dates of the rental weeks that were cancelled and included the text of a May 27, 2010 email from his rental company that explained the cancellations being due to the oil spill. While the NPFC appreciates the background information, the Claimant did not provide a copy of the actual email from the rental company nor did the Claimant provide the names and contact numbers for the individuals that cancelled their reservations therefore the NPFC is unable to confirm the validity of the information based on what has been provided to date;
5. Claimant asserted that he does not agree with the NPFC's footnote 11 on page 4 of the original denial that stated saved expenses were not factored into the calculation figures. The Claimant asserted that the circumstance surrounding saved expense was explained in his March 16 and 20, 2011 letter to the NPFC and that all saved expenses have been factored in. The NPFC acknowledges the clarification made by the Claimant on reconsideration;
6. Claimant asserted that he does not agree with footnote 12 on page 4 of the original denial that stated 2008 and 2009 are temporally more proximate to 2010 and that indicators suggest that the detrimental effects of the economic recession would have continued through 2010. The Claimant asserted he disagreed and provided two links to news articles referring to pent-up demand for vacations on the Gulf Coast. It is the NPFC's

position that 2008 and 2009 were temporally more approximate to 2010 and therefore the NPFC's position remains unchanged;

7. In closing, the Claimant asserted that saved expenses have been taken into account and he identified his loss for the period of May through August 2010 as \$20,860.80.

After consideration of the assertions made by the Claimant and a review of the documentation provided in support of the Claimant's submission, the NPFC has determined that the Claimant has not proven his claim for lost profits. The Claimant has not provided complete income tax returns in order for the NPFC to consider the full financial status of the Claimant's LLC each year when taking into consideration his rental income and any additional income subject of the LLC's complete income tax returns pursuant to 33 CFR 136.233. Additionally, the Claimant did not provide the actual names and phone numbers relevant to the cancellations claimed in order for the NPFC to contact each party for confirmation of the facts.

Furthermore, when comparing the number of weeks the subject was rented each year between May through August, the rental records show that the subject property was rented for 6 weeks in 2010; 8 weeks in 2009, and 10 weeks in 2008. Without the cancellation information, there is no way for the NPFC to confirm cancellations were in fact the result of the oil spill.⁵ Finally, it is important to note that the rental rates identified for the subject property in 2010 were set lower than the rental rates in 2009 although these lower prices were in effect PRIOR to the oil spill. Thus it appears that there were other factors associated with the 2010 rates being lower than previous years. In fact, the rental rates were lower in 2009 from 2008 and then again in 2010 from 2009 which would indicate reasons other than the oil spill affecting the reduction in rental income.⁶

Based on the foregoing information, the NPFC again denies the claim because (1) the Claimant has failed to demonstrate that he had an alleged loss of profits in the amount claimed and (2) the Claimant has failed to demonstrate he even had a loss of profits in light of the missing income information and the missing rental cancellation information. Therefore the Claimant has overall failed to demonstrate a he loss of profits by the preponderance of the evidence.

This claim is denied upon reconsideration.

Claim Supervisor: 

Date of Supervisor's review: 6/29/11

Supervisor Action: *Denial on reconsideration approved*

Supervisor's Comments:

⁵ See Enclosure (1) NPFC Excel spreadsheet

⁶ See annual beach rate addendums provided by the Claimant for 2007 – 2010.

<u>Beach Rental Rate Addendum for 2007</u>			
<u>2007 Rate Periods</u>	<u>Weekly Rate</u>	<u>Nightly Rate</u>	<u>Monthly Rate</u>
Spring Rate: 3/1/07 - 3/9/07 and 4/16/07 - 5/25/07	\$3,170.00	\$530.00	
Spring Break: 3/10/07 - 4/15/07	\$3,805.00	\$635.00	
Summer Rate: 5/26/07 - 8/12/07	\$4,225.00	\$705.00	
Fall Rate: 8/13/07 - 10/31/07	\$2,535.00	\$425.00	
Winter Rate: 11/1/07 - 2/29/08	\$2,115.00	\$355.00	
Winter Monthly Rate: 11/1/07 - 3/1/08			9200.00 / negotiable
<u>Beach Rental Rate Addendum for 2008</u>			
<u>2008 Rate Periods</u>	<u>Weekly Rate</u>	<u>Nightly Rate</u>	<u>Monthly Rate</u>
Spring Rate: 3/1/08 - 3/14/08 and 4/14/08 - 5/23/08	\$3,170.00	\$530.00	
Spring Break: 3/15/08 - 4/19/08	\$3,805.00	\$635.00	
Summer Rate: 5/24/08 - 8/10/08	\$4,225.00	\$705.00	
Fall Rate: 8/11/08 - 10/31/08	\$2,535.00	\$425.00	
Winter Rate: 11/1/08 - 2/28/09	\$2,115.00	\$355.00	
Winter Monthly Rate: 11/1/08 - 3/1/09			negotiable
<u>Beach Rental Rate Addendum for 2009</u>			
<u>2009 Rate Periods</u>	<u>Weekly Rate</u>	<u>Nightly Rate</u>	<u>Monthly Rate</u>
Spring Rate: 3/1/09 - 3/19/09 and 4/20/09 - 5/22/09	\$2,800.00	\$470.00	
Spring Break: 3/14/09 - 4/19/09	\$3,500.00	\$585.00	
Summer Rate: 5/23/09 - 8/16/09	\$4,225.00	\$705.00	
Fall Rate: 8/16/09 - 10/31/09	\$2,400.00	\$400.00	
Winter Rate: 11/1/09 - 2/28/10	\$2,000.00	\$335.00	
Winter Monthly Rate: 11/1/09 - 3/1/10			negotiable
<u>Beach Rental Rate Addendum for 2010</u>			

<u>2010 Rate Periods</u>	<u>Weekly Rate</u>	<u>Nightly Rate</u>	<u>Monthly Rate</u>
Spring Rate: 3/5/10 - 3/12/10 and 4/11/10 - 5/21/10	\$2,499.00	\$357.00	
Spring Break: 3/13/10 - 4/10/10	\$3,199.00		
Summer Rate: 5/22/10 - 8/14/10	\$3,885.00		
Late Summer Rate: 8/15/10 - 9/6/10	\$2,499.00	\$357.00	
Fall Rate: 9/07/10 - 10/31/10	\$2,100.00	\$300.00	
Winter Rate: 11/1/10 - 3/04/11	\$1,694.00	\$242.00	

	A	B	C	D	E	F	G	H	I
1	Rental Summary for 2007 - 2010								
2									
3	<u>Year</u>	<u>Total Rental Income For Comparable Periods</u>	<u>Average weeks rented</u>						
4									
5	2010	\$36,713.00	13						
6	2009	\$33,350.00	9						
7	2008	\$46,055.00	13						
8	2007	\$58,945.00	18						
9									
10									
11	2010 Rental History								
12									
13	<u>Dates</u>	<u>Rate</u>	<u>Total Cost</u>	<u>Nightly or Weekly</u>	<u># weeks / nights</u>				
14									
15	5/19/10 - 5/23/10	\$2,800.00	\$2,800.00	weekly	1				
16	6/2/10 - 6/8/10	\$3,885.00	\$3,885.00	weekly	1				
17	7/3/10 - 7/9/10	\$3,885.00	\$3,885.00	weekly	1				
18	7/15/10 - 7/22/10	\$3,885.00	\$3,885.00	weekly	1				
19	7/24/10 - 7/30/10	\$3,885.00	\$3,885.00	weekly	1				
20	8/7/10 - 8/13/10	\$3,885.00	\$3,885.00	weekly	1				
21	8/28/10 - 8/31/10			nightly	incl				
22	9/1/10 - 9/21/10	\$2,100.00	\$6,300.00	weekly	3				
23	9/22/10 - 9/24/10			nightly	incl				
24	10/1/10 - 10/3/10			nightly	incl				
25	10/7/10 - 10/11/10			nightly	incl				
26	10/20/10 - 10/23/10			nightly	incl				
27	10/27/10 - 10/30/10	\$2,400.00	\$4,800.00	weekly	2				
28	11/20/10 - 11/26/10	\$1,694.00	\$1,694.00	weekly	1				
29	12/26/10 - 12/31/10	\$1,694.00	\$1,694.00	weekly	1				

	A	B	C	D	E	F	G	H	I
30									
31	Total		\$36,713.00		6				
32									
33									
34	2009 Rental History								
35									
36	Dates	Rate	Total Cost	Nightly or Weekly	# weeks / nights				
37									
38	5/8/09 - 5/15/09	\$2,800.00	\$2,800.00	weekly	1				
39	5/17/09 - 5/21/09	\$2,800.00	\$2,800.00	weekly	1				
40	6/21/09 - 6/30/09	\$4,225.00	\$4,225.00	weekly	1				
41	7/1/09 - 7/9/09	\$4,225.00	\$12,675.00	weekly	3				
42	7/19/09 - 7/25/09				incl				
43	7/30/09 - 7/31/09				incl				
44	8/1/09 - 8/8/09	\$4,225.00	\$4,225.00	weekly	1				
45	8/17/09 - 8/21/09	\$4,225.00	\$4,225.00	weekly	1				
46	8/30/09 - 8/31/09				incl				
47	9/1/09 - 9/5/09	\$2,400.00	\$2,400.00	weekly	1				
48									
49	Total		\$33,350.00		8				
50									
51									
52	2008 Rental History								
53									
54	Dates	Rate	Total Cost	Nightly /Weekly	# weeks/nights				
55									
56	05/04/2008			nightly	incl				
57	5/25/08 - 5/31/08	\$4,225.00	\$4,225.00	weekly	1				
58	6/9/08 - 6/13/08				incl				
59	6/15/08 - 6/30/08	\$4,225.00	\$12,675.00	weekly	3				
60	7/1/08 - 7/26/08	\$4,225.00	\$16,900.00	weekly	4				
61	8/10/08 - 8/23/08	\$2,535.00	\$5,070.00	weekly	2				
62	8/30/08 - 8/31/08				incl				

	A	B	C	D	E	F	G	H	I
63	9/1/08 - 9/6/08	\$2,535.00	\$2,535.00	weekly	1				
64	10/3/08 - 10/10/08	\$2,535.00	\$2,535.00	weekly	1				
65	10/16/08 - 10/18/08				incl				
66	11/6/08 - 11/8/08	\$2,115.00	\$2,115.00	weekly	1				
67									
68	Total		\$46,055.00		10				
69									
70									
71	2007 Rental History								
72									
73	Dates	Rate	Total Cost	Nightly or Weekly	# weeks / nights				
74									
75	4/20/07 - 4/22/07	3,170.00	3,170.00	weekly	2				
76	5/10/07 - 5/13/07	3,170.00	3,170.00	weekly	1				
77	5/18/07 - 5/26/07	3,170.00	3,170.00	weekly	1				
78	6/3/07 - 6/30/07	4,225.00	16,900.00	weekly	4				
79	7/1/07 - 7/7/07								
80	7/13/07 - 7/31/07	4,225.00	16,900.00	weekly	4				
81	8/1/07 - 8/10/07	4,225.00	4,225.00	weekly	1				
82	8/16/07 - 8/18/07	4,225.00	4,225.00	weekly	1				
83	9/1/07 - 9/2/07	2,535.00	2,535.00	weekly	2				
84	9/13/07 - 9/16/07				incl				
85	10/11/07 - 10/13/07	2,535.00	2,535.00	weekly	1				
86	11/10/07 - 11/13/07	2,115.00	2,115.00	weekly	1				
87									
88	Total		\$58,945.00		18				
89									
90									
91									
92									
93									

MONTH	MONTHLY AVERAGE	LESS 2010 MONTHLY		POTENTIAL LOSS
	Based on Net Proceeds Paid to Claimant	Proceeds Paid to Claimant	Calculation	
	BASE PERIOD			
MAY	\$3,340.00	07/08/2009	\$992.00	\$2,348.00
JUNE	\$9,627.00	08-Jul	\$1,695.00	\$7,932.00
JULY	\$10,096.00	07/08/2009	\$9,539.00	\$557.00
AUGUST	\$2,970.00	07/08/2009	\$2,637.00	\$333.00
TOTAL	\$26,033.00		\$14,863.00	\$11,170.00

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

Fax: 202-493-6937

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim# N10036-0551
06 April 2011

RE: Claim Number: N10036-0551

Dear [REDACTED]

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 claim number N10036-0551 involving the Deepwater Horizon oil spill. Please see the enclosed 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 N10036-0551.

Mail reconsideration requests to:

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

Sincerely,

[REDACTED]
U. S. Coast Guard
Claims Manager

Enclosure: Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00002178

CLAIM SUMMARY / DETERMINATION FORM

Date	24 March 2011
Claim Number	N10036-0551
Claimant	██████████
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
Claim Manager	██
Amount Requested	\$11,667.00

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 was 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 claims for certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On 18 February 2011, ██████████ (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Funds Center (NPFC). The OSLTF claim form alleged \$11,667.00 in lost profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

Since the Claimant provided minimal information in her claim submission and did not respond to the NPFC request for additional information, there is little detail about her claim. A Wage and Income Transcript from the IRS for 2009 shows three W-2s and one Form 1099. A copy of her US Individual Tax Return for 2008 shows her occupation as Housekeeper. Her OSLTF claim form provides no description of how the oil spill caused her damages nor has she explained how she arrived at her requested loss amount.

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 waters or adjoining shorelines or the exclusive economic zone, as described in Section 2702(b) of OPA.

The OSLTF which is administered by the NPFC, is available, pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136, to pay claims for uncompensated damages. 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.
- (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.

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support her claim, Claimant submitted her OSLTF claim form, her handwritten letter explaining her claim, copies of Form 1040A US Individual Tax Return for 2008, Wage and Income Transcript from IRS for 2009, GCCF Denial Notice dated 06 December 2010, and GCCF Request for additional information dated 27 October 2010.

On 14 October 2010, Claimant presented a six-month Emergency Advance Payment claim for \$11,170.00 in lost earnings to the GCCF. She was assigned GCCF Claimant ID [REDACTED] and Claim [REDACTED]. On 10 December 2010, her claim was denied by the GCCF.²

On 17 February 2011, Claimant presented this claim for \$11,667.00 in lost profits and impairment of earnings capacity with the NPFC.

The NPFC recognizes that on 04 February 2011, Claimant presented an Interim Payment claim for \$10,000.00 with the GCCF.³ Claimant received \$8,145.42 as compensation for this claim from the GCCF. Claimant also received and accepted a Final Payment Offer from the GCCF.⁴

¹ GCCF Claimant status report.

² GCCF denial letter Re: Claimant's Emergency Advance Payment claim, dated 06 December 2010.

³ GCCF Claimant status report.

⁴ Email from GCCF to the NPFC, dated 29 March 2011 (as of the email date, Claimant had accepted the Final Payment offer, but not signed and returned the Release and Covenant not to Sue).

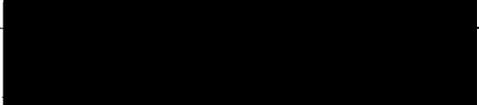
NPFC Determination

Under 33 CFR 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 CFR § 136.233, a claimant must establish loss of profits or impairment of earning capacity. The NPFC considered all the documentation submitted by the Claimant.

This claim is denied because Claimant's submission does not explain or support her alleged loss of \$11,667.00, or the correlation, if any, between this alleged loss and the Deepwater Horizon oil spill. Additionally, Claimant refused to respond to the NPFC's letter requesting additional information to evaluate her claim.⁵

Claimant is further put on notice that should she submit a request reconsideration for this claim or submit any further claim involving the Deepwater Horizon oil spill to the OSLTF, that she will have to produce documentation relevant to any Final Payment she received from the GCCF, including the Final Payment Offer and Release and Covenant not to Sue.

In light of the foregoing, this claim is denied.

Claim Supervisor: 

Date of Supervisor's Review: *4/6/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

⁵ On 21 February 2011, the NPFC sent Claimant a letter requesting additional information on her claim. The letter was sent Certified Mail Return Receipt Requested. The US Postal Service's Tracking site shows a Notice was Left on 07 March 2011 and the letter was Unclaimed on 17 March 2011. The mailing address was confirmed with the mailing address NPFC has on file for Claimant.

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

Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim # N10036-0552
14 March 2011

Re: Claim Number: N10036-0552

Dear [REDACTED]

The National Pollution Funds Center, 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 claim number N10036-0552 involving the Deepwater Horizon oil spill. Please see the enclosed 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 N10036-0552.

Mail reconsideration requests to:

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

[REDACTED]
Marine Science Technician 1
U.S. Coast Guard
Claims Manager

Enclosure: Claim Summary/Determination Form
09/14/11

FOIA2011-3380-0002182

CLAIM SUMMARY / DETERMINATION FORM

Date	: 10 March 2011
Claim Number	: N10036-0552
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$12,000

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 was 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.

CLAIM AND CLAIMANT

On 22 February 2011, [REDACTED] (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Funds Center (NPFC) seeking \$12,000 in lost profits and earning capacity allegedly resulting from the Deepwater Horizon oil-spill.

The Claimant indicated that since September 09, he worked for [REDACTED] by finding and recruiting individuals to staff short-term, manual labor projects in his area. He explained that he received monthly compensation reflecting the number of individuals he recruited and the number of man-hours they worked.

Claimant asserted that in the wake of the Deepwater Horizon oil-spill, the number of potential recruits in his area markedly decreased, as many had gone to work for oil cleanup crews. He stated that his monthly compensation consequently decreased, leading him to terminate his employment with [REDACTED] in July 2010 and take up oil cleanup work. He performed oil cleanup work with three different firms: [REDACTED]

[REDACTED] The work proved sporadic and ultimately ended on 15 August 2010.¹

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

The OSLTF, which is administered by the NPFC, is available, pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136, to pay claims for uncompensated damages. 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.

¹ PHONECON between Claimant and NPFC, dated 03 March 2011.

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;
- (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.

DETERMINATION OF LOSS

Claimant's Submission

In support of his claim, Claimant submitted the following documentation to the NPFC:

- OSLTF claim form, dated 21 February 2011;
- Paystubs from [REDACTED] for the periods ending 26 February and 02 April 2010;
- Paystub from Flexicrew Staffing for the period ending 15 August 2010;
- Paystub from On Demand Staffing for the period ending 18 July 2010;
- Signed, handwritten statement from Claimant explaining the reason for his departure from [REDACTED], undated;
- State of Alabama Driver's License;
- Alabama Department of Industrial Relations Employer Wage Report;
- Alabama Department of Industrial Relations Emergency Unemployment Compensation Determination;
- Federal income tax return (Form 1040s) for 2009 and 2010;
- 2010 W-2s from [REDACTED], On Demand Staffing and [REDACTED] Ft. Pierce;
- 2009 W-2 from [REDACTED] Ft. Pierce;
- 2008 W-2 from [REDACTED]

- Earnings statement from [REDACTED], dated 03 September 2009.

Claimant seeks \$12,000 in lost earnings allegedly resulting from the Deepwater Horizon oil-spill.

On 05 October 2010, Claimant submitted a six-month Emergency Advance Payment claim for \$12,000 with the GCCF. He was assigned GCCF Claimant ID [REDACTED] and Claim [REDACTED]. On 07 December 2010, his claim was denied by the GCCF.²

NPFC Determination

Under 33 CFR 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 CFR § 136.233, a claimant must establish loss of profits or impairment of earning capacity. The NPFC considered all the documentation submitted by the Claimant.

Claimant alleged that his wages and hours at [REDACTED] were reduced as a result of the Deepwater Horizon oil-spill. He explained that “the day laborers left the Company [REDACTED] for the oil spill [response work] and it did affected [sic] [my] hours and wages.”³ Claimant stated that his monthly compensation at [REDACTED] reflected the number of individuals he recruited and the number of man-hours they worked. Claimant hasn’t provided any evidence indicating that this compensation structure was changed as a result of the Deepwater Horizon oil-spill, or that [REDACTED] took action to reduce his wages or hours.

To the extent that Claimant experienced wage reduction from an exodus of laborers, this loss results from the independent decision of these laborers to undertake oil spill response work. Similarly, losses that the Claimant alleged from the short-term duration of his oil-spill response work result from his personal decision to leave [REDACTED] as the laborers did.

The claim is denied because the Claimant failed to demonstrate that the alleged loss in the amount of \$12,000 is due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil.

Claim Supervisor [REDACTED]

Date of Supervisor’s Review: 3/11/11

Supervisor’s Actions: *Denial approved*

Supervisor’s Comments:

² GCCF denial letter dated 07 November 2010.

³ Signed handwritten statement from Claimant explaining the reason for his departure from [REDACTED] undated.

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



CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim # N10036-0553
26 April 2011



RE: Claim Number: N10036-0553

De: [REDACTED]

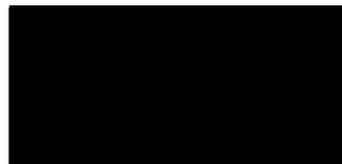
The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq. (OPA) and the associated regulations at 33 C.F.R. Part 136, denies payment on claim number N10036-0553 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination 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 N10036-0553.

Mail reconsideration requests to:

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



U.S. Coast Guard
Claims Manager

Enclosure: Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00002186

CLAIM SUMMARY / DETERMINATION FORM

Date	: 21 April 2011
Claim Number	: N10036-0553
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Impairment of Earnings Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$22,500.00

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 was 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 claims for certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On 22 February 2011 [REDACTED] Claimant), owner of [REDACTED] presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Funds Center (NPFC). The OSLTF claim form alleged \$13,000.00 in loss of profits and impairment of earnings capacity and \$9,500.00 in real or personal property damage for a total sum certain of \$22,500.00.

Because the Claimant has not presented her real or personal property damage claim in accordance with 33 C.F.R. § 136.103(a), which states that “all claims for removal costs or damages must be presented first to the responsible party . . .,” her real or personal property damage claim component is not properly before the NPFC and will be denied accordingly.

In regards to the Claimant’s loss of profits and impairment of earnings capacity claim, the Claimant owns and operates a business based in Grand Isle, LA that repairs and paints homes and fish camps. Claimant asserted that “property value[s] went down as a result of the oil spill and no one wanted to invest money painting and repairing the homes and camps.”¹

In regards to the Claimant’s real or personal property claim, Claimant indicated that she had previously leased a mobile home to the U.S. Department of Housing and Urban Development (HUD) for families in the Gulf Coast that had been displaced by hurricanes. However, because of the decrease in revenues from her business, Claimant asserted that she needed to live in the mobile home herself and thus she lost out on rental earnings from HUD.²

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

¹ OSLTF claim form dated 22 February 2011.

² CONFIDENTIAL between the Claimant and the NPFC on 07 March 2011

The OSLTF which is administered by the NPFC, is available, pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136, to pay claims for uncompensated damages. 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.
- 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.

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support her claim, Claimant submitted the following documentation to the NPFC:

- Optional OSLTF Claim Form, undated;
- Copy of the Claimant's GCCF claim status, dated 8 December 2010;
- Email between the Claimant and GCCF requesting a call back from the Escalation Department, dated 21 January 2011;
- Written chronology of the Claimant's communication with the GCCF, undated;
- Letter "To Whom It May Concern" regarding her attorney representation status, dated 26 December 2010;
- Hardship letter from the Claimant "To Whom It May Concern," dated 26 December 2010;

- Hardship letter from the Claimant "To Whom It May Concern," dated 19 December 2010;
- Letter of claim explanation from the Claimant "To Whom It May Concern," dated 19 December 2010;
- GCCF Full Review Final Payment Claim Form;
- Attestation page of the Claimant's 2009 Louisiana Resident Income Tax Return;
- 2009 1099-MISC from Pilgrim Rest Community;
- Partial 2009 Amended U.S. Individual Income Tax Return, Form 1040X;
- Partial 2009 Schedule E from the Claimant's U.S. Individual Income Tax Return;
- 2009 Form 4562 from the Claimant's U.S. Individual Income Tax Return;
- 2008 U.S. Individual Tax Return, Form 1040 including the Schedule C;
- 2008 Louisiana Resident Income Tax Return;
- Trajectory Forecast from NOAA, dated 5 May 2010;
- Copy of the Claimant's GCCF Claimant Identification Number;
- Notification to the Claimant of Employer Identification Number from the IRS, dated 16 June 2010;
- Partial 2009 U.S. Individual Tax Return Recap;
- 2007 U.S. Individual Tax Return, Form 1040 including the Schedule C and Form 4562;
- 2007 Louisiana Resident Income Tax Return.

On 08 September 2010, the Claimant presented a six-month Emergency Advance Payment (EAP) business claim of \$15,000.00 with the GCCF for lost profits and earnings.³ She was assigned GCCF Claimant ID [REDACTED] and Claim [REDACTED]. This business claim was denied by the GCCF on 25 January 2011.⁵

On 22 February 2011, the Claimant presented this claim for \$13,000.00 in loss of profits and impairment of earnings capacity and \$9,500.00 in real or personal property damage to the NPFC.⁶ As noted, the Claimant's real or personal property damage claim is improperly before the NPFC, not having been first presented to the RP according to 33 C.F.R. § 136.103(a).

NPFC Determination

Under 33 CFR 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 U.S.C § 2713, Claims Procedure, and 33 CFR § 136.103 Order of Presentment, a claimant may elect to present a claim to the OSLTF if that claim was first submitted to the responsible party. The NPFC considered all the documentation submitted by Claimant.

After an initial review of the Claimant's documentation, the NPFC has attempted to collect additional information from the Claimant in order to further the evaluation of her claim. The Claimant, however, has consistently avoided the NPFC's letter requesting additional information

³ GCCF Filing Report, dated 18 April 2011.

⁴ *Id.* The Claimant indicated that she additionally filed an individual six-month EAP claim with the GCCF for lost earnings that she suffered as a shrimper. The Claimant asserts that the individual claim, which the GCCF paid, is completely separate from the business claim presently at issue. PHONECON between the Claimant and the NPFC on 07 March 2011.

⁵ GCCF denial letter Re: Claimant's EAP claim, dated 25 January 2011.

⁶ Claimant also filed a Full Review Final Payment claim with the GCCF on 23 February 2011 for \$18,000.00 in lost earnings. This claim was deemed deficient by the GCCF, and the Claimant was given 30 days to respond to the GCCF deficiency letter. GCCF Filing Report, dated 18 April 2011.

(RFI letter). On 09 March 2011, the NPFC sent its RFI (Request For Information) letter to the Claimant's address on record. United States Postal Service Records (USPS) records indicated that USPS left two notices with the Claimant to pick up the RFI letter. The letter was eventually returned to sender after going unclaimed.⁷

On 30 March 2011, the Claimant acknowledged receiving the notices and admitted that she did not pick up the mail.⁸ She then requested that the letter be re-sent to her. The NPFC re-sent the letter on 31 March 2011. The USPS again left two notices for the Claimant to pick up the letter, which she ignored, resulting in the letter being returned to sender as unclaimed.⁹

The NPFC proceeded to evaluate the claim for an alleged loss of \$22,500.00 with the documentation that she had already provided.¹⁰ Claimant's evidence does not demonstrate her alleged loss of \$22,500.00, as claimed, or the correlation, if any, between this alleged loss and the Deepwater Horizon oil spill.

Claimant's loss of profits and impairment of earnings capacity claim for \$13,000.00 is DENIED because the Claimant has failed to meet her burden under OPA and the accompany regulations at 33 C.F.R. Part 136 to demonstrate her alleged loss and to establish that this 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 a discharge of oil. Additionally, Claimant's real or personal property damage claim for \$9,500.00 is DENIED because the Claimant failed to present this claim first to the RP in accordance with 33 C.F.R. 136.103(a).

Claim Supervisor: [REDACTED]

Date of Supervisor's Review: *4/26/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

⁷ Copy of Track & Confirm from the USPS – Receipt Number: [REDACTED]

⁸ PHONECON between the Claimant and the NPFC on 30 March 2011.

⁹ Copy of Track & Confirm from the USPS – Receipt Number: [REDACTED]

¹⁰ As noted, Claimant's real or personal property damage claim was not presented in accordance with 33 C.F.R. § 136.103(a) and therefore is not properly before the NPFC for the purposes of this determination.

U.S. Department of
Homeland Security

United States
Coast Guard



Director
National Pollution Funds Center
United States Coast Guard

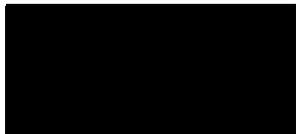
NPFC CA MS 7100
US COAST GUARD

5890
4/4/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]

EMAIL: [REDACTED]



RE: Claim Number: N10036-0554

Dear [REDACTED]

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 CFR Part 136, denies payment on the claim number N10036-0554 involving Deepwater Horizon. 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 N10036-0554.

Mail reconsideration requests to:

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

[REDACTED]
Claims Manager
U.S. Coast Guard

Encl: Claim Summary / Determination Form

09/14/11

FOIA2011-3380-0002191

CLAIM SUMMARY / DETERMINATION FORM

Date	: 4/3/2011
Claim Number	: N10036-0554
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$6,730,000.00

FACTS:

On or about April 20, 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 was 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 August 23, 2010, the Gulf Coast Claims Facility (GCCF) began accepting and adjudicating claims for certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT:

On February 23, 2011, [REDACTED] (Claimant), president, sole stockholder and owner of [REDACTED] presented a lost profits and earnings claim to the National Pollution Funds Center (NPFC) in the amount of \$6,730,000.00 for reimbursement of lost profits or impairment of earning capacity. [REDACTED] OSLTF claim form states that the nature of the damages claimed are for penalties and interest, loss of award winning boutique, and negative press.¹ It is important to note that the Claimant's submission does not actually articulate the nature of the penalties and interest although the NPFC assumes it is associated with the mortgage note for [REDACTED]. Additionally, the Claimant stated the claim includes damages for the loss of award winning boutique.

Claimant did not submit documentation with the claim evidencing when the property was purchased although there is an appraisal in the submission dated October 9, 2008 which indicates that the property subject of this claim was purchased on September 1, 1999 for a sum of \$1,620,000.00. Based on a mortgage statement dated December 10, 2010 included in the Claimant's submission, it appears that the first mortgage holder at the time the claim was submitted was First Third Bank out of Cincinnati, OH.

In the Claimant's submission to the NPFC, there is a letter from one of the Claimant's referenced attorneys, [REDACTED], dated July 7, 2010 to [REDACTED] BP Claims Service Center. According to [REDACTED] the [REDACTED] property is in foreclosure proceedings; however, the letter explains the Claimant's financial situation with respect to two boutique hotels she owns.² While the hotel properties and the claims are separate, they are financially related because of cross collateralization and the foreclosure proceedings.³ The letter states in relevant part... "Both of these have had financial problems created by the

¹ See, OSLTF Claim form, page 2, question 9. Claim form dated 1/11/11.

[REDACTED] presented a second claim to the NPFC for Super Enterprises, Inc. dba [REDACTED] on January 13, 2011 which is a separate claim at the NPFC.

³ To clarify this determination addresses on the [REDACTED] property.

banking crisis followed by the economic downturn which has now been exacerbated by the Deepwater Horizon oil spill in the Gulf.”⁴

The letter goes on to say that the Claimant had negotiated a workout with her lenders whereby a new lender would be taking over the loans and would be taking out the position of Fifth Third Bank (first mortgage holder) as it relates to the [REDACTED]. The letter further states that at the eleventh hour, [REDACTED] received a letter from CAP Management indicating that they were canceling their financing due to the Deepwater Horizon oil spill crisis.⁵

As a result, [REDACTED] asserts on behalf of the Claimant, that she now faces a substantial probability of losing both of the properties in foreclosure. The submission asserts that had CAP Management followed through with the debt restructure of her mortgage of the [REDACTED] [REDACTED] would have enabled the Claimant to remedy her mortgage issues on both properties. The Claimant asserts that [REDACTED] holds a first mortgage although she has never formally stated the original amount of that note and a second mortgage held by [REDACTED] [REDACTED] in the amount of \$400,000.00 for the [REDACTED] property.⁶ Closing arguments in [REDACTED] letter further asserts ...”while one can live through a recession and hope to come out the other end, one cannot overcome a loss of property and foreclosure caused by an oil spill.” The letter also states that the Claimant lost her “only” opportunity to refinance this property.”

The breakdown of the Claimant’s sum certain has fluctuated between what was requested on the OSLTF Claim for and what was identified on a spreadsheet created by the Claimant and submitted to the NPFC:⁷

\$2,555,000.00 in first mortgage balance;
\$1,300,000.00 in first mortgage penalties/interest;
\$400,000.00 in second mortgage balance;
\$250,000.00 in second mortgage penalties/interest;
\$75,000.00 in attorneys/consultants/foreclosure/bankruptcy fees;
\$1,034,250.00 in IRS taxes - proposed

TOTAL = \$5,614,250.00⁸

Claimant presented an Emergency Advance Claim to the GCCF on August 23, 2010 and an interim claim on January 4, 2011. The GCCF has confirmed Claimant ID as [REDACTED] and filing ID # for interim claim as [REDACTED] via an email dated March 23, 2011⁹

APPLICABLE LAW:

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a). Damages include the loss of profits or impairment of earning capacity due to the injury,

⁴ See, letter from [REDACTED] dated 7/7/10.

⁵ *Id*

⁶ *Id*

⁷ See, email from Claimant to [REDACTED] (NPFC) dated February 22, 2011 attachment entitled “NPFC – Minimum Claim – [REDACTED]”

⁸ Claimant’s sum certain to the OSLTF is \$6,730,000.

⁹ GCCF confirmed presentment of the claim for payoff of the mortgage for the [REDACTED] hotel

destruction or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant. 33 U.S.C. § 2702(b)(2)(E).

The OSLTF, which is administered by the NPFC, 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. With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

Pursuant to the claims regulations, 33 C.F.R. § 136.233, a claimant must establish the following to prove loss of profits or impairment of earning capacity:

- (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.
- (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.

DETERMINATION OF LOSS:

Under 33 CFR 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 CFR § 136.233, a claimant must establish loss of profits or impairment of earning capacity. The NPFC considered all the documentation submitted by the Claimant.

To receive compensation from the OSLTF for lost profits and earnings, the Claimant MUST establish that her loss of profits and impairment of earning capacity was due to the injury.

destruction or loss of real property, personal property or natural resource in order to have an OPA compensable damage. In this particular claim, Ms. Luper states she suffered lost profits associated with [REDACTED] because [REDACTED] backed out of debt restructure of the mortgage on her property because of the oil spill and that if the oil spill had not occurred, [REDACTED] would have refinanced the property and she would not have suffered her mortgage and financial problems and her alleged losses.

In this case, the Claimant provided evidence showing that she had financial and loan problems at least three years prior to the incident. The Claimant was in arrears on her first mortgage, which has been subject of foreclosure proceedings, prior to the Deepwater Horizon incident. Further, the second mortgage note held by [REDACTED] was executed on October 17, 2006 in the amount of \$400,000.00 with a maturity date of October 18, 2007. It is evident by the documentation presented by the Claimant that the note was delinquent several years prior to the oil spill and it remains in default to date. Thus, the evidence presented by the Claimant does not substantiate the Claimant's assertions that she will lose the [REDACTED] because of the Deepwater Horizon incident.

Claimant also argues that she was guaranteed the refinance by [REDACTED] and that it pulled out at the eleventh hour due to the oil spill. The Claimant produced a copy of a letter dated June 22, 2010 from [REDACTED] to [REDACTED] (the first mortgage holder of the [REDACTED]) which states that they have elected not to move forward with the 'proposed' acquisition of [REDACTED] loan on the [REDACTED] property due to concerns over the continually deteriorating conditions within the Gulf as a result of the Deepwater Horizon incident and to consider the letter a formal withdrawal of their offer.¹⁰

The NPFC contacted [REDACTED] of [REDACTED] to discuss the cancellation of the debt restructure negotiations associated with the [REDACTED] property. [REDACTED] stated that [REDACTED] considered many factors with respect to the risk associated with this transaction¹¹ and that the Deepwater Horizon incident was one factor they considered but was not the sole reason why the negotiations ended. [REDACTED] sent an email to the NPFC dated March 30, 2011 which states in part..." While the accident was a factor, it was not the sole factor in making our decision not to proceed forward."

The Claimant also provided an unexecuted copy of a 'Letter of Intent' for prospective restructuring of debt for the Claimant's other hotel property, [REDACTED]. The Letter of Intent is dated May 11, 2010 and addressed to the Claimant. This letter states that it acknowledges their mutual interest in proceeding forward with a debt restructuring transaction between [REDACTED] and the Claimant's business, [REDACTED], relating to certain existing debt secured by the [REDACTED] property. The letter goes on to say that the terms and concepts expressed in the letter are subject to the review and approval of all due diligence items and issues that [REDACTED] deems necessary and that the letter is further subject to the parties further negotiating and fully executing formal agreements memorializing the terms of the prospective Restructured Loan.

It is clear in this letter that at the time of its issuance on May 11, 2010, there were not any formal agreements in place and that the negotiations were preliminary and therefore not official until executed. The Letter of Intent includes the following at the end of the letter..."As referenced above, this non-binding LOI is only a list of proposed points that are intended to be included

¹⁰ See, letter from [REDACTED] to [REDACTED] dated June 22, 2010.

¹¹ [REDACTED] noted that [REDACTED] engages in the purchase of distressed property acquisitions.

within the restructuring documentation. Neither party shall be bound by any agreement until both agree to and sign formal agreements memorializing the restructuring transaction contemplated herein, and no party may reasonably rely on any promises inconsistent with this paragraph.”

Claimant has NOT produced a copy of any signed formal agreements between herself and CAP Management ratifying the proposed restructure loan; therefore, there is no evidence in the record that the restructuring would have gone forward. Based on the evidence, CAP Management walked away from acquisition negotiations. Based on [REDACTED] email to the NPFC, he did not state what all the factors were that caused the negotiation to end but he did confirm there was more than one factor.

The Claimant itemized the sum certain into several subparts via its spreadsheet of February 22, 2011 which, as noted above, does not correspond with the amount requested by the Claimant on her OSLTF claim form. The first amount requested is for the balance of the mortgage due on the Bungalow Beach Resort note, \$2,555,000.00. Mortgage payments are not OPA-compensable damages. The Claimant purchased the property years before the Deepwater Horizon incident and was bound by the terms of the note and the mortgage securing the property. Failure to meet the terms and conditions of that note is the sole responsibility of the Claimant as she is bound by those terms regardless of the oil spill or not.

The second amount requested by the Claimant is \$1,300,000.00 for the penalties and interest regarding her default of the first mortgage. Again, penalties and interest related to the mortgage default are not OPA-compensable damages payable from the Fund.

The third amount requested by the Claimant is \$400,000.00 for the balance of her second mortgage; the fourth amount requested by the Claimant is \$250,000.00 in for the penalties and interest regarding her default of the second mortgage. Payoff of the second mortgage note and associated penalties and interest are not OPA compensable damages but rather a routine expense associated with obtaining a second mortgage secured by collateral.

The fifth amount requested by the Claimant is \$75,000.00 for legal fees, consultation fees, and foreclosure and bankruptcy fees. The various fees including the legal fees are not OPA compensable damages as presented by the Claimant. In accordance with the governing claims regulations found at 33 CFR 136.105(e)(8) it states in part...” The reasonable costs incurred by the claimant in assessing the damages claimed [can be requested for compensation]. This includes the reasonable costs of estimating the damages claimed, but not attorney’s fees.”

The sixth and final amount requested by the Claimant is \$1,034,250.00 for proposed IRS taxes. The Claimant is responsible for paying taxes on real property she owns which are not OPA compensable damages.¹²

This claim is denied because (1) the Claimant has failed to demonstrate that her loss of profits and earnings was a result of the injury, destruction or loss of property or natural resources and the resulting discharge or substantial threat of discharge of oil. Her financial problems began several years prior to the Deepwater Horizon incident. Moreover, [REDACTED] acknowledged in his letter that the problems began with the banking crisis and the economy. Further, Claimant’s

¹² Claimant’s failure to pay property taxes is further evidence that her property was in financial difficulties at least three years prior to the incident.

request payment of mortgage payoffs, associated penalties and interest associated with those delinquent mortgages, back taxes and attorneys fees are not OPA compensable damages.

Claim Supervisor 

Date of Supervisor's review: *4/4/11*

Supervisor Action: *Denial approved*

Supervisor's Comments:

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

Fax: 202-438-6937
5890
4/12/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]



RE: Claim Number: N10036-0555

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number N10036-0555 involving Deepwater Horizon. See the attached Claim Summary / Determination Form for an explanation regarding the denial.

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 N10036-0555.

Mail reconsideration requests to:

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

Sincerely, [REDACTED]



Claims Manager
U.S. Coast Guard

Encl: Claim Summary / Determination Form

09/14/11

FOIA2011-3380-00002198

CLAIM SUMMARY / DETERMINATION FORM

Date	: April 12, 2011
Claim Number	: N10036-0555
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$45,249.69

FACTS:

On or about April 20, 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 was 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 August 23, 2010, the Gulf Coast Claims Facility (GCCF) began accepting and adjudicating claims for certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On February 23, 2011, [REDACTED] (Claimant) presented a lost profits & earnings claim in the amount of \$45,249.69 to the National Pollution Funds Center (NPFC) for reimbursement. The Claimant stated that he did not receive his performance based salary bonus at the [REDACTED] due to the oil spill. The Claimant provided a copy of his employer's claim which the GCCF found compensable.

Based on information provided by the Claimant, the NPFC understands that the Claimant is the Senior Vice President of Operations for [REDACTED], a position that was attained on April 8, 2010. The Claimant provided a document entitled Executive Committee Bonus Program¹ that outlines the components and provisions associated with the bonus.

The Claimant filed a Final claim with the GCCF and was given claimant id [REDACTED]. The Claimant's Final claim was re-reviewed by the GCCF on April 1, 2011 where it was once again determined, using their methodology, that no financial loss took place.

APPLICABLE LAW:

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a). Damages include the loss of profits or impairment of earning capacity due to the injury, destruction or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant. 33 U.S.C. § 2702(b)(2)(E).

The OSLTF, which is administered by the NPFC, 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. With certain exceptions a claim must first be presented to the

responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

Pursuant to the claims regulations, 33 C.F.R. § 136.233, a claimant must establish the following to prove loss of profits or impairment of earning capacity:

- (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.
- (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.

DETERMINATION OF LOSS

Claimant's Submission

To support the claim, the Claimants submitted the following documentation:

- NPFC Optional OSLTF Claim Form dated February 18, 2011;
- Letter from Claimant explaining the claim dated February 21, 2011;
- Affidavit from Employer, signed by [REDACTED] Regional Controller, not dated;
- Affidavit from [REDACTED] signed by [REDACTED] dated March 2, 2011;
- [REDACTED] claim to the GCCF;
- 2008, 2009, 2010 W-2s;
- 2008, 2009, 2010 Tax Returns;
- One (1) month of pay stubs;
- Pay stub showing salary based performance;

- Employer performance based salary program;
- Employer calculation of program;
- Claimant's submission to the GCCF;
- Copy of driver's license;
- GCCF determination letter;
- Annual performance review and change of job scope dated April 8, 2010;
- CD of recorded calls to [REDACTED] of cancellations and inquiries into the oil's impact at the resort

NPFC Determination

Under 33 CFR 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 CFR § 136.233, a claimant must establish loss of profits or impairment of earning capacity. The NPFC considered all the documentation submitted by the Claimant.

This claim is denied because Claimant's loss is speculative. Claimant's entire claim hinges on [REDACTED] Executive Committee Bonus Program 2010, which presumably applies to the Claimant and outlines metrics for triggering an annual bonus distribution. Claimant alleges that were it not for the Deepwater Horizon oil spill, the [REDACTED], where the Claimant is employed through [REDACTED] would have achieved sufficient numbers in the metrics outlined in the bonus plan to trigger the Claimant's alleged annual bonus.

Regardless of the merits of Claimant's argument, the bonus plan is discretionary and subject to unilateral modification. The plan's terms and conditions include the following: "[REDACTED] reserves the right at its sole discretion to change, rescind, amend, suspend, discontinue, and/or otherwise modify any section of or the entire Executive Committee Incentive Compensation Plan at any time without any advance notification." It also includes the following language: "The implementation of the Executive Committee bonus plan is not intended nor implied to be a guarantee of any distribution."

Based on this language, even if the resort had achieved numbers sufficient to trigger the metrics in the annual bonus plan, [REDACTED] had no obligation to pay the Claimant the alleged annual bonus therefore the Claimant has failed to meet his burden to demonstrate (1) that he had a loss of profits and (2) that the incentive pay was a guarantee. This claim is accordingly denied.

Claim Supervisor: [REDACTED]

Date of Supervisor's review: 4/12/11

Supervisor Action: *Denial approved*

Supervisor's Comments:

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

Fax: 202-493-6937

CERTIFIED MAIL - RETURN RECEIPT REQUESTED
Number: [REDACTED]

5890/DWHZ
Claim# N10036-0556
15 March 2011

RE: Claim Number: N10036-0556

Dear [REDACTED]

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 claim number N10036-0556 involving the Deepwater Horizon oil spill. Please see the enclosed 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 N10036-0556.

Mail reconsideration requests to:

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

Sincerely
[REDACTED]

U. S. Coast Guard
Claims Manager

Enclosure: Claim Summary/Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Date	15 March 2011
Claim Number	N10036-0556
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
Claim Manager	[REDACTED]
Amount Requested	\$12,000.00

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 was 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 claims for certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On 24 February 2011, [REDACTED] Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form seeking \$12,000.00 in lost profits and earning capacity to the National Pollution Funds Center (NPFC) alleging damages resulting from the Deepwater Horizon oil spill.

Claimant asserts that he was laid off as a server/bartender in May 2010 by [REDACTED] due to tourists and residents leaving when the Deepwater Horizon oil spill occurred. Claimant alludes to additional lost earnings due to the fact that the restaurant had to cut their menu in half because of EPA reports on the health of Gulf Coast seafood. Claimant stated he collected unemployment in the amount of \$5,500.00 from May 2010 through November 2010. In November 2010 Claimant found employment with [REDACTED]. Claimant alleges that his hourly wage is less with his current employment with [REDACTED] as opposed to his previous employment with [REDACTED].

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

The OSLTF, which is administered by the NPFC, is available, pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136, to pay claims for uncompensated damages. 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.
- (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.

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support his claim, Claimant submitted an optional OSLTF claim form dated 15 February 2011, a handwritten letter signed by Claimant explaining the nature of his claim, Seven typed answers to a NPFC request for additional information via email, 2009 W-2 statement from [REDACTED] 2010 W-2 statement from [REDACTED] 2010 W-2 statement from [REDACTED] Paystub from [REDACTED] [REDACTED] dated 04 March 2011, 2009 U.S. Individual Income Tax Return.

Claimant is claiming lost earnings and wages in the amount of \$12,000.00.

Claimant presented an Emergency Advance Payment claim to the GCCF and was issued GCCF Claimant ID [REDACTED] and Claim [REDACTED] On 04 December 2010 the GCCF denied his claim. This information was verified by the NPFC.

NPFC Determination

The claim is denied because the alleged loss in the amount of \$12,000.00 is not due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil. Claimant alleges lost earnings due to being laid off from [REDACTED] because of the Deepwater Horizon oil spill alleging loss of tourism, residents leaving, and the menu being reduced because of polluted gulf coast seafood.

The NPFC claims adjuster contacted [REDACTED] the Human Resource Coordinator for [REDACTED] on 10 March 2011. The HR Coordinator stated on the phone and in an email that the Claimant worked as a seasonal server from October through April/May for the 2008 to 2009 season and the 2009 to 2010 season. Claimant knew he was a seasonal worker and when his work would be completed based on the previous year's employment and the [REDACTED] season ending in April/May of each year. However, Claimant states in his signed handwritten letter that he was expecting "a great year for the restaurant business yet after the spill most residents and tourists left and I was left without a way to provide for a family of six."¹ Claimant was sent a letter for additional information. In his email response the Claimant states he was laid off because the oil spill made the tourists leave and EPA reports made the restaurant reduce its menu by one-half due to the tainted Gulf Coast seafood.

Under 33 C.F.R. 136.9, falsification of claims, persons submitting false claims or making false statements in connection with claims under this part may be subject to prosecution under Federal law, including but not limited to 18 U.S.C. 287 and 1001. In addition, persons submitting written documentation in support of claims under this part which they know, or should know, is false or omits a material fact may be subject to a civil penalty for each claim.

Claimant has not established that his alleged loss of income resulted from the Deepwater Horizon oil spill and his claim is denied.

Claim Supervisor: [REDACTED]

Date of Supervisor's Review: 3/16/11

Supervisor's Actions: Denial Approved

Supervisor's Comments:

¹ See signed handwritten letter presented to the NPFC 24 February 2011
09/14/11

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
National Pollution Funds Center
United States Coast Guard

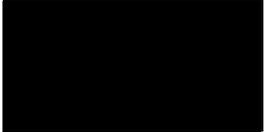
NPFC CA MS 7100



5890
2/28/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]



RE: Claim Number: N10036-0557

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et. seq. (OPA 90) and the associated regulations, 33 C.F.R. Part 136, denies payment on your claim, # N10036-0557. Please see the enclosed 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 N10036-0557.

Mail reconsideration requests to:

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

Sincerely,



Claims Manager
U.S. Coast Guard

CLAIM SUMMARY / DETERMINATION FORM

Date	: 2/27/2011
Claim Number	: N10036-0557
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$18,000.00

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 was 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 claims for certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On February 16, 2011, [REDACTED] (Claimant) presented a lost profits & earnings claim in the amount of \$18,000.00 to the National Pollution Funds Center (NPFC) for reimbursement. Claimant provided an OSLTF Claim Form identifying the amount requested, name, address, date and signature. Claimant has failed to provide any supporting documentation for the claim or an explanation as to how the Claimant derived at the amount requested or what exactly it covers. The NPFC called and left two messages for the Claimant inquiring on whether the Claimant was going to provide documentation to support her claim. To date, the NPFC has not received a reply.

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

The OSLTF which is administered by the NPFC, is available, pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136, to pay claims for uncompensated damages. 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.

- (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.

DETERMINATION OF LOSS:

Claimant's Submission

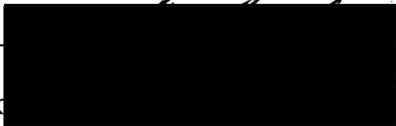
To support the claim, the Claimant submitted the following documentation:

- NPFC OSLTF Claim Form, dated February 7, 2011.

NPFC Determination

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. § 136.233, a Claimant must establish loss of profits or impairment of earning capacity. The NPFC considered all the documentation submitted by the Claimant.

The Claimant has failed to provide any documentation and explanation for the amount requested. The NPFC called and left two messages for the Claimant inquiring on whether she was going to provide supporting documentation for her claim and to date, no response has been received. The claim is denied because the evidence presented by the Claimant does not demonstrate that the Claimant's claimed loss was a result of injury destruction or loss of natural resources or real or personal property nor has the Claimant provided information on how she derived at her loss amount and what it represents.

Claim Supervisor 

Date of Supervisor's review: *2/28/11*

Supervisor Action: *Denial approved*

Supervisor's Comments:

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

Fax: 202-493-6937
5890
3/7/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]



RE: Claim Number: N10036-0558

Dear [REDACTED]

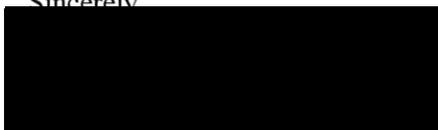
The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq. (OPA) and the associated regulations at 33 C.F.R. Part 136, denies payment on claim number N10036-0558 involving the Deepwater Horizon oil-spill. Please see the enclosed Claim Summary/Determination 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 N10036-0558.

Mail reconsideration requests to:

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

Sincerely,



Claims Manager
U.S. Coast Guard

Encl: Claim Summary / Determination Form

09/14/11

FOIA2011-3380-00002210

CLAIM SUMMARY / DETERMINATION FORM

Date	: 3/7/2011
Claim Number	: N10036-0558
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$35,000.00

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 was 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 claims for certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On 24 February 2011 the National Pollution Funds Center (NPFC) received a typed undated letter from [REDACTED] (Claimant) seeking \$35,000.00 in lost profits & earnings capacity resulting from the Deepwater Horizon incident.

Claimant asserted that he was employed during the Deepwater Horizon incident for beach cleanup. Claimant stated that he was promised three years of employment but after two months he was laid off therefore the Claimant has calculated his losses for a three year period although it is still not clear exactly how the breakdown is computed (i.e., what monthly salary, from what month and year to what month and year, and what other itemized costs are included and for what months and amounts).

APPLICABLE LAW

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a). Damages include the loss of profits or impairment of earning capacity due to the injury, destruction or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant. 33 U.S.C. § 2702(b)(2)(E).

The OSLTF, which is administered by the NPFC, 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. With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

Pursuant to the claims regulations, 33 C.F.R. § 136.233, a claimant must establish the following to prove loss of profits or impairment of earning capacity:

- (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.
- (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.

DETERMINATION OF LOSS

Claimant's Submission

To support the lost profits and earnings capacity claim, the Claimant provided the following documents:

1. Undated type written letter requesting \$35,000.00;
2. Copy of GCCF denial letter dated November 24, 2010;
3. Letter dated October 8, 2010 explaining circumstance;
4. Copies of paystubs from [REDACTED] dated 7/1/10; 7/9/10; 7/16/10; and 7/30/10;
5. Copy of Claimant's Certificate of Training for a 24 hour Hazardous Waste Operator training dated June 13, 2010;
6. Copies of eleven paystubs for [REDACTED], for the period of 2/27/10 through 5/22/10;
7. Copy of Alabama Drivers license;
8. Copy of various contractor ID badges;
9. Copy of [REDACTED] checking account for the period of 4/16/10 through 5/13/10.

NPFC Determination

This claim for lost profits and earnings capacity is denied. 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. § 136.233, a claimant must establish loss of profits or impairment of earning capacity. The NPFC considered all the documentation submitted by the Claimant.

Based on the documentation and information presented to the NPFC, the Claimant has not demonstrated that any loss of profits or earnings capacity occurred due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil.

Claim Supervisor: 

Date of Supervisor's review: *3/7/11*

Supervisor Action: *Denial approved*

Supervisor's Comments:

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

Fax: 202-493-6937

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim# N10036-0559
14 April 2011

C/O: [REDACTED]

RE: Claim Number: N10036-0559

Dear [REDACTED]

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 claim number N10036-0559 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination Form for further explanation.

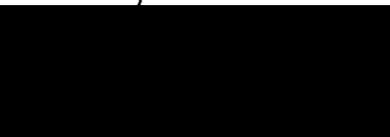
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-0559.

Mail reconsideration requests to:

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

Sincerely, /



U. S. Coast Guard
Claims Manager

Enclosure: Claim Summary/Determination Form
09/14/11

FOIA2011-3380-0002214

CLAIM SUMMARY / DETERMINATION FORM

Date	07 April 2011
Claim Number	N10036-0559
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
Claim Manager	[REDACTED]
Amount Requested	\$208,657.99

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 was 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 claims for certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On 25 February 2011, [REDACTED] of [REDACTED] (Agent) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form on behalf of [REDACTED] (Claimant) to the National Pollution Funds Center (NPFC). The OSLTF claim form alleged \$208,657.99 in lost profits and earnings capacity resulting from the Deepwater Horizon oil spill.

On 24 March 2011, the Agent submitted a revised Trend Analysis, documenting the Claimant's loss following the NPFC's call to try to understand the original Trend Analysis provided. It was during this phone conversation with the NPFC that the Agent realized the incorrect document had been provided resulting in the submission of a revised Trend Analysis.

The Claimant is a family dental practice in Pensacola, Florida. The Claimant alleged that as a result of the Deepwater Horizon oil spill, the Pensacola Beach area suffered economic damage and the Claimant's clients (business owners and workers in Pensacola Beach) lost revenues and jobs.¹ The Claimant indicated that it consequently experienced a significant drop in appointments.

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 waters or adjoining shorelines or the exclusive economic zone, as described in Section 2702(b) of OPA.

The OSLTF which is administered by the NPFC, is available, pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136, to pay claims for uncompensated damages. 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:

¹ Letter to the NPFC explaining the claim.

- (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.
- (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.

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support the claim, Agent on behalf of Claimant submitted the following documentation to the NPFC:

- OSLTF claim form signed by Agent;
- Trend Analysis worksheet;
- Letter of Authorization for Agent;
- Letter to the NPFC explaining the claim;
- Claimant Register Report for April 2008 through December 2008;
- Letter to [REDACTED] from Claimant, dated 05 February 2011;
- Production analysis;
- Florida Dental License dated 01 January 2010;
- City of Pensacola Local Business Tax for 2010-2011;
- Local Business Tax Receipt Escambia County;
- Statement of Revenues and Expenses for Year-Ended 31 December 2007, 2008, 2009 and 2010; and
- Form 1120S US Income Tax Return for an S Corporation for 2008 and 2009.

On 18 October 2010, Claimant presented an Emergency Advance Payment claim for \$50,553.00 in lost profits and earnings to the GCCF. Claimant was issued GCCF Claimant ID [REDACTED] and Claim [REDACTED]. On 12 November 2010, this claim was denied.²

On 05 February 2011, Claimant presented a Full Review Final Payment claim for \$208,657.95 in lost profits and earnings to the GCCF. Claimant was issued Claim [REDACTED]. On 06 March 2011, this claim was denied by the GCCF.³

Claimant then presented this claim for \$208,657.99 in lost profits and earnings capacity to the NPFC.

NPFC Determination

Under 33 CFR 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 CFR § 136.233, a claimant must establish loss of profits or impairment of earning capacity. The NPFC considered all the documentation submitted by the Claimant.

To support the Claimant's alleged loss, the Agent presented a trend analysis worksheet, which used a growth factor of 19.26% to project the Claimant's 2010 monthly gross sales.⁴ The Agent established this growth factor by averaging the month-to-month growth rate from September 08/09 through May 09/10 (a 9 month period). This growth factor does not reflect the downward trend in the Claimant's gross sales from January through August 08/09.⁵

Additionally, the trend analysis worksheet used a Gross Profit Margin of 99.19% to calculate gross profits. This profit margin does not account for savings from overhead and expenses that would have resulted from the decline in revenue. The Agent contended that any decline in revenue would not result in any saved costs.⁶

Even if the NPFC agreed with the Claimant's loss computation, there is no evidence beyond assertions that the Claimant's loss resulted from the Deepwater Horizon oil spill.

Based on the preponderance of the evidence, this claim is denied because the Claimant has failed to meet the burden that (1) 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 a discharge of oil or (2) that the alleged loss calculation is accurate based on the computation gaps referenced above by the NPFC.

² GCCF denial letter Re: Claimant's Emergency Advance Payment claim dated 12 November 2010.

³ GCCF denial of interim payment/final payment claim, dated 06 March 2011.

⁴ Agent actually uses monthly production analysis numbers vis-à-vis monthly gross sales figures to calculate Claimant's 2010 loss in profits. It is unclear what production analysis numbers represent, but, accumulated for the year, they exceed Claimant's annual gross sales. Agent does not adjust these production analysis numbers to reflect Claimant's gross sales figures.

⁵ It is unclear why the Agent has selected nine months to determine the growth factor in the trend analysis worksheet.

⁶ PHONECON between the NPFC and Agent on 24 March 2011.

Claim Supervisor: 

Date of Supervisor's Review: *4/14/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

U.S. Department
of Homeland
Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim # N10036-0560
7 April 2011

[REDACTED]

C/O: [REDACTED]

Re: Claim Number: N10036-0560

Dear [REDACTED]

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 claim number N10036-0560 involving the Deepwater Horizon oil spill. Please see the enclosed 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 N10036-0560.

Mail reconsideration requests to:

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

Sincerely,

[REDACTED]

U. S. Coast Guard
Claims Manager

Enclosure: Claim Summary/Determination Form
09/14/11

FOIA2011-3380-0002219

CLAIM SUMMARY / DETERMINATION FORM

Date	4 April 2011
Claim Number	N10036-0560
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
Claim Manager	[REDACTED]
Amount Requested	\$38,524.01

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 was 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 claims for certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On 25 February 2011, [REDACTED] on behalf of [REDACTED] (Claimant), presented an Optional Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Fund Center (NPFC). The OSLTF claim form alleged \$493,155.98 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill. Upon review of what had been properly presented to the RP first, it was determined that 90 days had not lapsed since the Claimant presented the full amount of \$493,155.98 as requested therefore the Claimant amended his sum certain on April 6, 2011 to \$36,524.01.¹

Claimant is a company based in Santa Rosa Beach, FL that provides landscape installation, landscape maintenance, and pool maintenance services. Claimant has both commercial and residential clients and conducts business in the South Walton area, including the neighborhoods of Destin and Panama City Beach. Claimant asserted that "installations were hit hard by lack of construction, home purchases and rentals all being down after the spill."²

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

The OSLTF which is administered by the NPFC, is available, pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136, to pay claims for uncompensated damages. 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.

¹ Email from Claimant to NPFC Representative on 05 April 2011.

² Email from Claimant to NPFC Representative on 08 March 2011.

- 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.
- 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.

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support this claim, Claimant submitted the following documentation to the NPFC:

- OSLTF claim form, undated;
- Letter of authorization allowing NWF Consulting to act on Claimant's behalf regarding matters related to the Deepwater Horizon oil spill, dated 17 February 2011;
- Claimant's calculation of projected earnings and loss;
- Form 1120S U.S. Income Tax Return, including all statements, schedules, and attachments, for the years 2007, 2008, and 2009;
- Monthly statement of revenue and expenses from January 2008 through December 2010;
- State of Florida Corporate Articles of Incorporation, filed on 8 September 1997; and
- Email from Claimant to NPFC with business description and claim explanation, dated 8 March 2011.

Claimant seeks a total of \$38,524.01 in lost profits allegedly resulting from the Deepwater Horizon oil spill.³

On 13 October 2010, Claimant presented a six-month Emergency Advance Payment (EAP) claim of \$279,000.00 in lost profits and earnings with the GCCF. Claimant was assigned GCCF

³ Claimant confirmed a payment of \$80,900.00 from the GCCF on the OSLTF claim form. 09/14/11 FOIA2011-3380-0002221

Claimant ID [REDACTED] and Claim [REDACTED] On 02 November 2010, Claimant was paid \$80,900.00 by the GCCF.⁴

On 17 February 2011, Claimant filed a Full Review Final claim with the GCCF in the amount of \$493,155.98.

NPFC Determination

This claim is denied. Under 33 CFR 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 U.S.C § 2713, Claims Procedure, and 33 CFR § 136.103 Order of Presentment, a claimant may elect to present a claim to the OSLTF if that claim was first submitted to the responsible party.

Based on a review of the documentation provided and the Owner's admissions, the NPFC concluded that the Claimant has already been fully compensated by the RP for all potential losses sustained. The GCCF paid Claimant \$80,900.00, which exceeds the potential losses for the Claimant as calculated by the NPFC based on the supporting documentation provided. Specifically, the independent calculations of the NPFC did not confirm the growth rate of business as alleged by the Claimant. Further, the Claimant's calculated loss included losses from the business that occurred prior to the Deepwater Horizon oil spill.

Based on the preceding analysis, this claim is denied because (1) the NPFC has determined that the Claimant has been fully compensated by the RP for the period claimed and (2) the Claimant has failed to meet his burden of demonstrating how his 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 as opposed to other economic factors experienced by his client base.

Claim Supervisor: [REDACTED]

Date of Supervisor's Review: 4/7/11

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

U.S. Department of
Homeland Security

United States
Coast Guard



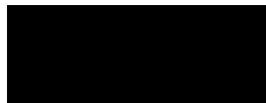
Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD

5890
3/2/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]



RE: Claim Number: N10036-0561

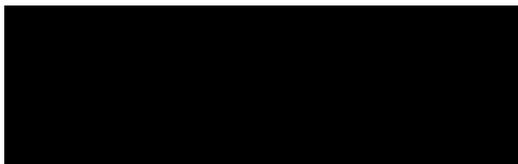
Dear [REDACTED]

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 claim number N10036-0561 involving the Deepwater Horizon oil-spill. Please see the enclosed 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 N10036-0561.

Mail reconsideration requests to:

Director (ca)
NPFC CA MS 7100
US COAST GUARD



Claims Manager
U.S. Coast Guard

Encl: Claim Summary / Determination Form

09/14/11

FOIA2011-3380-00002223

CLAIM SUMMARY / DETERMINATION FORM

Date	: 3/2/2011
Claim Number	: N10036-0561
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$4,500.00

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 was 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 claims for certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On February 28, 2011, the Claimant, [REDACTED], presented a loss of profits and impairment of earning capacity claim in the amount of \$4,500.00 to the National Pollution Funds Center (NPFC) for reimbursement. [REDACTED] asserted that due to the economic downturn from the Deepwater Horizon oil-spill, his employer, [REDACTED] has put an indefinite freeze on all raises and bonuses. The Claimant further alleged that all hourly employees' hours were scaled back and overtime was no longer being authorized due to the Deepwater Horizon incident.

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 waters or adjoining shorelines or the exclusive economic zone, as described in Section 2702(b) of OPA.

The OSLTF which is administered by the NPFC, is available, pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136, to pay claims for uncompensated damages. 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.

- (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 C.F.R. §136.9, Falsification of claims, persons submitting false claims or making false statements in connection with claims under this part may be subject to prosecution under Federal law, including but not limited to 18 U.S.C. 287 and 1001. In addition, persons submitting written documentation in support of claims under this part which they know, or should know, is false or omits a material fact may be subject to a civil penalty for each claim.

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support his claim, Claimant submitted the following documentation to the NPFC:

- OSLTF Claim Form dated February 6, 2011;
- Undated letter from [REDACTED] stating employer implemented monetary freezes and cut back hours due to the Deepwater Horizon incident;
- Undated typed statement #1 from Claimant in support of his alleged loss;
- Undated typed statement #2 from Claimant in support of his alleged loss;
- Copy of GCCF denial letter dated December 8, 2010;
- Copy of Claimant's Florida drivers license and social security card;
- Copies of W-2s for Claimant from [REDACTED] for 2008 through 2010.
-

Claimant seeks \$4,500.00 in lost earnings allegedly resulting from the Deepwater Horizon oil-spill.

NPFC Determination

The claim is denied because the alleged loss in the amount of \$4,500.00 is not due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil. After the NPFC reviewed the Claimant's W-2s for his employer whom he is still employed with, the evidence demonstrates that the Claimant only made \$393.02 less in 2010 compared to his earnings for 2009 and based on that figure, the Claimant has not demonstrated the cause of the overall annual difference from one year to the next. Additionally,

the Claimant has submitted an intentionally fake document in conjunction with his claim submission for which the NPFC was able to speak directly with [REDACTED] Co-Director of the [REDACTED] who requested that the NPFC fax him a copy of the letter the Claimant submitted with his signature. Upon receipt of the document, [REDACTED] called the NPFC back and verbally confirmed that he did not write or sign the letter. [REDACTED] further stated that the Claimant was at work and he approached the Claimant with the information regarding the fake document. The claims regulations state in relevant part... "persons submitting written documentation in support of claims under this part which they know, or should know, is false or omits a material fact may be subject to a civil penalty for each claim". This claim is denied.

Claim Supervisor: [REDACTED]

Date of Supervisor's review: 3/2/11

Supervisor Action: *Denial approved*

Supervisor's Comments:

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

Fax: 202-493-6937

CERTIFIED MAIL - RETURN RECEIPT REQUESTED
Number: [REDACTED]

5890/DWHZ
Claim# N10036-0563
11 April 2011



RE: Claim Number: N10036-0563

Dear [REDACTED]

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 claim number N10036-0563 involving the Deepwater Horizon oil spill. Please see the enclosed 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 N10036-0563.

Mail reconsideration requests to:

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



Sincerely,
[REDACTED]
U.S. Coast Guard
Claims Manager

Enclosure: Claim Summary/Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Date	07 April 2011
Claim Number	N10036-0563
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
Claim Manager	[REDACTED]
Amount Requested	\$29,000.00

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 was 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 claims for certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On 01 March 2011 [REDACTED] (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Funds Center (NPFC). The OSLTF claim form alleged \$29,000.00 in lost profits and earning capacity resulting from the Deepwater Horizon oil spill.

Claimant asserted that he worked fulltime for [REDACTED] as an installer, earning \$15.00 an hour, while attending college as a fulltime student at Mississippi Gulf Coast Community College.¹ He alleged that as a result of the Deepwater Horizon oil spill, his employer lost several major contracts which forced his lay-off on 30 April 2010.²

Claimant indicated that he dropped out of college to pursue employment opportunities, including short stints with [REDACTED], and oil spill response cleanup work. He claims \$29,000.00 in lost college tuition, lost earnings and lost money spent for training and job search.

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 waters or adjoining shorelines or the exclusive economic zone, as described in Section 2702(b) of OPA.

The OSLTF which is administered by the NPFC, is available, pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136, to pay claims for uncompensated damages. 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:

¹ OSLTF claim form.

² Id.

- (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.
- (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.

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support his claim, Claimant submitted the following documentation to the NPFC:

- 1) OSLTF claim form, dated 27 February 2011 (including Questions 10 & 11 attachment);
- 2) Letter from the [REDACTED];
- 3) Paystub for the week of 20-26 September 2010 from [REDACTED];
- 4) 2010 W-2 from [REDACTED];
- 5) 2010 W-2 from [REDACTED];
- 6) 2010 1099-MISC from [REDACTED] Building Systems;
- 7) List of four college classes dated 21 January 2011 from [REDACTED];
- 8) Certificate of Training for completion of hazardous materials operations and emergency response from United [REDACTED] dated 21 July 2010; and
- 9) Certificate of Training for completion of 40-hour hazwoper training from Command Center dated 19 May 2010.

Claimant seeks \$29,000.00 in lost earnings allegedly resulting from the Deepwater Horizon oil spill.

On 26 August 2010, Claimant presented an Emergency Advance Payment claim for \$8,000.00 in lost earnings with the GCCF.³ He was issued GCCF Claimant ID [REDACTED] and Claim # [REDACTED]. On 15 December 2010, this claim was denied by the GCCF.⁴

NPFC Determination

Under 33 CFR 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 CFR § 136.233, a claimant must establish loss of profits or impairment of earning capacity. The NPFC considered all the documentation submitted by the Claimant.

The claim is denied because the alleged loss in the amount of \$29,000.00 is not due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil.

In connection with a review of this claim, the NPFC sent the Claimant a letter requesting additional information in order to further evaluate his claim. The letter requested, among other things, financial documentation for an accurate accounting of the Claimant's losses and documentary evidence corroborating that the Deepwater Horizon oil spill resulted in the cancellation of major contracts and Claimant's layoff on 30 April 2010. The letter was sent on 01 March 2011 and on 08 March 2011, the Claimant signed for delivery. To date no response has been received by the NPFC.

The NPFC accordingly proceeded to evaluate the claim with the evidence the Claimant had submitted. The evidence does not demonstrate the Claimant's alleged loss of \$29,000.00 or the correlation, if any, between this alleged loss and the Deepwater Horizon oil spill.

This claim is denied because Claimant has failed to meet his burden under OPA and the associated regulations at 33 C.F.R. Part 136.

Claim Supervisor [REDACTED]

Date of Supervisor's Review: *4/8/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

³ GCCF Filing Report.

⁴ GCCF denial letter Re: Claimant's Emergency Advance Payment claim, dated 14 December 2010.

U.S. Department
of Homeland
Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim # N10036-0565
28 March 2011

Re: Claim Number: N10036-0565

Dear [REDACTED]

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 claim number N10036-0565 involving the Deepwater Horizon oil spill. Please see the enclosed 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 N10036-0565.

Mail reconsideration requests to:

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

Sincerely, /

[REDACTED]
U. S. Coast Guard
Claims Manager

Enclosure: Claim Summary/Determination Form

CLAIM SUMMARY/DETERMINATION FORM

Date	25 March 2011
Claim Number	N10036-0565
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity/Real or Personal Property
Claim Manager	[REDACTED]
Amount Requested	\$16,000.00/\$200.00

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 was 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 (GCCCF) began accepting and adjudicating claims for certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On 01 March 2011, [REDACTED] (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Funds Center (NPFC). The OSLTF claim form alleged \$16,000.00 for lost profits & earnings and \$200.00 for damage to real or personal property for a total of \$16,200.00 in damages allegedly resulting from the Deepwater Horizon oil spill.

The Claimant reportedly works as a commercial diver for [REDACTED] and alleged that the "[Deepwater Horizon] oil spill made it so [he] could not work . . ." because it surrounded the boat he worked on, forcing the termination of dive ops and the return of the boat back to the dock.¹ The Claimant also asserted oil got on his wetsuit and caused \$200.00 in damage.²

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

The OSLTF, which is administered by the NPFC, is available, pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136, to pay claims for uncompensated damages. 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.

¹ OSLTF claim form.

² *Id*

- (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.
- (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.

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support his claim, Claimant submitted his OSLTF claim form, dated 17 February 2011, his 2009 W-2 Wage and Tax Statement and his [REDACTED] Check History Listing for 2009 and 2010 through period ending 06 February 2011.

On 25 October 2010, Claimant filed a six-month Emergency Advance Payment claim with the RP/GCCF and was assigned Claimant ID [REDACTED] and Claim [REDACTED]. On 07 December 2010, his claim was denied by the GCCF.⁴

Claimant then filed this claim with the NPFC, seeking \$16,200.00 in total damages, allegedly resulting from the Deepwater Horizon oil spill.

NPFC Determination

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

³ GCCF filing report for Claimant, dated 18 March 2011.

⁴ GCCF denial letter Re: Claimant's Emergency Advance Payment claim, dated 07 December 2010.

support the claim. Under 33 C.F.R. § 136.233, a claimant must establish loss of profits or impairment of earning capacity. The NPFC considered all the documentation submitted by the Claimant.

A review of the Claimant's payroll records revealed a lack of an apparent reduction in earnings or worked hours following the Deepwater Horizon oil spill. In fact, considering the Claimant's bonus hours, regular hours and overtime hours worked, as well as considering the total pay for 2009 and 2010, it would appear as though there was an increase in total pay following the Deepwater Horizon oil spill in May through December 2010, as compared to the same period in 2009.

The only noticeable reduction in hours worked, and subsequent reduction in pay received, was determined to be prior to the date of the Deepwater Horizon oil spill (20 April 2010). Indeed, the total pay for January 2010 through April 2010 was lower than the same period in 2009, which suggests that the reduction in total pay for 2010 was not related to the Deepwater Horizon oil spill but due to other factors pre-dating the spill.⁵

Additionally, in consideration of all documents and information provided as well as a conversation with the employer, [REDACTED] the Claimant has failed to establish that his loss of profits or earnings capacity occurred as a result of the Deepwater Horizon oil spill. The Human Resources representative from [REDACTED] advised that to the best of her knowledge, no employees lost hours due to the oil spill but, if hours/wages were lost subsequent to the oil spill, it was due to the moratorium and permitting process delays rather than the presence of oil in the water. She further advised that the "slow" season was during the winter and hours lost any time prior to late March were most likely due to seasonal variances resulting in a lack of available work. In summary, she had no awareness of a loss of hours due directly to oil in the water or a threat of discharge of oil and likewise framed the seasonal components of this company in her own words, explaining the data presented by this claim and refuting direct causation to the Deepwater Horizon oil spill.⁶

As such, this claim for lost profits or earnings capacity is denied because the alleged losses were not demonstrated and any amount of loss thought to be sustained, is not due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil as a result of the Deepwater Horizon oil spill.

Finally, with the Claimant's alleged real or personal property damage he alleged associated with his wetsuit, the Claimant has provided no evidence to substantiate the damage claimed or the amount requested for compensation associated with the damage therefore this component of the claim is denied. The Claimant has failed to meet his burden to establish a damage resulting from the incident nor has the Claimant provided evidence in support of the amount requested for the reported damage.

Claim Supervisor: [REDACTED]

Date of Review: 3/27/11

Supervisor's Actions: *Denial approved*

⁵ Review of [REDACTED] Check History Listing provided by Claimant

⁶ Conversation between [REDACTED] and NPFC staff, 21 March 2011

U.S. Department of
Homeland Security

United States
Coast Guard



Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100

Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]

DWHZ/5890

23 May 2011



RE: Claim Number: N10036-0566

Dear [REDACTED]

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 claim number N10036-0566 involving the Deepwater Horizon oil spill. Please see the enclosed 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 N10036-0566.

Mail reconsideration requests to:

Director (ca)
NPFC CA MS 7100
US COAST GUARD



Sincerely,



National Pollution Funds Center
U.S. Coast Guard

Enclosures: (1) Claim Summary/Determination Form
(2) List of Documentation Provided by Claimant

09/14/11

FOIA2011-3380-00002235

CLAIM SUMMARY / DETERMINATION FORM

Date	: 5/18/2011
Claim Number	: N10036-0566
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: \$861,512.00

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 was 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 claims for certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On 25 February 2011, [REDACTED] Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Funds Center (NPFC) for \$115,460.00 in property damage and \$746,052.00 in lost profits and earnings capacity. Claimant's total alleged loss equals \$861,512.00. Duane Montgomery (Owner/Operator) asserts that he is the majority owner of Claimant.¹

Claimant is a nonprofit research, development and consulting firm. Claimant's primary data collection and monitoring tool is the research vessel [REDACTED], originally built by Bayliner and modified for long-distance, offshore use by the [REDACTED] boat yard.² Owner/Operator indicates that property damages were caused by tarballs ingested into the [REDACTED] raw water intakes, which caused overheating and ruined both propulsion engines and generator sets. The claim also includes Claimant's related and ensuing alleged loss of income from the unavailability of the [REDACTED].

The claimed loss of profits/earnings is calculated from the sum of 1 April 2010 through 31 December 2010 (second through fourth quarters of 2010) plus \$186,513.00, which is the average of those three months as an estimate of 1st quarter of 2011 losses.

The personal property damages claimed are the cost of the replacement propulsion engines and generator sets, as indicated by the Toromont CAT price quote dated 18 October 2010.³

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

The OSLTF, which is administered by the NPFC, is available, pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136, to pay claims for uncompensated damages. 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:

¹ Letter of Explanation dated 27 February 2011.

² Id.

³ [REDACTED] email quotation to [REDACTED] on 16 October 2010, Re: Caterpillar 2x3056 engines and 2xC1.5 generators for Sail Boat.

- (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.
- (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.

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

Claimant provided a number of documents in support of the claim. Those documents are listed in Enclosure (2). Included in those documents are seven pages that indicate Gulf of Mexico positions (latitudes and longitudes) for vessel [REDACTED] from 1 March 2010 through 25 May 2010.

Claimant presented a claim to BP on 16 June 2010 and was assigned Claim [REDACTED]. On 25 August 2010, Claimant presented an Emergency Advance Payment (EAP) claim to the GCCF for \$43,596.78 in real/personal property damages. Claimant was assigned GCCF Claimant ID [REDACTED] and Claim [REDACTED]. On 19 October 2010, Claimant received \$43,900.00 in compensation from the GCCF on this claim.

On 02 November 2010, Claimant presented a supplemental real/personal property claim for \$65,343.22 to the GCCF. On 12 November 2010, the supplemental claim was denied by the GCCF.

On 5 January 2011, Claimant presented two Full Review Final Payment claims (\$216,539.00 in lost profits and earnings; \$65,343.00 in real/personal property damages) to the GCCF. Those claims remain pending.

On 2 March 2011, Claimant presented this claim for \$115,460.00 in real or property damages and \$746,052.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

NPFC Determination

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. The NPFC considered all documentation presented by Claimant.

Under 33 C.F.R. § 136.9, falsification of claims, persons submitting false claims or making false statements in connection with claims under this part may be subject to prosecution under Federal law, including but not limited to 18 U.S. C. §§ 287 and 1001. In addition, persons submitting written documentation in support of claims under this part which they know, or should know, is false or omits a material fact may be subject to a civil penalty for each claim.

Owner/Operator alleged that on or about 10 May 2010, while the Claimant engaged in gathering water and soil samples during a pollution monitoring exercise, ██████████'s raw water intakes ingested oily tarballs from the Deepwater Horizon oil spill, which caused the engines and gensets to overheat and burn out. Owner/Operator further alleged that ██████████ was towed back to port and ██████████ ██████████ Company paid him \$8,109.00 for the loss.⁴

Owner/Operator submitted two separate cost estimates from ██████████ for replacement engines and gensets. He also submitted receipts for engine removal, which he dates on 17 and 24 September 2010. He also provided pictures purportedly of the engine removal from the ██████████ and a check from ██████████ to ██████████ for an engine deposit in the amount of \$30,000.00.

The first cost estimate, dated 12 June 2010 and purportedly from ██████████ quoted Owner/Operator a total of \$51,956.78 for two marine propulsion engines and one C1.5 10kW marine genset. The cost estimate included a diagnostic summary, which indicated that engine and genset failure resulted from "obstruction with 'Tar like' oily substance." The NPFC questioned the Owner about this diagnosis to which the Owner replied that he had made the diagnosis himself. The second cost estimate dated 18 October 2010 and purportedly from ██████████ indicated that "[t]his is for the required equipment replacement due to the BP Gulf of Mexico Oil Spill damage as *you* have mentioned."⁵

Neither cost estimate, therefore, diagnoses the source of the Claimant's alleged damage as the Deepwater Horizon oil spill. Owner, however, intentionally inserted this language into the cost estimate of 12 June 2010.

Owner/Operator also submitted a Michigan (MI) ██████████ Registration purportedly for the ██████████. The registration indicated that the vessel is a 30' 1996 Bayliner. Owner/Operator confirmed that the vessel is a Bayliner modified for long distance offshore use. The NPFC contacted Bayliner (manufacturer), which confirmed that the registered watercraft is a 1996 ██████████ ██████████ single screw, designed for a gas engine. Bayliner indicated that such a vessel would not be compatible or even modified, with the two CAT 3056 diesel engines and C1.5 genset, which are listed as replacement engines for the engines in ██████████.

Two CAT 3056 engines could not fit into the 2858 Ciera Command Bridge's engine box. ██████████ indicated that the dimensions of this engine box are 48.5 inches wide by 47.25 inches in length. Based on information available to the NPFC, the length of a single Caterpillar 3056 marine propulsion engine is 42.06 inches in length (without transmission) and 30.6 inches wide. With no clearance between or beside the engines, the combined width of two Caterpillar 3056 engines would exceed the available width of the engine box.

⁴ Although Owner/Operator alleges that this payment was limited because he did not have an OPA rider on his policy, the Geico check made out to Owner indicated "T/L Full Settlement." Owner/Operator was asked repeatedly to clarify with his insurer whether his rights to recover for his alleged loss have been subrogated. To date, he has not complied with this request.

⁵ 18 October 2010 price quote by ██████████ (emphasis added).

Additionally, the Owner/Operator also provided task log with positions (latitudes and longitudes) for the vessel [REDACTED]. Although he alleged that on 10 May 2010 [REDACTED] experienced complete engine failure⁶ and had to be towed to port, the task log indicated that the vessel continued at the same SOG [Speed over Ground] of "10" for another 15 days after the date the engines were allegedly ruined.⁷

Claimant's financial documentation is also inconsistent. Although the Claimant reportedly grossed \$13,253,712.78 in 2008 and \$15,875,945.00 in 2009, the Claimant's Profit & Loss Statements from 1 April through 30 December 2010 (2nd, 3rd, and 4th quarters) shows no actual revenues, costs of sales, or expenses (including sales and marketing, R&D, or general and administrative expenses).⁸ It is unclear how the loss of [REDACTED] a single vessel reportedly under [REDACTED] impacts the revenue stream for four different divisions in a multi-million dollar corporation.

Notwithstanding the above, the Claimant has not shown that the Owner/Operator's release of rights to Geico Indemnity Company (Geico) do not apply to the damages claimed. Owner/Operator provided a copy of payment made by Geico to him for damages which, by way of his signature and release on the check,⁹ may have subrogated all of the Claimant's rights for damages resulting from this incident to Geico.

In light of the foregoing, this claim is DENIED

Claim Supervisor: *NI* [REDACTED]

Date of Review: *5/23/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

⁶ Owner's 25 March 2011 Response to March 23, 2011 Request for Additional Information, page 7.

⁷ Engineering Technological Researchers' Task Site Log for SeaSearcher in Gulf of Mexico, 1 March 2010 through 25 May 2011.

⁸ 2008 Federal Tax Form 1120 indicates gross income of \$13,253,712.78 and 2009 Federal Tax Form 1120 indicates gross income of \$15,875,945.00.

⁹ Included in claim package is copy of [REDACTED] Check number [REDACTED], which indicates that the payment is for T/L Full Settlement.

1. NPFC Optional OSLTF Claim Form 25 February 2011.
2. Claim submission cover, table of contents and overview of damage claim.
3. Wikipedia excerpt on Deepwater Horizon oil spill.
4. NOAA charts depicting approximate oil spill locations for—
 - a. April 25 to April 28, 2010,
 - b. April 27 to May 1, 2010,
 - c. April 29 to May 3, 2010,
 - d. April 30 to May 4, 2010,
 - e. May 1 to May 5, 2010, and
 - f. May 2 to May 6, 2010.
5. Statement of submissions to BP and the GCCF, as well as Statement of the Claim.
6. Engineering Technological Researchers Corp. Profit and Loss Statements for 1st, 2nd, 3rd and 4th Quarters, 2010.
7. Estimate and Damage Report June 12, 2010, for vessel SeaSeasearcher, in the amount of \$51,956.78, with a Diagnostic Summary.
8. Estimate and Damage Report October 18, 2010: Quote for (2) 3056 Caterpillar Marine Engines and (2) C1.5 generator for Sail Boat, from Toromont CAT, Concord, Ontario, Canada. 30-Day Quote dated 18 October 2010 in \$60,390 CDN, plus taxes, (5 pages) sent via email.
9. Receipt for engine deposit in amount of \$30,000.00, dated 29 October 2010.
10. Wire Transfer Information Sheet for Toromont CAT.
11. Parcel Plus/FedEx shipping receipt in the amount of \$27.85 dated 29 October 2010, accompanying order number 8217.
12. Parcel Plus shipping order #8217 in the amount of \$2715.
13. Invoice for Engine Removal in amount of \$915.00 for work completed 17 September 2010, from [REDACTED], Felton, DE. Invoice number obscured.
14. Invoice for Engine Removal in amount of \$670.00 for work completed 24 September 2010, from Jim Pettit's Diesel Service, Felton, DE. Invoice number 347256.
15. Handwritten, non-negotiable check copy on PNC Bank for \$1,585.00, payable to Jim Pettit's Diesel Service, dated 22 October 2010.
16. Four undated photos of engine removals.
17. Invoice for Engine Removal (Statement) in account with [REDACTED] to Duane, for work completed 24 September 2010, in amount of \$928.
18. Handwritten, non-negotiable check copy on [REDACTED] for \$928, payable to [REDACTED] [REDACTED] dated 22 October 2010.
19. 2008 Tax Form 1120, Corporate Income Tax Return for Engineering Technological Researchers Corp (1 page) showing gross receipts/sales of \$13,253,712.78.

20. 2009 Tax Form 1120, Corporate Income Tax Return for Engineering Technological Researchers Corp (1 page) showing gross receipts/sales of \$15,875,945.09.
21. State of Michigan Watercraft Registration for 30 ft. 6 in, 1996 Bayliner Hull ID Number [REDACTED] registration number [REDACTED] expiring 31 March 2013.
22. Michigan watercraft registration decal, number 0757135, showing expiration date of 13 Mar. 13.
23. Pantaenius Yacht Insurance quotation number [REDACTED] for stated value yacht insurance dated 03 December 2010 for \$ [REDACTED] 'Seasearcher', 5 pages.
24. Demand for payment on BP claim number [REDACTED] in the amount of \$43,856.78, dated 16 June 2010.
25. (Duplicate) State of Michigan Watercraft Registration for 30 ft. 6 in, 1996 Bayliner Hull ID Number [REDACTED] registration number [REDACTED] expiring 31 March 2013.
26. (Duplicate) Michigan watercraft registration decal, number [REDACTED] showing expiration date of 13 Mar. 13.
27. Electronics Invoice/Repair Order of 12 June 2010, totaling \$51,956.78 and including Diagnostic Summary.
28. Profit and Loss Statement for period 1 Jan. 10 through 31 Mar. 10, showing revenues of \$2,884,727.
29. (Duplicate) 2008 Tax Form 1120.
30. (Duplicate) 2009 Tax Form 1120.
31. Copy of Claimant's Ohio State Driver's License, number [REDACTED]
32. Copy of GEICO Indemnity Company check [REDACTED] dated 6/14/2010, in the amount of \$8,109.00, payable to ETR, Attn: Duane Montgomery, for Comprehensive Coverage, T/L Full Settlement.
33. Certified mail receipts and USPS payment for mailing to BP Oil Service Center
34. BP letter to Claimant dated 19 July, 2010, regarding insufficient documentation.
35. ESIS claim adjuster letter to Claimant dated 22 July 2010, requesting copy of certain documents, including Social Security Card, Log with mapping grid and pictures of vessel and with copy of postmarked envelope marked 22 July 2010.
36. Claimant letter of 21 July 2010 to BP/ESIS, providing 7 pages of task log sheets, Ohio Driver's License with SSN and documentation of mailing.
37. GCCF letter of 23 August 2010 with listing of Claim Site Offices.
38. GCCF Claim Packet and mailing documentation.
39. Undated and unsigned copy of Claimant's GCCF Claim Form for Emergency Advance Payment in the amount of \$81,032.36.
40. GCCF letter of 30 September 2010 requesting information necessary to complete review of [the] claim.
41. Claimant's GCCF Claim Form for Final Payment in the amount of \$281,882.22, signed 11/18/2010, with mailing documentation.
42. GCCF Emergency Advance Payment Determination and payment check for \$43,900 dated 19 October 2010.

43. GCCF Denial letter for Supplemental Emergency Advance Payment, dated 12 November 2010.
44. GCCF Claimant and Claim Information report, accessed 2/27/2011.
45. GCCF Claimant Status sheet, 27 Feb. 2011.
46. NOAA information sheet, "Understanding Tar Balls", July 8, 2010.
47. (Duplicate) 30-Day Quote for (2) 125 HP Marine Propulsion Engines and (1) 10 kW Generator Set including labor and materials from [REDACTED] Power Systems. Quote dated 12 June 2010 for \$51,956.78.
48. (Duplicate) Receipt for document shipping charges to Toromont CAT of \$27.85 dated 29 October 2010.
49. (Duplicate) Quote for Vessel Insurance from [REDACTED] dated 03 December 2010.
50. Quarterly Profit and Loss Statements from 2010.
51. Task Log for Engineering Technological Researchers Corporation indicating site coordinates from 01 March 2010 through 25 May 2010.
52. Toromont CAT Invoice to Engineering Technological Researchers (ETR) on (2) 3056 engines and (2) C1.5 generators, totaling \$115,460, indicating a progress payment made in the amount of \$30,000.
53. Claimant response to NPFC's 23 March 2011 Request for Additional Information, 9 pages.
54. [REDACTED] letter of 24 March 2011 to the Clerk of the House of Representatives; to the Director, NPFC; to [REDACTED] and to the District of Columbia Bar.

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

Fax: 202-493-6937

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim# N10036-0567
25 March 2011

RE: Claim Number: N10036-0567

Dear [REDACTED]

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 claim number N10036-0567 involving the Deepwater Horizon oil spill. Please see the enclosed 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 N10036-00567.

Mail reconsideration requests to:

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

Sincerely,

[REDACTED]
U. S. Coast Guard
Claims Manager

Enclosure: Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00002243

CLAIM SUMMARY / DETERMINATION FORM

Date	16 March 2011
Claim Number	N10036-0567
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
Claim ManagerMST1	[REDACTED]
Amount Requested	\$122,371.79

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 was 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 claims for certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On 02 March 2011, [REDACTED] (Claimant) through its authorized agent, NWF Consulting, presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Funds Center (NPFC). The OSLTF claim form alleged \$122,371.79 in lost profits resulting from the Deepwater Horizon oil spill.

Claimant is a construction contractor that repairs, remodels and maintains properties in Pensacola Beach, Florida. Typical customers include business owners, condominium complexes and rental management companies that rely on vacationing families for their income. Claimant alleged that the Deepwater Horizon oil spill deterred these families from visiting the area, resulting in reduced income for Claimant's typical customers, who, in turn, chose to forego Claimant's services.

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 waters or adjoining shorelines or the exclusive economic zone, as described in Section 2702(b) of OPA.

The OSLTF which is administered by the NPFC, is available, pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136, to pay claims for uncompensated damages. 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.

- (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.

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support his claim, Claimant through NWL Consulting submitted the following documentation to the NPFC:

- OSLTF claim form undated;
- Authorization for NWF Consulting, dated 03 February 2011;
- Claimant's typewritten letter explaining the loss of profits;
- Trend Analysis worksheet for loss of profits;
- GCCF Denial Notice dated 06 December 2010;
- US S Corporate Tax Returns for 2008 and 2009;
- Florida construction license expiring 31 August 2011;
- Florida articles of incorporation; and
- Monthly income statements from 2008, 2009 and 2010 for Horizon Home Improvements.

On 04 March 2011, NPFC sent a letter to the Claimant requesting additional information in order to further review his claim. On 15 March 2011, NWF Consulting responded by e-mail and provided this additional documentation:

- Answers to questions 1-9;
- US Corporate Tax Return for 2007, Schedule K for 2008; and
- Year-to-date Profit and Loss Statements for 2008 and 2009.

Claimant seeks \$122,371.79 in lost profits allegedly resulting from the Deepwater Horizon oil spill.

On 18 November 2010, Claimant filed a six-month Emergency Advance Payment claim for \$168,426.00 with the GCCF. Claimant was issued GCCF Claimant ID [REDACTED] and Claim [REDACTED]. On 06 December 2010, this claim was denied by the GCCF.²

¹ GCCF Claimant Status page for Claimant ID [REDACTED]

² GCCF Denial Notice, dated 06 December 2010.

NPFC Determination

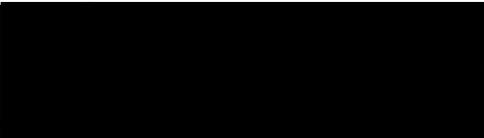
Under 33 CFR 136.105(a) and 136.105(e)(6), the claimant bears the burden of providing to the NPFC all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim. Under 33 CFR § 136.233, a claimant must establish loss of profits or impairment of earning capacity. The NPFC considered all the documentation submitted by the Claimant.

To demonstrate the alleged loss of profits in the amount of \$122,371.79, the Claimant submitted a trend analysis worksheet which compares gross sales in 2010 versus the average of gross sales from 2008 and 2009. Overall, there is a significant variance in annual gross sales for 2008 (\$1,001,926.42) versus 2009 (\$507,984.38)—a roughly 50% decline in gross sales. The Claimant's authorized agent explained that this wide variance resulted from "health problems experienced in 2009 . . . [which] forced [us] to reduce the size of our operation."³ The Claimant's authorized agent then goes on to say that "[i]n the beginning of 2010 we were expanding our business and attempting to re-enter the Southern AL market."⁴

The effect of the Claimant's method of averaging 2008 and 2009, despite the wide variance, and comparing this average to 2010 is that projected gross sales in 2010 is 25% greater than 2009. However, this rising trend assumption is not supported in the Claimant's documentation. The Claimant indicated that 2010 was an expansion year for the business, but there is no empirical evidence that this expansion necessarily translates into a 25% increase in gross sales over 2009.

Additionally, the Claimant fails to demonstrate how his alleged losses resulted from the Deepwater Horizon oil spill. The Claimant indicated that as a result of the Deepwater Horizon oil spill, tourism in Pensacola Beach, FL declined, resulting in reduced demand for the Claimant's repair and maintenance services from typical customers. In a letter, dated 04 March 2011, the NPFC challenged Claimant "to provide further information on how the oil spill caused your losses."⁵ Claimant could not adequately respond to this portion of the request.⁶

This claim is denied because the alleged loss in the amount of \$122,371.79 is not due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil.

Claim Supervisor  for

Date of Supervisor's Review: 3/25/11

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

³ Answers to questions 1-9.

⁴ Answers to questions 1-9.

⁵ NPFC letter requesting additional information, dated 04 March 2011.

⁶ Claimant responded by saying "[p]lease inform us how we can closer show that our business simply did not receive the calls for quotes and ect [sic] as we have in the past." Answers to questions 1-9.

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

Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number [REDACTED]

5890/DWHZ
Claim # N10036-0568
09 March 2011

Re: Claim Number: N10036-0568

Dear [REDACTED]

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 claim number N10036-0568 involving the Deepwater Horizon oil spill. Please see the enclosed 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 N10036-0568.

Mail reconsideration requests to:

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

Sincerely,

[REDACTED]
Claims Manager
U.S. Coast Guard

Enclosure(s): (1) Claim Summary/Determination Form
09/14/11

FOIA2011-3380-0002247

CLAIM SUMMARY/DETERMINATION FORM

Date	08 March 2011
Claim Number	N10036-0568
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
Claim Manager	[REDACTED]
Amount Requested	\$4,000.00

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 was 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 claims for certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On 02 March 2011, [REDACTED] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$4,000.00 in lost profits and earning capacity resulting from the Deepwater Horizon oil-spill. The Claimant works for [REDACTED], a subsidiary of [REDACTED], currently located in New Orleans, LA. The Claimant asserted that he lost wages due to the oil-spill and had to seek other employment to mitigate the loss.

The Claimant has previously presented an Emergency Advance Payment claim to the RP/GCCF in the amount of \$4,000.00, Claimant Identification Number: [REDACTED], which was denied in a letter dated 06 December 2010.

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

The OSLTF which is administered by the NPFC, is available, pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136, to pay claims for uncompensated damages. 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.
- (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.

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support the claim, the Claimant presented the NPFC Optional OSLTF Claim Form on 02 March 2011, pay documents including partial 2008 and 2009 Form 1040 Tax Return Documents, W2s from employment in Vermont and Louisiana, a Google directional map for the current place of employment and a copy of the GCCF denial letter.

NPFC Determination

The claim is denied. Under 33 U.S.C. § 2702(b)(2)(E) and 33 C.F.R. Part 136, a claimant must prove that his loss of income was due to injury or destruction or loss of real or personal property or 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 to the NPFC all evidence, information, and documentation deemed necessary by the Director, NPFC, to support his claim.

The NPFC reviewed the evidence presented by the Claimant and spoke with the Manager of the [REDACTED] with which Claimant was employed during the specified period of time. The Manager advised that the Claimant, a server, had transferred to this restaurant from a restaurant in Vermont during the summer, after the Deepwater Horizon oil-spill had occurred, so he is unsure how the Claimant's losses are being measured since business had been slow prior to the incident. The Manager further stated that, although several employees had filed claims, he was unwilling to say that there was any impact on wages due to the oil-spill as neither him, the restaurant or the company had filed a claim.¹

Under 33 C.F.R. 136.9, Falsification of claims. Persons submitting false claims or making false statements in connection with claims under this part may be subject to prosecution under Federal law, including but not limited to 18 U.S.C. 287 and 1001. In addition, persons submitting written documentation in support of claims under this part which they know, or should know, is false or omits a material fact may be subject to a civil penalty for each claim. Claimant has

¹ Conversation between current manager of [REDACTED], New Orleans, LA and NPFC Staff 08 March 2011

intentionally made false assertions on the NPFC Optional OSLTF Claim Form which have been repudiated by the employer.

The Claimant has failed to meet the burden of proof in establishing the claimed loss of profits and earnings as due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil. Therefore this claim is denied.

Claim Supervisor: 

Date of Supervisor's Review: *3/9/11*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

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



CERTIFIED MAIL - RETURN RECEIPT REQUESTED
Number [REDACTED]

5890/DWHZ
Claim# N10036-0569
25 May 2011



RE: Claim Number: N10036-0569

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq. (OPA 90) and the associated regulations, 33 C.F.R. Part 136, denies payment on your claim, # N10036-0569. Please see the enclosed Claim Summary/Determination Form for further explanation.

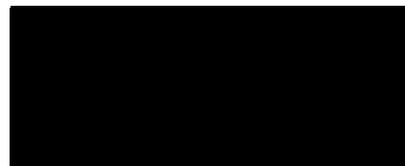
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you 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 N10036-0569.

Mail reconsideration requests to:

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

Sincerely,



National Pollution Funds Center
U.S. Coast Guard

Enclosure(s): (1) Claim Summary/Determination Form
(2) Summary of Documentation Provided

09/14/11

FOIA2011-3380-00002251

CLAIM SUMMARY/DETERMINATION FORM

Date	18 May 2011
Claim Number	N10036-0569
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits & Earning Capacity
Amount Requested	\$75,000.00

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 was 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 claims for certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On 2 March 2011, [REDACTED] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$75,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.¹

Claimant indicated that she has been working in the crushed concrete industry for several years. This industry, as she describes it, provides crushed concrete for oyster beds in St. Bernard Parish, LA. From January through May 2010, Claimant stated that she worked for two rock yards, [REDACTED] and [REDACTED], as an administrative and sales agent.² She stated that she earned both a weekly base salary and commission on the sale of crushed rock for oyster beds.³

Claimant alleged that as a result of the Deepwater Horizon oil spill, the LA oyster industry suffered a tremendous downturn, which forced [REDACTED] to shut down operations in May 2010 and [REDACTED] to contemplate closing as of December 2010. Claimant alleged that she suffered loss of income and commissions from the impact of the oil spill on her employment.

Claimant calculated her sum certain as 42 weeks of lost salary at \$1,100.00 a week (totaling \$46,200.00) plus lost commissions of \$28,800.00 for a total loss of \$75,000.00.

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 waters or adjoining shorelines or the exclusive economic zone, as described in Section 2702(b) of OPA.

The OSLTF which is administered by the NPFC, is available, pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136, to pay claims for uncompensated damages. 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 or loss of natural resources or real or personal property.

¹ OSLTF claim form.

² It appears that both rock yards are competitors, but Claimant somehow was able to work for both agreeably.

³ Letter to GCCF dated 20 December 2010 requesting relief of \$93,104.

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.
- (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.

DETERMINATION OF LOSS

Claimant's Submission

To support this claim, the Claimant presented a considerable amount of documentation to the NPFC in the form of initial submission documentation as well as ongoing additional information specifically requested by the NPFC. This list of documentation provided is located in Enclosure (2).

On 19 November 2010, the Claimant presented an Emergency Advance Payment (EAP) claim for \$40,000.00 in lost profits and earnings to the RP/GCCF. She was assigned GCCF Claimant ID # [REDACTED] and Claim [REDACTED]. On 6 December 2010, the EAP claim was denied by the GCCF.

On 4 January 2011, Claimant presented an Interim Payment claim for \$93,104.00 in lost profits and earnings to the GCCF. She was assigned Claim [REDACTED]. On 16 April 2011, the Interim Payment claim was denied by the GCCF.

On 2 March 2011, Claimant presented this claim for \$75,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

NPFC Determination

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. The NPFC considered all of the documentation submitted by the Claimant. The NPFC also conducted an investigation to verify the Claimant's assertions and documentation.

To support her alleged loss in commission of \$28,800.00, the Claimant provided an alleged purchase order (PO) from Walt Nawara, [REDACTED] for 43,000 tons of crushed rock. On the alleged PO, the Claimant scrawled "I sold this order. I would have made \$21,500.00 commission on this order."⁴ Additional scrawling on the alleged PO reads "[REDACTED] was supposed to have been paid \$.50 per ton on this rock sale that was cancelled."⁵

The document is actually a letter which requested 25,000-27,000 ton order of #57 rock for two locations.⁶ At \$.50 a ton, as the Claimant alleged, she would have earned between \$12,500.00 and \$13,500.00 commission on this alleged order. The letter, on its face, does not support the Claimant's assertion that she sold 43,000 tons for a total commission of \$21,500.00.

The NPFC contacted [REDACTED] to verify the letter. [REDACTED] confirmed that the only viable portion of the letter was the request for 25,000-27,000 tons of #57 rock.⁷ This amount of rock, if sold, would not support a total lost commission of \$21,500.00.

To verify her employment and compensation at [REDACTED], Claimant provided a letter allegedly from [REDACTED] Owner of [REDACTED], which indicated that the Claimant was paid a weekly salary of \$600.00 and compensated \$.50 per ton of crushed concrete on orders. The letter was dated 29 March 2011.⁸

On 8 April 2011, the NPFC contacted [REDACTED] to verify the letter. [REDACTED] denied writing a letter for the Claimant and denied that [REDACTED] had gone out of business. [REDACTED] clarified that the Claimant did not work directly for [REDACTED] but rather for him personally as a secretary that helped with sales. [REDACTED] further clarified that the Claimant did not receive commission, but she did receive bonuses for hard work and assistance with sales.⁹

Based on the foregoing, the Claimant's evidence does not demonstrate (1) her alleged loss in the amount of \$75,000.00 or (2) that this 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 a discharge of oil.

Based on the foregoing, this claim is denied.

Claim Supervisor: NP [REDACTED] Division

Date of Supervisor's Review: 5/25/11

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

⁴ Letter ordering rock purchase dated 23 March 2010.

⁵ *Id.*

⁶ Claimant indicates that she filled .057 spec. custom crushed concrete orders for three different companies.

⁷ EMAIL from [REDACTED] to the NPFC on 7 April 2011.

⁸ Letter dated 29 March 2011 compensation agreement between [REDACTED] and Recycled Concrete Materials.

⁹ PHONECON with [REDACTED] on 8 April 2011.

SUMMARY OF DOCUMENTATION PROVIDED

- 1 Denial letter dated 06 December 2010 from GCCF to claimant
- 2 Letter to GCCF dated 20 December 2010 requesting relief of \$93,104
- 3 GCCF Form requesting interim payment
- 4 [REDACTED] LA driver's license and social security card
- 5 Brief description of what crushed concrete is used for
- 6 Notice of Cancellation dated 10 May 2010
- 7 2010 version of 1099 and W2 forms
- 8 Letter ordering rock purchase dated 23 March 2010
- 9 Letter informing termination of [REDACTED] dated 17 December 2010
- 10 Example of undated ticket used for rock sale by weight
- 11 Payroll Register dated 20 November 2010 for [REDACTED]
- 12 Check dated 29 January 2010 for \$554.20
- 13 Check dated 12 February 2010 for \$505.30
- 14 Check dated 12 February 2010 for \$307.32
- 15 Check dated 26 February 2010 for \$711.30
- 16 Check dated 26 March 2010 for \$991.66
- 17 Check dated 05 April 2010 for \$231.35
- 18 Check dated 05 April 2010 for \$570.50
- 19 Check dated 29 April 2010 for \$543.20
- 20 Letter dated 19 December 2010 regarding [REDACTED] part time status
- 21 Report dated 18 December 2010 listing [REDACTED] check payment amounts
- 22 Check dated 15 October 2010 for \$500.00
- 23 Check dated 3 December 2010 for \$500.00
photocopy of 3 checks dated 7 April 2010 for \$800; 24 April 2010 for \$500.00; 24 April 2010 for \$700.00
- 25 Statement ending 05 May 2010
- 26 Statement ending 05 April 2010
- 27 Statement ending 03 March 2010
- 28 Statement ending 03 February 2010
- 29 Statement ending 06 January 2010
- 30 2009 version of 1040A and W2 forms
- 31 2008 version of 1040A form
- 32 Copy of [REDACTED] resume
- 33 Emails concerning [REDACTED] job applications
- 34 Emails from 14 April 2011 concerning correspondence with claimant
- 35 31 March 2011 letter requesting additional information
- 36 29 March 2011 letter responding to additional information
- 37 Income calculation for current losses due to oil spill in the amount of \$75,000 (\$28,800 partial claim)
- 38 Letter dated 29 March 2011 compensation agreement between [REDACTED] and Recycled Concrete Materials
- 39 Letter dated 01 April 2011 compensation agreement between [REDACTED] and [REDACTED]
- 40 Maps of the oil spill area complete with closure/open areas of the Gulf of Mexico

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)

5890
4/5/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]



RE: Claim Number: N10036-0577

Dear [REDACTED]

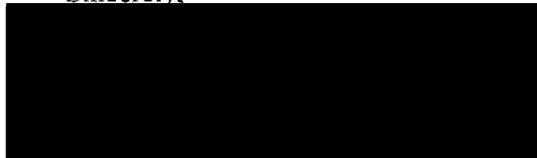
The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq. (OPA) and the associated regulations at 33 CFR Part 136, denies payment on the claim number N10036-0577 involving Deepwater Horizon. Please see the attached Claim Summary/Determination 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 N10036-0577.

Mail reconsideration requests to:

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

Sincerely,



Claims Manager
U.S. Coast Guard

CLAIM SUMMARY / DETERMINATION FORM

Date	: 4/5/2011
Claim Number	: N10036-0577
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$17,000.00

FACTS

On or about April 20, 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 was 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 August 23, 2010, the Gulf Coast Claims Facility (GCCF) began accepting and adjudicating claims for certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On March 2, 2011, [REDACTED] (Claimant) presented a claim to the National Pollution Fund Center (NPFC) on an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form seeking \$17,000.00 in lost profits and earning capacity resulting from the Deepwater Horizon incident.

Claimant asserted that due to the river being closed, he was unable to receive containers coming up river and was unable to deliver and or receive monies.

The Claimant filed an Emergency Advance Payment (EAP) claim (Claim ID# [REDACTED] with the GCCF on November 23, 2010 and was subsequently denied.

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 waters or adjoining shorelines or the exclusive economic zone, as described in Section 2702(b) of OPA.

The OSLTF which is administered by the NPFC, is available, pursuant to 33 U.S.C. § 2712(a)(4) and 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136, to pay claims for uncompensated damages. 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.

- (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.

DETERMINATION OF LOSS

Claimant's Submission

To support his claim, the Claimant submitted the following documentation:

- NPFC OSLTF Claim Form received March 2, 2011.

NPFC Determination

Under 33 CFR 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 CFR § 136.233, a claimant must establish loss of profits or impairment of earning capacity. The NPFC considered all the documentation submitted by the Claimant.

Under 33 U.S.C. § 2702(b)(2)(E) and 33 C.F.R. Part 136, a claimant must prove that his loss of income was due to injury or destruction or loss of real or personal property or a natural resource as a result of a discharge or substantial threat of a discharge of oil.

Based on the documentation provided by the Claimant, he indicated that because the river was closed, he was unable to receive containers coming up river and was unable to deliver and receive monies.

On March 7, 2011, the NPFC sent, via certified mail, a request for additional information to the Claimant in order to obtain the necessary information to adjudicate the claim. The documentation requested consisted of the following:

1. U.S. Income Tax Returns, 2007, 2008 and 2009 including all supporting schedules, statements, forms and attachments.
2. All pay stubs, direct deposit advices, or other earnings statements for each pay period in 2009 and 2010.
3. Please provide a detailed description of your circumstance along with an itemized explanation as to how you arrived at your requested amount of \$17,000.00.
4. Please provide an explanation of how your alleged financial loss resulted from the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil

The NPFC also requested the Claimant answer the following questions:

1. Describe your employment history from 2008 through the current period.
 - a. Include a description of dates worked, your position held and job duties.
2. Identify any specific periods of time that you were unemployed from 2008 through the current period.
3. If you have received unemployment benefits during 2009 and 2010 identify the periods of time when you received benefits and the amounts received.
4. Describe your primary form of employment and trade skills.
5. Describe how you computed your claimed loss of earnings.

The Claimant has not provided the additional documentation nor answered any of the questions to support his claim in order to demonstrate a loss of profits and earnings. Therefore, this claim is denied because the Claimant has failed to meet his burden to demonstrate that his loss of income was reduced as a consequence of injury to, destruction of, or loss of property or natural resources.

Claim Supervisor: 

Date of Supervisor's review: 4/5/11

Supervisor Action: *Denial approved*

Supervisor's Comments:

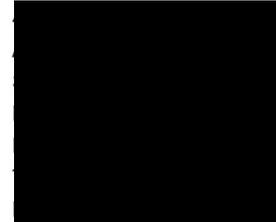
U.S. Department of
Homeland Security

United States
Coast Guard



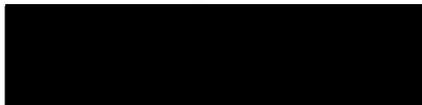
Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD



CERTIFIED MAIL - RETURN RECEIPT REQUESTED
Number: [REDACTED]

5890/DWHZ
Claim# N10036-0579
21 April 2011



RE: Claim Number: N10036-0579

Dear [REDACTED]

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 claim number N10036-0579 involving the Deepwater Horizon oil spill. Please see the enclosed 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 N10036-0579.

Mail reconsideration requests to:

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

Sincerely,



U. S. Coast Guard
Claims Manager

Enclosure: Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00002260

CLAIM SUMMARY / DETERMINATION FORM

Date	15 April 2011
Claim Number	N10036-0579
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
Claim Manager	[REDACTED]
Amount Requested	\$40,000.00

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 was 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 claims for certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On 07 March 2011, [REDACTED] (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Funds Center (NPFC). The OSLTF claim form alleged \$22.00 in loss of subsistence use of natural resources and \$22.139 in lost profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.¹ On 07 March 2011, after discussions with the NPFC, the Claimant amended her sum certain to \$40,000.00 in lost profits and impairment of earnings capacity and stated she did not have a subsistence claim based on the definition of what a subsistence claim is.²

Claimant indicated that she works as a Spa Coordinator/Assistant Manager at Antonio's Salon at the [REDACTED] on Sandy Key in Clearwater, Florida.³ Claimant alleged that as a result of the Deepwater Horizon oil spill, business at the spa slowed down, resulting in a reduction of her hours.⁴ Claimant alleged that she used to work 40 hours a week then her hours were reduced to 18 a week.⁵

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 waters or adjoining shorelines or the exclusive economic zone, as described in Section 2702(b) of OPA.

The OSLTF which is administered by the NPFC, is available, pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136, to pay claims for uncompensated damages. One type of damages available pursuant to 33 C.F.R. §136.231 is a

¹ The OSLTF claim form also alleged future damages for a total loss of \$66.278.

² Claimant EMAIL to the NPFC dated 07 March 2011. It is unclear how Claimant arrived at this figure. Claimant indicates that "[w]ith combining my taxes, and the money from my saving, that is what it came out to."

³ Claimant "Answered questions" response to NPFC request for additional information.

⁴ OSLTF claim form.

⁵ Id; Claimant "Answered questions" response to NPFC request for additional information.

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.
- (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.

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support the claim, Claimant submitted the following documentation to the NPFC:

- OSLTF claim form, signed 01 March 2011;
- GCCF letter acknowledging receipt of Final Claim, dated 26 January 2011;
- Claimant email to the NPFC, amending sum certain, dated 07 March 2011;
- Letter from Director of HR at the Clearwater Marriott dated 04 November 2010, 14 January 2011 and 08 April 2011;
- Earnings statement for period ending 26 November 2010, 01 April 2011, 18 March 2011;
- Claimant "Answered questions" response to NPFC request for additional information;
- Employee transactions and totals page dated 16 March 2011;
- Form 1040 US Individual Income Tax Returns for 2008, 2009 and 2010;
- W-2 from Cedarwood Hotel Management in Clearwater, Florida for 2010;
- Letter to the NPFC received 25 March 2011 explaining claim; and

– Listing of Time Detail for 2009 and 2010.

On 08 September 2010, Claimant presented a six-month Emergency Advance Payment (EAP) claim for \$5,904.00 in lost earnings to the GCCF.⁶ She was assigned GCCF Claimant ID # [REDACTED] and Claim # [REDACTED]. On 13 April 2011, Claimant was paid \$6,000.00 as compensation for her EAP claim from the GCCF.

On 04 December 2010, Claimant presented a Final Payment claim for lost earnings to the GCCF. She was assigned Claim # [REDACTED]. On 14 April 2011, Claimant was offered a Final Payment Offer of \$7,270.72. Claimant has not accepted this offer.

On 07 March 2011, Claimant presented this claim for \$40,000.00, as amended, in lost profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.⁷

NPFC Determination

Under 33 CFR 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 CFR § 136.233, a claimant must establish loss of profits or impairment of earning capacity. The NPFC considered all the documentation submitted by the Claimant.

Claimant alleged that her hours were reduced at [REDACTED] as a result of the Deepwater Horizon oil spill. Claimant estimated her lost earnings at \$40,000.00. In order to verify the accuracy of this estimate, the NPFC requested that the Claimant describe her loss calculation. Claimant's response was unclear, but it suggested that the Claimant was including collateral items, such as the cost of gas, electricity and lost school tuition, in her loss total.⁸ The NPFC could not verify the Claimant's loss of earnings estimate.⁹

Even if the NPFC could verify this estimate, there is no empirical evidence in the Claimant's submission supporting the allegation that her 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 a discharge of oil.¹⁰ Additionally, it is important to note that the Claimant has not presented a claim to the RP in the amount of \$40,000.00 therefore the NPFC can only consider the amount that has been properly presented to the RP which was \$5,904.00 for which the RP made a payment to the Claimant in the amount of \$6,000.00 and has an offer out to the Claimant in the amount of \$7,270.72.

Based on the information provided, this claim is denied because (1) the Claimant has failed to make proper presentment of \$40,000.00 to the RP as required by § 136.103 which states..." (a) Except as provided in paragraph (b) of this section, all claims for removal costs or damages must be presented first to the responsible party or guarantor of the source designated under §136.305." while the Claimant has presented several claims to the RP and no one single claim submission

⁶ GCCF Filing Report, dated 19 April 2011.

⁷ The NPFC notes that Claimant's Final Payment claim was not settled by payment within 90 days after the date of presentment to the RP. Under 33 C.F.R. 136.103(c)(2), Claimant may elect to present the claim to the OSLTF.

⁸ Claimant's response provides five different figures, none of which add up to \$40,000.00, and also includes the following notation: "food/ utilities/ rent/ electric/ car/ gas/ school tuition totals lost = \$35,400." Claimant

"Answered questions" response to NPFC request for additional information.

⁹ The NPFC, additionally, could not verify whether Claimant had presented her alleged loss of \$40,000.00 to the RP/GCCF pursuant to 33 C.F.R. § 136.103(a).

¹⁰ Claimant did provide three letters from the HR of the [REDACTED] on Sand Key, all summarily indicating that Claimant's loss of hours resulted from the Deepwater Horizon oil spill.

totalled the amount requested to the NPFC. The claim is also denied because (2) the Claimant failed to meet her burden to demonstrate a loss in the amount of \$40,000.00 due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil, (3) the Claimant has failed to provide sufficient evidence to demonstrate that the reduction in business was a result of the Deepwater Horizon incident as opposed to other external economic factors and (4) the Claimant has been fully compensated by the RP based on the information provided to the NPFC .

Based on the foregoing, this claim is denied.

Claim Supervisor: [REDACTED]

Date of Supervisor's Review: *4/21/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

U.S. Department
of Homeland
Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD
4200 Wilson Blvd., Suite 1000

Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim # N10036-0580
28 March 2011

Re: Claim Number: N10036-0580

Dear [REDACTED]:

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 claim number N10036-0580 involving the Deepwater Horizon oil spill. Please see the enclosed 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 N10036-0580.

Mail reconsideration requests to:

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

Sincerely,

[REDACTED]
U. S. Coast Guard
Claims Manager

Enclosure: Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00002265

CLAIM SUMMARY/DETERMINATION FORM

Date	25 March 2011
Claim Number	N10036-0580
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
Claim Manager	[REDACTED]
Amount Requested	\$28,000.00

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 was 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 claims for certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On 08 March 2011 [REDACTED] (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Funds Center (NPFC). The OSLTF claim form alleged \$28,000.00 for lost profits and earnings capacity resulting from the Deepwater Horizon oil spill.

The Claimant reportedly works as a commercial diver for [REDACTED] and alleged that as a result of the Deepwater Horizon oil spill, work “slowed work down for the past 8 months.”¹ Claimant further asserted that he “just got laid off” after having “been out of work for 3 months.”² Claimant attributed the slowing work to “Obama[‘s] . . . band [sic] on drilling.”³

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

The OSLTF, which is administered by the NPFC, is available, pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136, to pay claims for uncompensated damages. 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.

¹ OSLTF claim form.

² *Id*

³ Typed letter addressed to USCG from Claimant dated 06 March 2011

- (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.
- (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.

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support the claim, Claimant submitted his OSLTF claim form, dated 07 March 2011, his 2009 Form 1040X, 2010 Form 1040, and a [REDACTED] Check History Listing for 2010.

On 10 September 2010, Claimant filed an Emergency Advance Payment claim with the RP/GCCF and was assigned Claimant ID [REDACTED].⁴ Claimant received two payments from the RP/GCCF in the amounts of \$19,500.00 on 21 September 2010 and \$9,300.00 on 01 October 2010, respectively.⁵ Total compensation by the RP/GCCF is \$28,800.00 as of 25 March 2011.

NPFC Determination

This claim is denied. 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. § 136.233, a claimant must establish loss of profits or impairment of earning capacity. The NPFC considered all the documentation submitted by the Claimant.

Upon review of all documents and information provided, as well as a conversation with the employer, [REDACTED] the Claimant has failed to establish a loss of profits or earnings capacity occurred as a direct result of the Deepwater Horizon oil spill. The Human Resources

⁴ GCCF Email to the NPFC, dated 24 March 2011.

⁵ *Id*

representative from [REDACTED] advised the NPFC that to the best of her knowledge, no employees lost hours due to the oil spill but, if hours/wages were lost subsequent to the oil spill, it was due to the moratorium and permitting process delays. She further advised that the "slow" season was during the winter and hours lost any time prior to late March were most likely due to seasonal variances resulting in a lack of available work. In summary, she had no awareness of a loss of hours due directly to oil in the water or a threat of discharge of oil and likewise framed the seasonal components of this company in her own words, explaining the data presented by this claim and refuting direct causation to the Deepwater Horizon oil spill.⁶

As such, this claim for lost profits or earnings capacity is denied because any amount of loss thought to be sustained is not due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil as a result of the Deepwater Horizon oil spill.⁷

Claim Supervisor: [REDACTED]

Date of Review: 3/27/11

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

⁶ Conversation between [REDACTED] Human Resources and NPFC staff, 21 March 2011

⁷ The NPFC notes that the Claimant received a total of \$28,800.00, which exceeds his claimed loss of \$28,000.00.

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

Fax: 202-493-6937

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim# N10036-0581
22 March 2011

RE: Claim Number: N10036-0581

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et. seq. (OPA 90) and the associated regulations, 33 C.F.R. Part 136, denies payment on your claim, # N10036-0581, involving the Deepwater Horizon oil spill. Please see the enclosed 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 N10036-0581.

Mail reconsideration requests to:

Director (ca)
NPFC CA MS 7100
US COAST GUARD

Sincerely,

[REDACTED]
U. S. Coast Guard
Claims Manager

Enclosure(s): (1) Claim Summary/Determination Form

09/14/11

FOIA2011-3380-0002269

CLAIM SUMMARY / DETERMINATION FORM

Date	: 3/19/2011
Claim Number	: N10036-0581
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$274,865.50

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 was 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 claims for certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On 10 March 2011, [REDACTED] on behalf of [REDACTED] (Claimant) presented an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC) claiming a loss of profits and earning capacity. Claimant asserted that due to factors caused by the Deepwater Horizon oil spill, there was a sequence of events which resulted in significant financial impacts to the company.

Claimant alleged that the company sustained a “loss of trained Employees, because we could not compete with hourly wages paid to oil relief workers, which cause All Clean to pay out overtime wages, training wages for new hire, drug test, background check, advertising for employees, uniform and cancellation of contracts.”¹ The Claimant further asserted that as a result of his loss of employees, they experienced cancellation of pre-existing contracts and loss of income “due to the inability to maintain a stable workforce” which caused further loss of profits.²

Claimant filed an Emergency Advance Payment (EAP) claim with the GCCF. She was assigned GCCF Claimant ID [REDACTED]. This claim was denied in a letter dated 15 December 2010.

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 waters or adjoining shorelines or the exclusive economic zone, as described in Section 2702(b) of OPA.

The OSLTF which is administered by the NPFC, is available, pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136, to pay claims for uncompensated damages. One type of damages available pursuant to 33 C.F.R. §136.231 is a

¹ See, Hardship letter from Claimant to the GCCF, dated 10 November 2010

² See, Hardship letter from Claimant to the GCCF, dated 10 November 2010

claim for loss of profits or impairment of earning capacity due to injury to or destruction or loss of natural resources or real or personal property.

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.
- (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.

DETERMINATION OF LOSS

Claimant's Submission

To support this claim, the Claimant presented the following documentation:

- NPFC Optional Oil Spill Liability Trust Form (OSLTF) Claim Form, dated 08 March 2011;
- Tax information, Form 1065 for Tax Year 2008;
- Hardship letter from Claimant, addressed to the GCCF, dated 22 November 2010;
- Letter of Authorization for NWF Consulting, dated 07 March 2011;
- Various P&L and Income Statements for 2007-2011;
- Gross Annual Sales/Income Projected Earnings with Trending Analysis for 2010;
- City of Mobile Business License, Issued 02 March 2010, Expiring 31 December 2010;
- City of Prichard Business License, Issued 19 January 2011, Expiring 31 December 2011;

- Letter of contract termination from [REDACTED] to Claimant, dated 28 May 2010;
- Denial letter from the GCCF to Claimant, ID Number [REDACTED] dated 15 December 2010;
- Articles of Organization of [REDACTED], dated 19 February 2003;
- Tax Information, Form 1065 for Tax Year 2009.

NPFC Determination

This claim is denied. Under 33 U.S.C. § 2702(b)(2)(E) and 33 C.F.R. Part 136, a claimant must prove that the loss of income was due to the injury or destruction or loss of real or personal property or 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 to the NPFC all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim. The NPFC considered all of the documentation presented by Claimant.

Claimant presents a claim against the OSLTF asserting that the business sustained a "loss of employees due to oil spill clean-up opportunities...necessitating recruitment and training of new employees" which resulted in a "lost account due to manpower loss."³ The calculated losses were a result of the costs incurred due to additional training and advertising and the loss of income due to the cancelled contract with The WAVE Transit System.

A conversation with the General Manager of The WAVE Transit System revealed that the cancellation/termination of contract was due to a direct executive order from the Mayor of Mobile in efforts to "scale back" operating costs due to economic shortfalls. As such, his decision was to manage janitorial services "in house" and discontinue the "35-45 thousand dollar cost a year" for the janitorial services. He reiterated that there was no apparent influence of the oil spill on the contract cancellation.⁴

Based on the above analysis, the NPFC has determined that there are no calculable losses or evidence that the Claimant's alleged financial is due to the injury, destruction or loss of property or natural resources, as a result of a discharge or substantial threat of a discharge of oil, therefore this claim is denied.

Claim Supervisor [REDACTED]

Date of Supervisor's Review: 3/22/11

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

³ See, NPFC Optional OSLTF Claim Form dated 08 March 2011

⁴ Conversation between the General Manager of [REDACTED] and NPFC Staff on 17 March 2011

U.S. Department of
Homeland Security

**United States
Coast Guard**



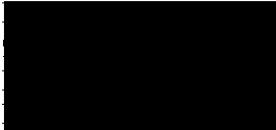
Director
National Pollution Funds Center
United States Coast Guard

NPFC CA MS 7100
US COAST GUARD



CERTIFIED MAIL - RETURN RECEIPT REQUESTED
Number: [REDACTED]

5890/DWHZ
Claim# N10036-0582
15 April 2011



RE: Claim Number: N10036-0582

Dear [REDACTED]

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 claim number N10036-0582 involving the Deepwater Horizon oil spill. Please see the enclosed 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 N10036-0582.

Mail reconsideration requests to:

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

Sincerely, /



U. S. Coast Guard
Claims Manager

Enclosure: Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00002273

CLAIM SUMMARY / DETERMINATION FORM

Date	13 April 2011
Claim Number	N10036-0582
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Claim Manager	[REDACTED]
Amount Requested	\$75,833.33

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 was 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.

CLAIM AND CLAIMANT

On 10 March 2011, [REDACTED] (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Funds Center (NPFC). The OSLTF claim form alleged \$228,000.00 in lost profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.¹

In January 2011, the Claimant began work as the Vice President of strategic initiatives for [REDACTED].² In that role, the Claimant was tasked with developing and implementing a strategic sales initiative for the fabrication, placement and marketing of the company's kiosk product throughout the Gulf Coast region.³ Claimant asserted that he received \$10,000 monthly in compensation.⁴

Claimant alleged that he spent the first five months of his employment developing investor and advertiser interest in [REDACTED] product, and that after the oil spill, these parties withdrew. [REDACTED] terminated the Claimant's employment via a letter on 14 May 2010, stating he was "unable to complete the company's critical project tasks," and "the company has reached a limit and cannot carry the Gulf Coast phase of the project any further given the Oil Spill and its effect on the region."⁵

Claimant indicated that after his termination, he received a contingent offer of employment from one investor, who later terminated this offer as a result of worsening economic conditions the Gulf Coast region.⁶

¹ Claimant has not presented this sum certain to the RP pursuant to 33 C.F.R. § 136.103 (a). The only amount properly before the NPFC pursuant to this regulation is \$75,833.33—the claimed amount of Claimant's denied Emergency Advance Payment claim. This determination addresses only that alleged claimed amount of loss.

² Employment offer for Claimant from CEO of [REDACTED]. [REDACTED] provides innovative solutions to deliver time-saving business services and entertainment media to airport travelers. <http://www.powerports.com/company/index.html> (last visited 13 April 2011).

³ Employment offer for Claimant from [REDACTED].

⁴ Summary Hardship Letter from Claimant, dated 03 January 2011.

⁵ Letter from [REDACTED] to Claimant dated 14 May 2010.

⁶ Letter from [REDACTED] of Message on Hold rescinding offer of conditional employment, dated 25 June 2010.

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 waters or adjoining shorelines or the exclusive economic zone, as described in Section 2702(b) of OPA.

The OSLTF which is administered by the NPFC, is available, pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136, to pay claims for uncompensated damages. 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.
- (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.

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

In support of his claim, Claimant submitted the following documentation to the NPFC:

- OSLTF claim form, signed by Claimant and dated 09 March 2011;
- Document inventory;

- Summary Hardship Letter from Claimant, dated 03 January 2011;
- Explanation of what has occurred from Claimant, dated 03 January 2011;
- Employment offer for Claimant from CEO of Power Station LLC;
- Termination letter from [REDACTED] to Claimant, dated 14 May 2010;
- Letter from CEO of Message on Hold to Claimant offering conditional employment pending stoppage of oil flow by 30 June 2010, dated 21 May 2010;
- Letter from CEO of Message on Hold rescinding offer of conditional employment, dated 25 June 2010; and
- Wire transfer history report from Beach Community Bank.

On 21 July 2010, Claimant filed a claim with BP and received BP Claim [REDACTED] 101434.⁷

On 04 December 2010, Claimant presented a six-month Emergency Advance Payment claim for \$75,833.33 in lost earnings with the GCCF.⁸ Claimant was assigned GCCF Claimant ID # [REDACTED] and Claim # [REDACTED]. This claim was denied by the GCCF.⁹

Claimant then filed this claim for \$228,000.00 in lost profits and impairment of earnings capacity with the NPFC.¹⁰ As noted, pursuant to 33 C.F.R. § 136.103 (a), only \$75,833.33 of Claimant's claimed loss amount has been properly presented to the RP, therefore this determination addresses what was properly presented to the RP and all amounts above \$75,833.33 is denied for failure to make proper present to the RP as required by regulation.

NPFC Determination

Under 33 CFR 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 CFR § 136.233, a claimant must establish loss of profits or impairment of earnings capacity. The NPFC considered all the documentation submitted by the Claimant.

Claimant alleged that his employment with [REDACTED] was terminated as a result of the Deepwater Horizon oil spill. Claimant further alleged that his contingent employment with one investor, whom he dealt with as an employee of [REDACTED], was also terminated as a result of the Deepwater Horizon oil spill.

Claimant's employment with [REDACTED] was indefinite and at will. Claimant's job was to drum up investor interest for the placement and sale of company kiosks in the Gulf Coast region. Claimant described this venture as a "huge gamble funding a new division on the Gulf Coast of MS, AL, NW FL." Claimant admitted that many investors were "ultra-cautious about giving contract commitments . . . and adopted a 'wait-and-see' mind-set."

Given this tenuous climate, investor interest vanished in the wake of Deepwater Horizon oil spill. [REDACTED] decision to terminate the Claimant's employment represented an independent business decision based on the lack of investor interest in the venture.¹¹

⁷ GCCF Filing Report, dated 12 April 2011.

⁸ Id.

⁹ Id.

¹⁰ Claimant has an Interim Claim for \$117,000.00 in lost earnings pending before the GCCF.

[REDACTED] termination letter of 14 May 2010 states: "I understand the difficult position you are in, but the company has reached a limit and cannot carry the Gulf Coast phase of the project any further given the Oil Spill and its effect on the region. PSLLC cannot wait and see if this oil problem will get solved quickly or not." The

Additionally, the decision by the investor to terminate the Claimant's contingent employment offer is also an independent business decision.¹²

For the foregoing reasons, the claim is denied because the alleged loss in the amount of \$75,833.33 is not due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil and the claimed amount over and above \$75,833.33 is denied because the Claimant has failed to make proper presentment of costs first to the RP as required by regulation located at 33 C.F.R. § 136.103(a), which states that all claims for removal costs and damages must be presented first to the Responsible Party or guarantor.

Claim Supervisor 

for

Date of Supervisor's Review: 4/15/11

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

letter further states: "If you find any investors that want to move forward with PSLLC, the company would still be willing to pay you but on a commission-only basis."

¹² This termination letter read "We realize how many meetings and time all of us have invested in trying to push this project forward but it has come to an end. The future for the Panhandle-Gulf Coast market is very uncertain (short and long term) with no end in sight when and if it will turn around."

U.S. Department of
Homeland Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim # N10036-0583
25 May 2011

RE: Claim Number: N10036-0583

Dear [REDACTED]:

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 claim number N10036-0583 involving the Deepwater Horizon oil spill. Please see the enclosed 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 N10036-0583.

Mail reconsideration requests to:

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

Sincerely,

[REDACTED]
National Pollution Funds Center
Claims Manager

Enclosure: (1) Claim Summary/Determination Form
(2) Documentary Evidence Submitted in Support of Claim N10036-0583

09/14/11

FOIA2011-3380-00002278

CLAIM SUMMARY / DETERMINATION FORM

Date	25 May 2011
Claim Number	N10036-0583
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
Amount Requested	\$1,719,400.00

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 was 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 claims for certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On 07 March 2011, [REDACTED] (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form seeking \$1,719,400.00 in lost profits and earning capacity to the National Pollution Funds Center (NPFC) alleging damages resulting from the Deepwater Horizon oil spill.

Claimant works in the crushed rock business. The majority of the purported business is providing crushed concrete for oyster beds. The company excavates rock, salvages rock, and crushes different specifications of various rock based on their respective customer's requirements, i.e. types of rock for oyster beds, levees, and construction projects. The Claimant alleged that eight purchase orders totaling sales of \$2,947,500.00 were cancelled due to the Deepwater Horizon oil spill. The direct costs associated with the cancelled sales are reported as \$1,445,100.00 which equals 49% cost of goods sold. The original claim of \$1,502,400.00 was augmented by the Claimant alleging another lost sale of \$330,000.00 with cost of sales of \$125,000.00 thus increasing the Claimant's lost profits by \$205,000.00. This makes a total of nine alleged lost sales. The Claimant also supplemented the original claim amount by \$12,000.00 for claim preparation costs due to [REDACTED] Souders, the Claims Consultant. The original claim amount was increased from \$1,502,400.00 to \$1,719,400.00. The Claimant later withdrew a portion of the claim totaling \$464,000.00 relating to the customer, Oyster Fisheries. A formal claim revision was not submitted reflecting the adjustment.

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 waters or adjoining shorelines or the exclusive economic zone, as described in Section 2702(b) of OPA.

The OSLTF which is administered by the NPFC, is available, pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136, to pay claims for uncompensated damages. 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.

- (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.

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support their claim, the Claimant submitted: See Enclosure (1) infra.

Claimant is asserting lost earnings and wages in the amount of \$1,719,400.00.

Claimant presented an Emergency Advance Payment claim to the GCCF and was issued GCCF Claimant ID # [REDACTED] and Claim # [REDACTED]. The GCCF denied their claim.

NPFC Determination

Under 33 CFR 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 CFR § 136.233, a claimant must establish loss of profits or impairment of earning capacity. The NPFC considered all the documentation submitted by the Claimant.

The claim is denied because the alleged loss in the amount of \$1,719,400.00 is based on multiple misrepresentations and fraudulent documentation. Below the NPFC will discuss in detail the findings of its investigation relating to the information presented in support of this claim submission.

Discussion on the Financial Documentation

The Claimant submitted a business plan for Louisiana Rock titled "Business plan 2009-2013." The plan is not dated. The plan relates to a company named Texas Premium Seafood (TPS), a seafood distribution business. The acronym TPS is conspicuously in the business plan. Specifically, on page 2 of 5, under the section "Objectives", we noted that a seafood distribution business ("TPS") is referenced as the subject company under the plan. TPS is also represented by Olga Sounders and has submitted its own claim to the NPFC for adjudication.

The business plan states "the company plans to maintain an average gross margin of 14.3% of sales during all five years." Yet the business plan references year one projected sales of \$2,200,000.00 with net profits of \$1,344,569.00 equaling a 61% gross margin. These two contradictory numbers are provided in the Louisiana Rock and TPS plan by the same preparer. The plan further shows start-up costs totaling \$400,000.00. Yet the only start-up costs actually applied to the business is a single shareholder loan of \$52,145.00 reported on their 2009 U.S. Corporation Income Tax Return. The company was incorporated 23 September 2009. In conclusion,

it is evident the business plan was not contemporaneously prepared at the inception of the business and that the plan was not originally related to this claim. Further, the plan contains inherent inaccuracies and demonstrates the improper use of another Claimant's business objectives. It is important to note that the other Claimant is also represented by Olga Souders, Claim Consultant.

The Claimant submitted six different sources of financial information: 2009 U.S. Corporation Income Tax Return, monthly business bank statements, sales invoices, and three separate Profit and Loss statements dated 17 November 2010, 26 February 2011, and 1 March 2011. None of the six sources of financial information reconcile with respect to total annual or monthly sales of the Claimant. The total bank deposits in 2010 were \$1,104,524.00. The other financial documents submitted are substantially less. Thus, the NPFC was not provided with all sales invoices for 2010 and the three Profit and Loss statements do not reflect all sales actually made in 2010.

The Claimant submitted all three Profit and Loss statements to the NPFC on the same date of 03 March 2011. The amounts shown for Sales, Cost of Goods Sold, Operating Expenses, and resulting Net Income were vastly different on all three statements. Furthermore, in certain cases the financial reports contained arithmetic errors in the total columns. Two of the three statements showed negative costs of goods sold, which is not possible. The third statement understated costs of goods sold at 8.67%. According to the nature of the business this number is clearly erroneous.

The Claimant submitted a report titled "Expenses by Vendor" dated 10 November 2010. None of the monthly expense amounts on the Vendor report reconcile to any of the related monthly expense amounts shown on the Profit and Loss statements provided.

Claimant further submitted certain sales invoices. Once again, the total monthly sales invoices are not consistent with any of the three Profit and Loss statements. (It is worth noting that the sales invoices use non-sequential invoice numbers and numbers ranging from 3 to 5 digits. This is highly unusual and would serve no useful business purpose).

Claimant submitted their 2009 U.S. Corporation Income Tax Return. The total sales on the return are \$149,235 for 2009, while the bank deposits total \$206,314.00 for 2009. (It is possible that the shareholder loan of \$52,145.00 might account for some of the difference although the NPFC can only assume). The cost of goods sold percentage on the return is 79% of sales. This percentage is inconsistent with the three Profit and Loss statements, as well as the Claimant's proffered business plan. The company owns no assets as of 31 December 2009 according to their tax return. They leased all equipment needed. Based on all the financial documents provided for 2010, there appears to be no expenses for property plant and equipment. The only long-term liability is the aforementioned shareholder loan of \$52,145.00. According to the 2009 tax return, the Claimant used a paid preparer, [REDACTED] CPA. Although the preparer signature shows a typed name, the date block is undated. The company officer signature signed by James Durham is also undated in the date block. The title for [REDACTED] is typed in as "member". Generally, when submitted to the Internal Revenue Service (IRS) the returns are to be signed and dated. Based on the information provided, it is impossible to determine whether the NPFC's copy of the return was actually filed with the IRS.

Claimant's agent, Ms. Olga Souders, sent an email to NPFC staff dated 7 March 2011 which stated "a considerable amount of money has been lost in equity because of the court-mandated repossession of all heavy equipment." Since the equipment was rented, it is a liability not equity like an asset that was purchased. Thus, the company lost no equity but rather breached their equipment rental contracts and further received a judgment against them in the amount owed. The Claimant may have lost equity in the sense that they lost their deposit for the rental equipment.

Based on the foregoing, it is evident that the financial statements provided to the NPFC are not consistent, have mathematical errors, and factual misrepresentations, thus they are unreliable and the NPFC has determined that the financial information cannot be used to support the alleged financial losses claimed.

Discussion on the Purchase Orders

Similar to the finance statements, six of the nine purchase orders submitted to substantiate the claim also contain misrepresentations of fact and are fraudulent.

Three of the purchase orders were between the Claimant and Callou Corporation (1) 27,000 tons at \$21.50 a ton totaling \$580,500.00, (2) 40,000 tons at \$21.50 a ton totaling \$860,000, (3) 8,000 tons at \$23.00 a ton totaling \$184,000.00. The NPFC contacted [REDACTED], the representative for Callou Corporation, via email about the purchase orders. [REDACTED] responded via email on 07 April 2011 stating that the 27,000 tons order is the "only viable aspect of the P.O." but the "rock value should be \$10 a ton" not \$21.50 and the other orders were never executed nor discussed. Mr. Nawara further stated that a portion of the valid purchase order was for levee work and not all for oyster reefs as presented by the Claimant.

The [REDACTED] purchase orders total a misrepresentation in the amount of \$1,354,000.00.

One purchase order between the Claimant and [REDACTED] was allegedly for 7,500 tons at \$22.00 a ton totaling \$165,000.00. The NPFC contacted [REDACTED] the representative for Port Sulphur Fisheries, Inc., via telephone on 27 April 2011. [REDACTED] stated that he canceled an order for \$50,000.00 from the Claimant for rock he was going to use in oyster Lease Area 3, 4, and 5 in the St. Bernard area. Therefore, the [REDACTED] purchase order is a misrepresentation in the amount of \$115,000.00.

The Claimant submitted an additional purchase order for 30,000 tons at \$11.00 a ton totaling \$330,000 in alleged lost sales with a net profit of \$205,000.00 between the Claimant and Desire Street Ministries in conjunction with a business partner of the Claimant's, [REDACTED]. The NPFC contacted Sara Pace via email, a representative for [REDACTED]. [REDACTED] stated via email dated 28 April 2011 that "Vern Keeler did rent the [REDACTED] property and had an office on the site, we were his landlord and currently his creditor, he no longer leases the property and we are not nor have we ever been in business together." The [REDACTED] Ministries purchase order in conjunction with [REDACTED] is a misrepresentation in the amount of \$205,000.00.

The Claimant submitted and later retracted, without an official amendment to the claimed amount, a purchase order between the Claimant and Oyster Fisheries. The purchase order was for 40,000 tons at \$23.00 totaling \$920,000.00 in sales. Since the Claimant retracted this purchase order, the NPFC disregards this potential fraud, but would reduce the Claimant's claimed amount by \$920,000.00 if we were to further adjust the claim.

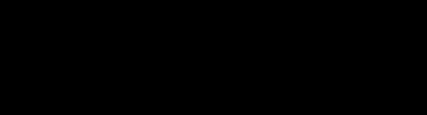
The three remaining purchase orders are between the Claimant and [REDACTED] Point-Ala-Hache, and [REDACTED]. The NPFC contacted the buyers and confirmed the amounts submitted were correct and valid cancellations via telephone 27 April 2011. All three businesses stated that the purchase orders were correct and that they cancelled the respective orders.

It is evident that five of nine purchase orders were fraudulent, one was retracted, and only three were likely valid.

This claim is denied because the Claimant has intentionally made false statements in connection with the claim submission to the NPFC in order to obtain funds for an alleged loss of profits as a result of the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil. As a result, the NPFC is unable to make an adjudication on the merits of the case.

Under 33 C.F.R. 136.9, persons submitting false claims or making false statements in connection with claims under this part may be subject to prosecution under Federal law, including but not limited to 18 U.S.C. 287 and 1001. In addition, persons submitting written documentation in support of claims under this part which they know, or should know, is false or omits a material fact may be subject to a civil penalty for each claim. The NPFC considered all of the documentation submitted by the Claimant.

This claim is denied for FRAUD.

Claim Supervisor: M 

Date of Review: 5/25/11

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

Enclosure (2)

Documentary Evidence Submitted in Support of Claim N10036-0583

- 1) Optional Claims form (2 pages), NPFC form dated 11 March 2011
- 2) [REDACTED] Email (2 pages), Email to [REDACTED] dated 7 March 2011
- 3) Federal tax form (6 pages), 2009 version of 1120 Forms
- 4) Letter from [REDACTED] Letter from [REDACTED] explaining the lack of access to oyster leases dated 7 June 2010
- 5) Letter from [REDACTED] Letter from [REDACTED] from [REDACTED] to [REDACTED] [REDACTED] dated 23 March 2010
- 6) Cancellation letter from [REDACTED] Letter from [REDACTED] from [REDACTED] to [REDACTED] [REDACTED] cancelling order dated 10 May 2010
- 7) [REDACTED] Purchase Order, Purchase order dated 1 May 2010 totaling \$1,009,700.00
- 8) Letter from [REDACTED] Letter from [REDACTED] dated 11 May 2010
- 9) [REDACTED] Purchase Order, Purchase order dated 2 August 2010 for \$50,000
- 10) Letter from [REDACTED] Letter from [REDACTED] dated 3 September 2010 cancelling order
- 11) [REDACTED] Purchase Order, Purchase order dated 15 August 2010 for \$100,000
- 12) Letter from [REDACTED] Letter from [REDACTED] dated 3 September 2010 cancelling order
- 13) Letter from [REDACTED] Letter from [REDACTED] dated 7 March 2011 cancelling order
- 14) Map of Hopedale, LA, Map
- 15) [REDACTED] Profit and Loss (2 pages), Profit and Loss chart from January through December 2010 dated 26 May 2011
- 16) Notice to pay rent, notice from landlord [REDACTED] demanding payment dated 4 January 2011
- 17) [REDACTED] plan (5 pages), Business plan from 2009-2013
- 18) [REDACTED] bank statement (2 pages), Bank statement ending 31 January 2010
- 19) [REDACTED] bank statement (2 pages), Bank statement ending 28 February 2010
- 20) [REDACTED] bank statement (2 pages), Bank statement ending 31 March 2010
- 21) [REDACTED] bank statement (3 pages), Bank statement ending 02 May 2010 (Note from 29 October 2010 'Faked by Danielle @ FNBC, contact 504-671-3530)
- 22) [REDACTED] bank statement (2 pages), Bank statement ending 31 May 2010
- 23) [REDACTED] bank statement (2 pages), Bank statement ending 30 June 2010
- 24) [REDACTED] bank statement (2 pages), Bank statement ending 1 August 2010
- 25) [REDACTED] bank statement (2 pages), Bank statement ending 31 August 2010
- 26) [REDACTED] bank statement (2 pages), Bank statement ending 30 September 2010
- 27) [REDACTED] statement (3 pages), Bank statement ending 30 November 2010

- 28) [REDACTED] statement, Bank statement ending 31 December 2010
- 29) [REDACTED] statement (3 pages), Bank statement ending 30 October 2009
- 30) [REDACTED] statement (4 pages), Bank statement ending 30 November 2009

- 31) Bank Reconciliation Spreadsheet, Deposit and withdrawal information dated 30 November 2009
- 32) Regions Bank statement (5 pages), Bank statement ending 31 December 2009

- 33) Bank Reconciliation Spreadsheet, Deposit and withdrawal information dated 31 December 2009
- 34) Powerscreen Texas sales rental contract (3 pages), contract for [REDACTED] dated 13 April 2010
- 35) Account receivable detail (2 pages), spreadsheet with account information dated 17 November 2010
- 36) Returned checks letter, letter dated 17 December 2010 informing [REDACTED] of checks returned with NSF labeled on them
- 37) Hard Rock Equipment and Rental Wire notice, Wire notice dated 20 July 2010 in the amount of \$34,000
- 38) Hard Rock Equipment and Rental Wire notice, Wire notice dated 22 July 2010 in the amount of \$11,000
- 39) civil court order, Order concerning Hard Rock Equipment v. LA Rock Monsters filed 20 October 2010
- 40) Equipment pickup notice, letter notifying of default dated 6 October 2010
- 41) Intent to cancel notice (2 pages), Notice from Appalachian Underwriters notifying of intent to cancel policy dated 16 November 2010
- 42) Notice of cancellation, Notice from [REDACTED] dated 30 November 2010
- 43) Letter from Burt and Associates, Letter to LA Rock demanding cashier's check dated 8 November 2010
- 44) Debt collection letter (2 pages), Letter dated 4 November 2010 regarding collecting debt totaling \$3500
- 45) Demand for payment, demand for balance in full payment dated 15 October 2010 in the amount of \$4177.43
- 46) Notice of cancellation, Notice of cancellation from sun premium financing dated 3 November 2010
- 47) GCCF application (20 pages), GCCF's provided forms

- 48) letter to GCCF, LA Rock Company's letter dated 9 February 2011 demanding \$3,527,500.00
- 49) GCCF denial letter, GCCF letter dated 22 February 2011 denying claim
- 50) claimant status (4 pages), claimant status information
- 51) email from [REDACTED] email dated 28 April 2011 regarding [REDACTED] and Alvar Street property
- 52) email from [REDACTED] email dated 24 March 2011 concerning conversation between [REDACTED]
- 53) email from [REDACTED] email dated 24 March 2011 between [REDACTED] and [REDACTED]
- 54) LA Oyster Harvesting Regulations, Regulations published by LA Department of Health and Hospitals

- 55) Maps of closed waterways (13 pages), various maps of closed waterways in LA post-spill
- 56) High Reef Oyster Company invoice (3 pages), invoice dated 15 November 2009 for the amount of \$246,000.00
- 57) Letter from LA Rock to [REDACTED] letter from [REDACTED] dated 19 May 2010
- 58) Letter from [REDACTED] letter from [REDACTED] dated 19 May 2010 stating the end of rock purchases because of BP spill
- 59) check to [REDACTED] check dated 21 May 2010 for the amount of \$5,000
- 60) Kreller Law firm letter (2 pages), letter dated 12 July 2010 to [REDACTED] regarding representation of LA Rock
- 61) settlement agreement, undated agreement for the amount of \$335,000.00 to [REDACTED] and Associates
- 62) termination of [REDACTED] email, email dated 23 May 2010 discussing the termination of [REDACTED]
- 63) [REDACTED] agreement (6 pages), agreement dated 1 April 2010 regarding [REDACTED] between [REDACTED] and Associates
- 64) [REDACTED] (23 pages), email dated 11 May 2010 with [REDACTED] attached to them
- 65) Check to [REDACTED] check dated 7 July 2010 in the amount of 24, 669.96
- 66) High Reef purchase order (2 pages), email dated 2 February 2011 with purchase order from High Reef attached to it
- 67) Letter to GCCF, letter to GCCF from [REDACTED] dated 21 December 2010
- 68) Fax to GCCF (2 pages), fax dated 20 December 2010 containing a cancellation of contract
- 69) fax to GCCF (2) pages, fax dated 21 December 2010 detailing repossession information
- 70) fax to GCCF (18 pages), fax dated 14 December 2010 attaching documents relating to income loss
- 71) [REDACTED] 2010 Income Expense (2 pages), spreadsheet with income account information from 1 January to 31 December 2010
- 72) [REDACTED] 2010 Expenses by Vendor Detail, spreadsheet with information for January 2010
- 73) [REDACTED] 2010 Expenses by Vendor Detail, spreadsheet with information for February 2010
- 74) [REDACTED] 2010 Expenses by Vendor Detail, spreadsheet with information for March 2010
- 75) [REDACTED] 2010 Expenses by Vendor Detail (2 pages), spreadsheet with information for April 2010
- 76) [REDACTED] 2010 Expenses by Vendor Detail (4 pages), spreadsheet with information for May 2010
- 77) [REDACTED] 2010 Expenses by Vendor Detail (5 pages), spreadsheet with information for June 2010
- 78) [REDACTED] 2010 Expenses by Vendor Detail (6 pages), spreadsheet with information for July 2010

79) [REDACTED] 2010 Expenses by Vendor Detail (4 pages), spreadsheet with information for August 2010

80) [REDACTED] invoice dated 2 January 2010 in the amount of \$3398.00

81) [REDACTED] invoice dated 7 January 2010 in the amount of \$1831.20

82) Invoice dated 2 January 2010, for the amount of \$4539 (name of company billed is not legible)

83) High Reef invoice, invoice dated 25 January 2010 in the amount of \$61,803.00

84) [REDACTED] invoice, invoice dated 16 February 2010 in the amount of \$25,800.00

85) [REDACTED] invoice dated 25 February 2010 in the amount of \$43,000.00

86) [REDACTED] invoice dated 18 March 2010 in the amount of \$4,422.90

87) [REDACTED] invoice dated 19 March 2010 in the amount of \$5,000.00

88) [REDACTED] invoice dated 25 March 2010 in the amount \$7,287.00

89) [REDACTED] invoice dated 25 March 2010 in the amount of \$12,000.00

90) [REDACTED] invoice dated 26 March 2010 in the amount of \$5,000

91) [REDACTED] invoice dated 26 March 2010 in the amount of \$4,877.40

92) [REDACTED] invoice dated 5 April 2010 in the amount of \$4,399.60

93) [REDACTED] invoice dated 6 April 2010 in the amount of \$1,008.00

94) [REDACTED] invoice dated 10 April 2010 in the amount of \$4,862.97

95) [REDACTED] invoice dated 10 April 2010 in the amount of \$41,160.00

96) [REDACTED] (2 pages), invoice dated 10 April 2010 in the amount of \$362,276.75 (document shows a 3 page invoice but page 2 is missing)

97) [REDACTED] invoice dated 13 April 2010 in the amount of \$3,541

98) [REDACTED] invoice dated 14 April 2010 in the amount of \$1,177.20

99) [REDACTED] invoice dated 17 April 2010 in the amount of \$4,978.00

100) [REDACTED] invoice dated 21 April 2010 in the amount of \$248.43

101) [REDACTED] invoice dated 10 May 2010 in the amount of \$4,852.97

102) [REDACTED] invoice dated 10 May 2010 in the amount of \$6,039.81

103) [REDACTED] invoice dated 10 May 2010 in the amount of \$1,820.00

104) [REDACTED] invoice dated 10 May 2010 in the amount of \$1,160.00

105) [REDACTED] invoice dated 12 May 2010 in the amount of \$1,820.00

106) [REDACTED] invoice dated 14 May 2010 in the amount of \$1,177.20

107) photographs (45 pages), various photographs

108) maps of gulf (5 pages), various maps of the gulf

109) state of LA executive order (2 pages), executive order no. 19BJ 2011 regarding state of emergency

110) state of LA executive order (2 pages), executive order no. 29BJ 2011 regarding state of emergency

111) state of LA executive order (2 pages), executive order no. 104BJ 2010 regarding state of emergency

112) state of LA executive order (2 pages), executive order no. 6BJ 2011 regarding state of emergency

- 113) Maps of gulf (37 pages), various maps of Gulf of Mexico
- 114) Southeast Fishery Bulletin (2 pages), Bulletin regarding Deepwater Horizon Spill dated 3 May 2010
- 115) photographs (31 pages), various photographs regarding the Deepwater Horizon Spill
- 116) letter from [REDACTED] (2 pages including envelope), letter from [REDACTED] dated 21 April 2011 regarding Gulf Quality's representation
- 117) [REDACTED] between LA Rock Monsters and Gulf Quality (6 pages), unsigned and undated copy of agreement
- 118) operating agreement of gulf coast aggregates (16 pages), operating agreement dated 4 January 2011
- 119) email communication, email from [REDACTED] dated 11 April 2011
- 120) email communication (2 pages), email from [REDACTED] dated 7 April 2011
- 121) email communication (2 pages), email from [REDACTED] dated 6 April 2011
- 122) [REDACTED] correction letter, letter from [REDACTED] to NPFC regarding purchase order mistakes dated 4 April 2011
- 123) GCCF invoice, GCCF invoice dated 7 March 2011 in the amount of \$12,000
- 124) purchase order cancellations, A Rock Company purchase order cancellations dated 8 March 2011 in the amount of \$2,947,500.00 in scheduled orders
- 125) LA Rock Company Daily Crushing Goals, Chart detailing daily goals for Fiscal Year 2010
- 126) email communication, emails to [REDACTED] dated 31 March 2011
- 127) GCCF additional information (4 pages), additional information submitted to GCCF by LA Rock Company dated 7 February 2011
- 128) GCCF Emergency advance payment request (2 pages), request made by LA Rock to GCCF on 20 November 2010
- 129) Profit and Loss chart, Chart detailing profit and loss numbers from 1 January 2010 to 1 October 2010
- 130) [REDACTED] Agreement (13 pages + 3 pages in attachment), agreement between [REDACTED] signed 8 January 2010
- 131) [REDACTED] Purchase Order (5 pages), purchase order dated 8 January 2010 in the amount of \$237,500.00
- 132) email communication, email from [REDACTED] dated 31 March 2011 with revised profits claimed total of \$1,719,400.00
- 133) presidents report, report from [REDACTED] dated 16 November 2010
- 134) [REDACTED] Agreement (3 pages), agreement signed 4 December 2009
- 135) presidents report, report from [REDACTED] dated 2 November 2010
- 136) presidents report, report from [REDACTED] dated 7 December 2010
- 137) AI request, request for additional information from [REDACTED] dated 16 March 2011
- 138) email communication, email from [REDACTED] dated 16 March 2011
- 139) Release form, letter from [REDACTED] granting release of information with [REDACTED] and GCCF dated 15 March 2011

U.S. Department of
Homeland Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

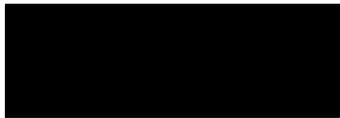
NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937

5890
5/13/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]



RE: Claim Number: N10036-0584

Dear [REDACTED]

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 claim number N10036-0584 involving the Deepwater Horizon incident. Please see the enclosed Claim Summary/Determination Form for further explanation.

Disposition of this reconsideration constitutes final agency action.

If you have any questions or would like to discuss the matter, you may contact me at the above address and phone number.

Sincerely,



Chief, Claims Adjudication Division
U.S. Coast Guard

Encl: Claim Summary / Determination Form

09/14/11

FOIA2011-3380-00002289

CLAIM SUMMARY / DETERMINATION FORM

Date	: 4/26/2011
Claim Number	: N10036-0584
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$18,065.28

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 was 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 claims for certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT:

On 11 March 2010, [REDACTED] (Claimant) presented an Optional Oil Spill Liability Trust Fund (OSLTF) claim form, seeking \$18,065.28 in loss of profits and earning capacity, to the National Pollution Fund Center (NPFC). Claimant asserts that he lost his job due to the Deepwater Horizon oil spill.¹

Claimant asserted that he worked as a cook at [REDACTED] restaurant located in St. Petersburg, Florida. He indicated that he was hired by the restaurant on 23 April 2010, began work on 03 May 2010, and was laid off on 23 June 2010.² Claimant alleged that the Deepwater Horizon oil spill affected seafood products served by the restaurant, leading to reduced business and a lack of hours. He further alleged that this reduction in business and availability of hours resulted in his layoff from the restaurant.³

The NPFC denied the claim on March 18, 2011, on the basis the evidence provided does not support Claimant's allegation that it lost profits as a result of the Deepwater Horizon incident. The alleged loss in the amount of \$18,065.28 is not due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil. The Claimant provided a letter from his employer that stated he was laid off to due lack of available hours.

BP made an initial payment in the field to the Claimant on June 28, 2010 in the amount of \$4,138.96. On 27 August 2010, the Claimant presented a six-month Emergency Advance Payment claim for \$10,000.00 in lost earnings to the GCCF.⁴ He was assigned GCCF Claimant ID [REDACTED] and Claim [REDACTED] and that claim was denied by the GCCF.

¹ OSLTF claim form.

² Notes of explanation from Claimant, undated. Claimant's provided paystubs and unemployment records support this employment timeline.

³ OSLTF claim form.

⁴ GCCF Filing Report, dated 1 April 2011.

On 26 January 2011, the Claimant presented a Interim Payment claim to the GCCF in the amount of \$15,800.00 (Claim [REDACTED]). On 26 March 2011, an interim payment of \$2,966.11 was made to the Claimant by the GCCF.⁵ A Quick Pay Final Payment offer was made to the Claimant on 26 March 2011 in the amount of \$7,105.07.

REQUEST FOR RECONSIDERATION:

On April 25, 2011, the Claimant made a request for reconsideration to the NPFC stating he would like the NPFC to reconsider his claim. The Claimant's request for reconsideration request consisted of an email request and a three page facsimile that contained a cover sheet, an undated statement and a duplicate copy of his employer letter dated February 1, 2011. No new information or arguments were made on reconsideration.

RECONSIDERATION CLAIM ANALYSIS:

The claimant requested reconsideration via email and facsimile on April 25, 2011. To support his request for reconsideration, the claimant provided no new information other than an employer letter that had already been provided in the original claim submission.

NPFC Determination on Reconsideration

Under 33 CFR 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 CFR § 136.233, a claimant must establish loss of profits or impairment of earning capacity. The NPFC considered all the documentation submitted by the Claimant.

Based on the information presented by the Claimant and information available to the NPFC, the BP/GCCF paid a total of \$7,105.07 (\$4,138.96+\$2,966.11) to the Claimant as compensation for his claim. According to information from the GCCF, the Claimant executed a Release and Covenant Not to Sue in return for the Quick Payment on 12 April 2011 as well as the Claimant responded to the NPFC's request of whether the Claimant accepted a Final Quick Pay payment executing a release, and the Claimant responded on 03 May 2011 stating that he did sign and accept a Final Quick Pay Payment and executed a release.

This claim is denied because it appears from the record that the Claimant has fully settled his claims with BP/GCCF, and that BP and GCCF have compensated the Claimant, including a Quick Payment for which GCCF reportedly required a final and full release of rights against any Responsible Party.

The Claimant has not addressed any of the payments made or otherwise provided any information to show the Claimant has any rights to recover any of the amount claimed here from a Responsible Party. The Fund will not pay what has already been compensated and any Fund payment is subject to acquiring all rights to recover from the Responsible Party.

This claim is denied upon reconsideration.

⁵ See GCCF offer letter dated March 26, 2011.

Claim Supervisor



Date of Supervisor's review: *5/13/11*

Supervisor Action: *Denial on reconsideration approved*

Supervisor's Comments:

U.S. Department of
Homeland Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

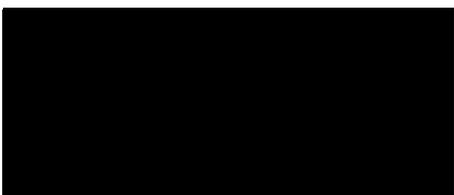
NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937

5890
6/8/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]



RE: Claim Number: N10036-0585

Dear [REDACTED]

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 claim number N10036-0585 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination Form for further explanation.

Disposition of this reconsideration constitutes final agency action.

If you have any questions or would like to discuss the matter, you may contact me at the above address and phone number.

Sincerely,



Chief, Claims Adjudication Division
U.S. Coast Guard

ENCL: Claim Summary / Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: N10036-0585
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Amount Requested	: \$19,992.00

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 was 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 claims for certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT:

On 14 March 2011, [REDACTED] (Owner) presented an Oil Spill Liability Trust Fund (OSLTF) Claim Form on behalf of [REDACTED] (Claimant) to the National Pollution Funds Center (NPFC). The OSLTF claim form alleged \$19,992.00 in lost profits and earnings capacity resulting from the Deepwater Horizon oil spill.

The Claimant "provides [Information Technology] IT auditing and consulting services to businesses in Louisiana."¹ At the time of the Deepwater Horizon oil spill, the Claimant was providing IT support to [REDACTED], which is owned by [REDACTED].

The Claimant alleged that it "was not able to perform any work at Oil Mop from 05/22/2010 through 09/30/2010 due to the oil spill in the Gulf of Mexico . . . [because] Oil Mop was consumed with that work and our project was put on hiatus during that time frame."³

REQUEST FOR RECONSIDERATION:

On May 26, 2011, the Claimant sent a request for reconsideration to the NPFC stating she would like the NPFC to reconsider her claim. The Claimant's request for reconsideration was presented by her assigned legal representative, [REDACTED]. The Claimant sent an email to the NPFC dated May 4, 2011 by [REDACTED] and granting permission for [REDACTED] to act on the Claimant's behalf in all claim matters.⁵

The NPFC denied the claim originally on April 12, 2011 because any alleged loss that the Claimant suffered from the postponement of the contract tasks appeared to have been cured because the Claimant was permitted to complete its IT work when Oil Mop personnel returned from response activities sometime after September 30, 2010. To the extent that the Claimant alleged a loss from not working during the postponement, this alleged loss is not due to the

¹ Claimant's email to the NPFC, dated 13 March 2011.

² Claimant's email to the NPFC, dated 07 April 2011, responding to the NPFC's request for additional information.

³ OSLTF claim form and Claimant's email to the NPFC, dated 13 March 2011.

⁴ Request for reconsideration letter by legal representative dated May 26, 2011.

⁵ See, Email from [REDACTED] to [REDACTED] dated May 4, 2011.

injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil. It was a result of a lack of work within the meaning of the Claimant's contractual relationship with [REDACTED]

On reconsideration, the Claimant, through its legal representative, presented its factual arguments in support of its request for reconsideration. The request for reconsideration also referenced all documentation previously presented by the Claimant in its original claim submission to the NPFC.

The Claimant filed a Final Payment claim with GCCF on November 26, 2010 via GCCF Claimant ID [REDACTED]. The NPFC has confirmed that the claim was denied by the GCCF.

RECONSIDERATION CLAIM ANALYSIS:

The claimant requested reconsideration which was received by the NPFC on June 3, 2011. To support the request for reconsideration, the Claimant, through its legal representative, provided a letter making her reconsideration arguments. No other documentation has been provided in support of the reconsideration request.

NPFC Determination on Reconsideration

Under 33 CFR 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 CFR § 136.233, a claimant must establish loss of profits or impairment of earning capacity and that the loss was due to the destruction or injury to real or personal property or natural resources. The NPFC considered all the documentation submitted by the Claimant. The request for reconsideration must be in writing and include the factual or legal grounds for the relief requested, providing any additional support for the claim. 33 CFR 136.115(d).

The NPFC performed a *de novo* review of the entire claim submission upon reconsideration.

The NPFC performed a complete review of the documentation presented by the Claimant. The Claimant's request for reconsideration focused on the fact that the Claimant disagrees with the NPFC's reference in its original denial that any alleged loss suffered by the Claimant appeared to have been cured because the Claimant was permitted to complete its IT project work when Oil Mop's key personnel returned to the office following response work on the Deepwater Horizon incident. The Claimant further argued on reconsideration that it was unable to obtain other work 7 hours a week for the 21 week postponement period because Claimant needed to be available when [REDACTED] personnel became available again to finish the project and that availability was unknown. Thus, Claimant calculated its alleged loss on the 21-week postponement.

The NPFC has determined after reviewing the February 6, 2007 contractual agreement between the Claimant and [REDACTED] for consultation services related to an upgrade of the Lawson application modules to version 9.0, that the contractual agreement does not specify a guarantee of 7 hours per week at a rate of \$136.00 per hour. There is an assumption in the contract that [REDACTED] would provide access to [REDACTED] personnel but no guarantee as to specific time frames for that access. Additionally, the contract did not specify a project end date.

Furthermore, [REDACTED] of [REDACTED] sent a letter to the NPFC dated April 20, 2011 that stated the Claimant would have continued to work with [REDACTED] after the 'go live' date; therefore, it is clear there was no scheduled end date to this project. Thus, even without the interruption in access to [REDACTED] personnel, Claimant had no clear end date and would have had uncertainty about accepting other jobs while still being available for the [REDACTED] project.

After key personnel returned to [REDACTED] the Claimant did resume the project duties and was able to bill and receive payment for the services provided; therefore, the Claimant has no actual losses related to this project since they are paid on a time and materials basis as billed after services rendered.

The Claimant's assertion that they did in fact lose the 147 hours is merely displaced time not lost time as evidenced by Mr. Gauthier's letter⁶. Finally, [REDACTED] letter further confirms that the goal of the 'go live' date for the Claimant's project did not end its relationship with [REDACTED] but rather allowed an opportunity to continue working on incremental improvements to business processes.

Based on the foregoing information, the NPFC again denies the claim because (1) the Claimant has failed to demonstrate that it had an alleged loss of profits related to the IMTT project, and (2) the Claimant has failed to demonstrate a loss of profits in the amount claimed.

This claim is denied upon reconsideration.

Claim Supervisor [REDACTED]

Date of Supervisor's review: *6/8/11*

Supervisor Action: *Denial on reconsideration approved*

Supervisor's Comments:

⁶ Letter from Michael Gauthier of IMTT to NPFC dated April 20, 2011.

U.S. Department of
Homeland Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937

5890
4/4/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]



RE: Claim Number: N10036-0586

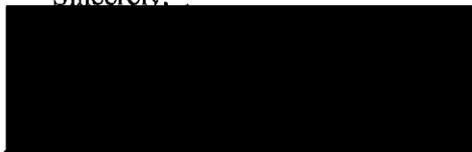
Dear [REDACTED]

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 claim number N10036-0586 involving the Deepwater Horizon incident. Please see the enclosed Claim Summary/Determination Form for further explanation.

Disposition of this reconsideration constitutes final agency action.

If you have any questions or would like to discuss the matter, you may contact me at the above address and phone number.

Sincerely,



Chief, Claims Adjudication Division
U.S. Coast Guard

ENCL: Claim Summary / Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Date	: 4/3/2011
Claim Number	: N10036-0586
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$150,000.00

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 was 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 claims for certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT:

On 14 March 2011, [REDACTED] (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Fund Center (NPFC) seeking damages in the amount of \$150,000.00. His claim form specified \$50,000.00 in removal costs, \$50,000.00 in subsistence use and \$50,000.00 in lost profits and earning capacity. Thus, his alleged combined loss is \$150,000.00.

On his optional OSLTF claim form, the Claimant failed to fill in blocks 9 (description of the nature and extent of damages claimed), 10 (description of how the incident caused the damage) and block 11 (description of actions taken by claimant/representative to avoid or minimize damages. Claimant did fill in block 12 (witnesses) but cited the information as "classified information" with "no witnesses available at this time."

REQUEST FOR RECONSIDERATION:

On March 30, 2011, the NPFC received the Claimant's request for reconsideration which merely comprised of a copy of the NPFC's initial determination package and page 2 of the OSLTF claim form with questions 9, 10 and 11 answered. No other information has been provided for consideration.

RECONSIDERATION CLAIM ANALYSIS:

The claimant requested reconsideration via a cover sheet entitled "RECON INFO". The package was received by the NPFC on March 30, 2011. To support his request for reconsideration, the claimant provided no new information.

NPFC Determination on Reconsideration

Under 33 U.S.C. § 2702(b)(2)(E) and 33 C.F.R. Part 136, a claimant must prove that his loss of income was due to the injury, destruction or loss of real or personal property or 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 to the NPFC all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim. The NPFC considered all of the documentation presented by the Claimant.

The Claimant provided no new information associated with his request for reconsideration other than answers to OSLTF claim form questions 9, 10, and 11. The only argument the Claimant has made is that he has experienced excessive financial losses. The Claimant has provided no comparable financial information, no explanation as to how he arrived at his sum certain of \$150,000.00, and no documentation other than news articles. The Claimant has not explained any component of damages he has claimed (i.e., removal costs, lost profits and subsistence use).

The NPFC again denies the claim because the Claimant has failed to meet his burden in providing any documentation to support his alleged losses.

Claim Supervisor: 

Date of Supervisor's review: *4/4/11*

Supervisor Action: *Denial on reconsideration approved*

Supervisor's Comments:

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

5890
5/2/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]



RE: Claim Number: N10036-0588

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number N10036-0588 involving Deepwater Horizon. Please see the attached Claim Summary / Determination Form for an explanation regarding the denial.

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 N10036-0588.

Mail reconsideration requests to:

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

Sincerely, [REDACTED]

U.S. Coast Guard

Encl: Claim Summary / Determination Form
09/14/11

FOIA2011-3380-0002300

CLAIM SUMMARY / DETERMINATION FORM

Date	: May 2, 2011
Claim Number	: N10036-0588
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$500,000.00

FACTS

On or about April 20, 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 was 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 August 23, 2010, the Gulf Coast Claims Facility (GCCF) began accepting and adjudicating claims for certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On March 16, 2011, [REDACTED] presented a claim to the National Pollution Fund Center (NPFC) on behalf of [REDACTED] (Claimant), on an Optional Oil Spill Liability Trust Fund (OSLTF) Claim Form seeking \$500,000.00 in lost profits and earning capacity resulting from the Deepwater Horizon incident.

Claimant asserted that [REDACTED] was affected by the oil spill because the clientele they serve were mostly fishermen. The Claimant stated that [REDACTED] is a home service and sales center that finances homes for customers thereby allowing them to establish some credit. Once the customer establishes a good payment history, they refinance into an FHA loan and Suburban, Inc. recoups their costs.

The Claimant provided a denial letter from their claim with the GCCF dated March 6, 2011. It is unknown if the Claimant filed an emergency advance payment claim with the GCCF.

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 waters or adjoining shorelines or the exclusive economic zone, as described in Section 2702(b) of OPA.

The OSLTF which is administered by the NPFC, is available, pursuant to 33 U.S.C. § 2712(a)(4) and 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136, to pay claims for uncompensated damages. 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.
- (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.

DETERMINATION OF LOSS

Claimant's Submission

To support the claim, the Claimant submitted the following documentation:

- NPFC OSLTF Claim form, submitted 11 March 2011, received on 16 March 2011.
- 2007, 2008, 2009 and 2010 Business Income Tax Return.
- Profit and loss statement for November 2009 through April 2010.
- Correspondence from GCCF dated 29 January 2011.
- Denial Interim Payment/Final Payment letter from GCCF dated 6 March 2011.
- Letter of explanation from Claimant, dated 30 November 2010.

NPFC Determination

Under 33 U.S.C. § 2702(b)(2)(E) and 33 C.F.R. Part 136, a claimant must prove that his loss of income was due to injury or destruction or loss of real or personal property or 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 to the NPFC all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim. The NPFC considered all documentation presented by the Claimant.

Based on the documentation provided by the Claimant, the Claimant indicated that income was reduced as a result of the Deepwater Horizon incident.

On March 31, 2011, the NPFC sent, via certified mail, a request for additional information to the Claimant in order to obtain the necessary information to adjudicate the claim. The documentation requested consisted of the following:

1. Provide 2008, 2009 and 2010 monthly sales ledgers for [REDACTED] categorized by location of customer.
2. Provide 2008, 2009 and 2010 Monthly Profit and loss statements.
3. Copies of permits and licenses filed with the City, County and State applicable to your business
 - a. If the above is not available, provide documentation stating the filing requirements and associated fees.
4. If applicable, provide copies of cancelled transactions due to the Deepwater Horizon incident.
5. Provide proof of ownership of buildings claimed by [REDACTED] for the properties which have not been sold following the Deepwater Horizon incident
6. Provide recent/historical value of appraisals.
7. All correspondence with perspective buyers who canceled.
8. Identify advertisement/sales listing to support your efforts to sell the homes/buildings.
9. Provide documents to show the claim calculation.

The NPFC also requested the Claimant answer the following questions:

1. Describe the operation history of the business for 2008 through present. Please explain all aspects of the business.
2. Explain the financing operations, and if it is done through Suburban Inc or a third party.
3. Provide a description of the income and cost of sales categories listed on the profit and loss statement.
4. Please explain trends of your business including any seasonality based on your customers' orders.
5. Please explain whether the reduction in business has been experienced in all the counties that you provide your services. The counties mentioned are Mobile, Baldwin, Washington, Jackson, Harrison, George.
6. Describe the following in regards to your business:
 - a. Describe the nature of the business and the services performed.
 - b. Describe how your business was impacted by the Deepwater Horizon Incident.
 - c. Describe your client base.
 - d. What are your business hours and days operating?
 - e. Describe how your customers were affected by the Deepwater Horizon Incident.
 - f. Name all employees and contractors who are employed by your business.
 - g. Identify the various job functions within your business operations.
7. Describe the current status of your business and customer orders.
8. Were any of your homes sold since the date of your claim submission?
9. Identify any period(s) of time during 2009 and 2010 that your business was closed.
10. Explain the reason for the decrease in gross sales from 2008 to 2009 shown on the Business Income Tax Returns.
11. Explain how the claimed lost earnings were estimated.

The Claimant has not provided the additional documentation nor answered any of the questions to support the claim in order to demonstrate a loss of profits and earnings. Therefore, this claim is denied because (1) the Claimant has failed to meet the burden to demonstrate that there was a loss of profits and (2) that the alleged loss was due to the injury to, destruction of, or loss of property or natural resources as a result of a discharge or substantial threat of discharge of oil.

Claim Supervisor 

Date of Supervisor's review: *FOR* **May 2, 2011**

Supervisor Action: ***Denial approved***

Supervisor's Comments:

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

Fax: 202-493-6937

CERTIFIED MAIL - RETURN RECEIPT REQUESTED
Number: [REDACTED]

5890/DWHZ
Claim# N10036-0589
4 April 2011



RE: Claim Number: N10036-0589

De [REDACTED]

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 claim number N10036-0589 involving the Deepwater Horizon oil spill. Please see the enclosed 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 N10036-0589.

Mail reconsideration requests to:

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

Sincerely, /



U. S. Coast Guard
Claims Manager

Enclosure: Claim Summary/Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Date	23 March 2011
Claim Number	N10036-0589
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
Claim Manager	[REDACTED]
Amount Requested	\$15,000.00

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 was 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.

CLAIM AND CLAIMANT

On 16 March 2011, [REDACTED] (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) Claim Form to the National Pollution Funds Center (NPFC). The OSLTF claim form alleged \$15,000 in lost profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

At the time of the Deepwater Horizon oil spill, Claimant worked offshore for [REDACTED] aboard the [REDACTED]. Claimant's vessel received orders to transit to the site of the Deepwater Horizon drilling rig to provide assistance. While at the site, Claimant alleges that he was exposed to oil dispersant released in the area via aircraft and fell ill soon thereafter. Claimant was then hospitalized in Mobile, AL, causing him to lose nine weeks of work and incur \$10,800 in medical expenses.¹

Claimant's asserted damages encompass nine weeks of missed work at \$1,200 per week, plus \$4,200 in unreimbursed medical expenses due to injury caused by airborne dispersant exposure.²

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 waters or adjoining shorelines or the exclusive economic zone, as described in Section 2702(b) of OPA.

The OSLTF, which is administered by the NPFC, is available pursuant to 33 U.S.C. § 2712 (a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136 to pay claims for uncompensated damages. Under 33 U.S.C. § 2712 (b), private OSLTF claimants may only recover for damages to real or personal property, subsistence use and profits or earning capacity due to the injury, destruction or loss of natural resources. Personal injury damages are not recoverable under OPA.

¹ Phone conversation between NPFC and Claimant, dated 18 March 2011.

² Phone conversation between NPFC and Claimant, dated 18 March 2011; Claimant's OSLTF Claim Form.

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

In support of his claim, Claimant submitted the following documentation to the NPFC:

- OSLTF Claim Form signed by Claimant, undated;
- Signed release granting NPFC authority to request Claimant's documentation from GCCF, dated 16 March 2011;
- Medical bills from Mobile Emergency Group, PC;
- W-2 statements from Baileys Catering LLC from 2009;
- Unidentifiable financial statements.

Claimant filed Emergency Advance Payment claims for lost profits and earnings and physical injury and death. He was assigned GCCF Claimant ID [REDACTED] and Claim ID [REDACTED] and # [REDACTED] respectively. These claims were denied by the GCCF.³

This filing with the NPFC followed. As noted, Claimant seeks \$15,000 in lost profits and impairment of earnings capacity resulting from physical injury, which Claimant attributes to the Deepwater Horizon oil spill.

NPFC Determination

This claim is denied. Under 33 U.S.C. § 2712 (b), private OSLTF claimants may only recover for damages to real or personal property, subsistence use and profits or earning capacity due to the injury, destruction or loss of natural resources. Personal injury damages are not recoverable under OPA and the associated regulations at 33 C.F.R. 136.

Based on the information provided by Claimant to NPFC, Claimant's alleged loss in the amount of \$15,000 stems entirely from personal injuries caused by his alleged exposure to oil dispersant. Because Claimant's asserted loss stems entirely from personal injuries, and because damages from these types of injuries do not fall within the purview of OPA, Claimant's loss is not compensable under OSLTF.

This claim is accordingly denied.

Claim Supervisor: [REDACTED]

Date of Supervisor's Review: 4/4/11

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

³ GCCF denial letters Re: Claimant's Emergency Advance Payment claims, dated 25 October and 07 December

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

[REDACTED]
Fax: 202-493-6937
5890
3/24/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]



RE: Claim Number: N10036-0590

Dear [REDACTED]

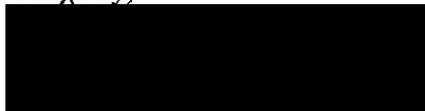
The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq. (OPA) and the associated regulations at 33 C.F.R. Part 136, denies payment on claim number N10036-0590 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination 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 N10036-0590.

Mail reconsideration requests to:

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

Sincerely,



Claims Manager
U.S. Coast Guard

Encl: Claim Summary / Determination Form

09/14/11

FOIA2011-3380-00002308

CLAIM SUMMARY / DETERMINATION FORM

Date	: 3/24/2011
Claim Number	: N10036-0590
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$17,400.00

FACTS

On or about April 20, 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 was 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 August 23, 2010, the Gulf Coast Claims Facility (GCCF) began accepting and adjudicating claims for certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On March 17, 2011, [REDACTED] (Claimant) presented a lost profits & earnings claim in the amount of \$17,400.00 to the National Pollution Funds Center (NPFC) for reimbursement. The Claimant asserted that she lost profits & earnings due to loss of employment as a result of the Deepwater Horizon incident but never provided an explanation or information on her place of employment other than she was a sitter for the elderly and left her field of work to go work for [REDACTED].

The Claimant has not provided any financial information, tax records, W2s, or contact information for [REDACTED] who provided a statement for the Claimant which asserted that the Claimant worked as a sitter/companion to her mother from October 2009 through April 2010 with a gross income of \$17,400.00.

The Claimant stated that she filed a claim with the GCCF on October 8, 2010 and was subsequently denied. The Claimant has not provided a copy of her denial letter.

APPLICABLE LAW:

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a). Damages include the loss of profits or impairment of earning capacity due to the injury, destruction or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant. 33 U.S.C. § 2702(b)(2)(E).

The OSLTF, which is administered by the NPFC, 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. With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(e)

Pursuant to the claims regulations, 33 C.F.R. § 136.233, a claimant must establish the following to prove loss of profits or impairment of earning capacity:

- (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.
- (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.

DETERMINATION OF LOSS

Claimant's Submission

To support her claim, the Claimant submitted the following documentation:

- NPFC OSLTF Claim form, dated February 23, 2011;
- Handwritten hardship letter dated February 23, 2011.

NPFC Determination

Under 33 U.S.C. § 2702(b)(2)(E) and 33 C.F.R. Part 136, a claimant must prove that his loss of income was due to injury or destruction or loss of real or personal property or 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 to the NPFC all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim. The NPFC considered all documentation presented by the Claimant.

Upon review of the Claimant's submission, the NPFC had determined that the Claimant has failed to meet her burden to demonstrate she has a loss of profits and earnings that resulted from the injury, destruction of, or loss of property or natural resources as a result of a discharge or substantial threat of discharge of oil.

The Claimant has not provided comparable financial information as required nor has the Claimant provided a contact number for [REDACTED] so that the NPFC can obtain proof of payment of the salary paid for the care the Claimant provided to [REDACTED] mother. Should the Claimant decide to request reconsideration of this determination, all comparable financial information will need to be provided, including but not limited to bank statements, W2s, three years of income tax filings, documentation associated with any and all unemployment compensation applied or received over the past three years, a contact phone number for [REDACTED] and a copy of the Claimant's pay stubs for employment. Until such time as the Claimant can demonstrate a loss of profits, this claim is denied.

Claim Supervisor [REDACTED]

Date of Supervisor's review: *3/24/11*

Supervisor Action: *Denial approved*

Supervisor's Comments:

U.S. Department
of Homeland
Security

**United States
Coast Guard**



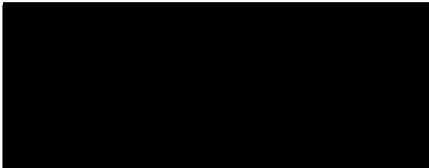
Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]



5890/DWHZ
Claim # N10036-0591
04 May 2011

Re: Claim Number: N10036-0591

De [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with 33 C.F.R. Part 136, denies your claim relating to the Deepwater Horizon incident. Please see the enclosed 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 N10036-0591.

Mail reconsideration requests to:

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

Sincerely,



U. S. Coast Guard
Claims Manager

Enclosures: (1) Claim Summary/Determination Form
(2) Summary of Documentation Provided by Claimant

CLAIM SUMMARY / DETERMINATION FORM

Date	28 April 2011
Claim Number	N10036-0591
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
Claim Manager	[REDACTED]
Amount Requested	\$103,237.22

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 was 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.

CLAIM AND CLAIMANT

On 15 March 2011, [REDACTED] on behalf of [REDACTED] (Claimant), presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Funds Center (NPFC) for \$102,787.22 which is identified in the lost profits and impairment of earnings capacity section but then his total amount claimed on the same form indicated a total of \$103,237.22 resulting from the Deepwater Horizon incident.¹ The Claimant has not explained why one line item identifies one amount and why the total amount is different.

[REDACTED] is an accountancy firm located in New Orleans, Louisiana that provides various accounting, tax, business and financial advisory services. The Company was formed in 1995. Claimant's clientele is located throughout the Gulf region and includes individuals and businesses involved with offshore marine services, hospitality and tourism. Claimant asserted that these particular business industries were impacted by the Deepwater Horizon incident and as a result, they chose to forgo or reduce the use of the Claimant's services.²

APPLICABLE LAW

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a). Damages include the loss of profits or impairment of earning capacity due to the injury, destruction or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant. 33 U.S.C. § 2702(b)(2)(E).

¹ Claimant doesn't account for the \$540.00 difference between these figures.

² Claimant's OSLTF claim form dated 17 March 2011. [REDACTED] as a separate claim for alleged losses from his wealth, risk and asset management business before the NPFC which is identified as N10036-0593.

The OSLTF, which is administered by the NPFC, 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. With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

Pursuant to the claims regulations, 33 C.F.R. § 136.233, a claimant must establish the following to prove loss of profits or impairment of earning capacity:

- (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.
- (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.

DETERMINATION OF LOSS

Claimant's Submission

To support the claim, the Claimant provided various documents including financial statements, tax returns and a claim calculation prepared by a consultant. Upon receipt of the initial claim submission, the NPFC requested additional information and documentation regarding the

background of the business activities and supporting documentation. Documentation presented by the Claimant is listed in Enclosure (2).

On 02 November 2010, Claimant presented a six-month Emergency Advance Payment claim for \$60,787.00 in lost profits or earnings to the GCCF. Claimant was assigned GCCF Claimant ID # [REDACTED] and Claim [REDACTED]. On 12 November 2010, Claim [REDACTED] was denied by the GCCF.³

On 17 March 2011, Claimant presented this claim to the NPFC for \$102,787.22 in lost profits and impairment of earnings capacity and a total loss claimed of \$103,327.22. On the same day, the Claimant also presented a Full Review Final Payment claim (Claim [REDACTED]) for \$102,787.22 in lost profits and earnings to the GCCF.

On 22 April 2011, Claim [REDACTED] was denied by the GCCF.⁴

The NPFC notes that a related claim, N10036-0593 for [REDACTED] is under review at the NPFC. Although [REDACTED] claim and the claim for [REDACTED] were consolidated by the GCCF, the NPFC addresses these claims separately because they involve separate income streams allegedly impacted by the Deepwater Horizon oil spill.

NPFC Determination

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. The NPFC considered all documentation presented by Claimant.

Under 33 C.F.R. § 136.103(a), all claims for removal costs or damages must be presented first to the responsible party (RP). Additionally, when a claim is not settled by any person by payment within 90 days after the date upon which the claim was presented, the claimant may elect to present the claim to the OSLTF. 33 C.F.R. § 136.103(c)(2). Although Claimant did not present the lost profits and earnings claim for \$102,787.22 (to the RP first) in accordance with 33 C.F.R. § 136.103(a), this presentment defect was cured on 22 April 2011, the date the GCCF denied the claim. Since Claimant did not present a claim for a loss greater than \$102,787.22 in profits and earnings to the RP, the NPFC will only consider this claim up to \$102,787.22. Any amount in excess of this sum is not properly before the NPFC pursuant to 33 C.F.R. § 136.103 and is therefore DENIED.

The remainder of this claim is DENIED because the Claimant's evidence does not demonstrate that his alleged loss in the amount of \$102,787.22 is due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil.

Although total revenue from May through December 2010 (\$397,957.01) is lower than the same period of 2009 (\$498,436.03),⁵ the Claimant failed to demonstrate the correlation between this

³ GCCF Denial Letter Re: Claimant's EAP claim, dated 12 November 2010.

⁴ GCCF Denial Letter Re: Claimant's Final Payment claim, dated 22 April 2011.

⁵ Figures taken from Claimant's lost profit calculation.

reduction and the Deepwater Horizon oil spill. Citing client confidentiality, the Claimant did not provide the NPFC with written statements from his clients explaining the impact of the Deepwater Horizon oil spill on the decision to discontinue or scale back on the use of the Claimant's services.⁶ Claimant indicated that his clients have not authorized him to divulge this confidential information. Based on the Claimant's failure to provide detailed client information that could be verified, there is no way for the NPFC to know the actual reasons for business reduction.

Claimant alleged that it lost revenues because its clients in the offshore marine services, hospitality and tourism-based industries were impacted as a result of the Deepwater Horizon oil spill.⁷ The Annual Revenue (Calendar Year) by Practice Area for [REDACTED] is as follows:

<u>Practice Area</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>
Fixed Price Agreements	[REDACTED]	[REDACTED]	[REDACTED]
Accounting Services	[REDACTED]	[REDACTED]	[REDACTED]
Consulting Services	[REDACTED]	[REDACTED]	[REDACTED]
Employee Benefit Consulting	[REDACTED]	[REDACTED]	[REDACTED]
Tax	[REDACTED]	[REDACTED]	[REDACTED]
Litigation	[REDACTED]	[REDACTED]	[REDACTED]
Financial Planning	[REDACTED]	[REDACTED]	[REDACTED]
Total	\$735,317	\$763,692	\$654,265

In 2010, the Claimant primarily experienced a reduction in revenue for Employee Benefit Consulting and Litigation Support service. It is unclear how these impacted practice areas correspond to the offshore marine services, hospitality and tourism-based industries, areas from which the Claimant alleged its clients were impacted as a result of the Deepwater Horizon oil spill.

Additionally, the Claimant provided detailed sales ledgers for 2010 to identify client names, their respective industries with NAICS Codes and the amounts billed to those clients. The sales ledgers indicated that a significant portion of the Claimant's business is generated through attorneys, doctors, dentists and other healthcare professionals. It is unclear how this client base is related to the offshore marine services, hospitality and tourism-based industries.

Because the Claimant has failed to demonstrate that his 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 a discharge of oil, this claim is DENIED.

⁶ Letter from [REDACTED] to the NPFC, dated 21 April 2011 (indicating "Unfortunately, our clients (current and former) have not provided us with written documentation, nor authorized us to share anecdotal specifics as to their losses due to the Deepwater Horizon oil spill.").

⁷ Letter of explanation from [REDACTED] consultant, dated 14 March 2011; OSLTF claim form; and Letter of explanation from Claimant, dated 15 November 2010.

Claim Supervisor: [REDACTED]

Date of Review: 5/4/11

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

Summary of Documentation Provided by Claimant N10036-0591

1. OSLTF claim form dated 15 March 2010.
2. Claimant's lost profit calculation based on 2008-2010 gross sales.
3. Summary of yearly income and expenses for 2007, 2008 and 2009 with the 3 year average compared with 2010.
4. 2007, 2008, 2009 and 2010 business Income Tax Returns.
5. 2007, 2008, 2009, and 2010 profit and loss statements.
6. Notification from GCCF to complete the online claim form, dated 1 November 2010.
7. Document request from GCCF, dated 4 February 2011.
8. GCCF claim packet, dated 13 November 2010.
9. Denial letter from GCCF, dated 12 November 2010.
10. Letter of explanation from Claimant, dated 15 November 2010 and 14 February 2011.
11. Letter of explanation from [REDACTED] consultant, dated 14 March 2011.
12. GCCR invoice.
13. [REDACTED] 2005 Profit and Loss Statement.
14. [REDACTED] Curriculum Vitae.
15. [REDACTED] s from 2008, 2009 and 2010.
16. Louisiana State accountancy licenses, Claimant and [REDACTED]
17. Letter from [REDACTED] to the NPFC, dated 21 April 2011.

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

Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim # N10036-0592
05 May 2011

Re: Claim Number: N10036-0592

Dear [REDACTED]

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 CFR Part 136, denies payment on the claim number N10036-0592 involving Deepwater Horizon. 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 N10036-0600.

Mail reconsideration requests to:

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

Sincerely,

[REDACTED]
Claims Manager
U.S. Coast Guard

Enclosure(s): (1) Claim Summary/Determination Form
(2) Summary of Documentation Provided

09/14/11

FOIA2011-3380-00002319

CLAIM SUMMARY/DETERMINATION FORM

Date	02 May 2011
Claim Number	N10036-0592
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
Claim Manager	[REDACTED]
Amount Requested	\$49,115.62

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 was 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 claims for certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On 18 March 2011, [REDACTED] (Agent) on behalf of [REDACTED] (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Funds Center (NPFC) for \$43,115.62 in loss of profits and impairment of earnings capacity and a total loss of \$49,115.62 resulting from the Deepwater Horizon oil spill.¹

Claimant is a fishing business owned and operated by [REDACTED] out of Fort Lauderdale, FL. Claimant stated that the business primarily relies on the vessel [REDACTED] which reportedly docks and operates out of Key Largo, FL.² From this location, [REDACTED] reportedly loaded with ice and baited traps and departs to pull traps. Claimant then transports its catch to the county of Miami/Dade/Broward, where it is sold to dealers and landings are then reported.

Claimant indicated that it catches golden crabs, grunts, spiny lobster, mutton snapper, blue runner, hogfish, jack, and sturgeon fish. Claimant's reported equipment includes 300 crab traps and 300 lobster traps, which are placed under water year-round (except for 01 April through 05 August for lobster traps) along Florida's South Eastern coast and pulled on Tuesdays and Fridays.³ Claimant indicated that its primary dealers include [REDACTED], [REDACTED], [REDACTED] and [REDACTED].

Claimant alleged that as a result of the Deepwater Horizon oil spill, waters on the Western side of Florida (like Port St. Joe) were closed to commercial fishing, impacting the Claimant's ability to obtain bait and presumably fish.⁴ Claimant additionally indicated that it expected to experience significant growth in 2010 over 2009 reportedly due to overall operational improvements and the typical high growth associated with the peak season.⁵

¹ The total loss amount reflects \$6,000.00 in consultancy fees. PHONECON between [REDACTED] consultant, and NPFC staff, 21 April 2011

² Claimant Additional Information to the NPFC, dated 13 April 2011.

³ Id.

⁴ OSLTF claim form.

⁵ Claimant Additional Information to the NPFC, dated 13 April 2011.

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 waters or adjoining shorelines or the exclusive economic zone, as described in Section 2702(b) of OPA.

The OSLTF which is administered by the NPFC, is available, pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136, to pay claims for uncompensated damages. 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.
- (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.

DETERMINATION OF LOSS

Claimant's Submission

To support this claim, Claimant presented the documentation listed in Enclosure 2.

On 22 November 2010, Claimant presented a six-month Emergency Advance Payment claim for \$75,000.00 in lost profits and earnings to the RP/GCCF. Claimant was assigned GCCF Claimant

ID [REDACTED] 7 and Claim [REDACTED] On 13 December 2010, this claim was denied by the GCCF.⁶

On 18 March 2011, Claimant presented this claim for 43,115.62 in loss of profits and impairment of earnings capacity and a total loss of 49,115.62 to the NPFC.

NPFC Determination

Under 33 U.S.C. § 2702(b)(2)(E) and 33 C.F.R. Part 136, a claimant must prove that his loss of income was due to injury or destruction or loss of real or personal property or 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 to the NPFC all evidence, information, and documentation deemed necessary by the Director, NPFC, to support his claim.

This claim is denied because the Claimant's evidence does not demonstrate (1) the alleged loss of profits in the amount of \$43,115.62, as claimed, or (2) the correlation, if any, between this alleged loss and the Deepwater Horizon oil spill.

Although the Claimant alleged that commercial fishing grounds associated with its business were closed as a result of Deepwater Horizon oil spill, the Claimant could not provide evidence of these closures. In fact, the Claimant admits that areas where it fished "were not closed to fishing, however trajectories & alerts alarmed the entire fishing communities in those areas."⁷

Additionally, although the Claimant associates its business with the Northwestern coastal waters of Florida (like Port St. Joe), the Claimant's provided evidence which indicates that it conducts business primarily along Florida's east coast. Claimant's Federal Fisheries Permits for South [REDACTED] and [REDACTED] Commercial indicate that the [REDACTED] is home-ported in Miami and Ft. Lauderdale, FL respectively (both on Florida's eastern Coast). Additionally, the [REDACTED] permit is for a designated middle fishing zone, specifically "From 25 degrees N. lat. To 28 degrees N. lat.," which covers waters off of Florida's east coast.⁸

Additionally, the NPFC contacted the Claimant's reported dealers and learned that all were located on Florida's east coast [REDACTED] Miami, FL; [REDACTED] Inc., Hollywood, FL; and [REDACTED] Ft. Lauderdale, FL.⁹ A conversation with [REDACTED] revealed no immediate knowledge of decreased demand or decreased ability to catch seafood.¹⁰

Claimant's lost profits calculation does not demonstrate a loss of \$43,115.62. According to the lost profits calculation, the Claimant grossed \$82,641.07 in 2008, \$81,590.78 in 2009 and \$127,006.73 in 2010. These figures demonstrate growth through 2010, the year of the Deepwater Horizon oil spill. Claimant alleged that it should have earned more due to overall operational improvements and the typical high growth associated with the peak season. To

⁶ GCCF Denial Letter Re: Claimant's Emergency Advance Payment claim, dated 13 December 2010.

⁷ Claimant Additional Information to the NPFC, dated 13 April 2011.

⁸ United States of America Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service Federal Fisheries Permit for the [REDACTED] and the Owner: [REDACTED], Homeport: Miami, FL, issued 17 December 2009, expires 31 December 2010.

⁹ Florida Fish and Wildlife Conservation Commission, Commercial Fishing Landing Report, fax date 09 December 2010.

¹⁰ PHONECON between the NPFC and [REDACTED] on 02 April 2011. FOIA2011-3380-0002322

verify this assertion, the NPFC independently analyzed the Claimant's lost profits calculation against the Claimant's provided financial documentation.

This analysis revealed that the Claimant earned \$18,102.80 more in 2010 than reported on its lost profits calculation. Claimant's Landings Reports indicate that Claimant earned \$145,109.53 through 2010, not the \$127,006.73 that the Claimant reported. Based on this corrected figure, Claimant experienced a growth in earnings from 2009 to 2010 of over 55%, which further negates a demonstration of loss as alleged in 2010.

Because Claimant has failed to demonstrate (1) the alleged loss of profits in the amount of \$43,115.62, as claimed, or (2) that this alleged loss is due to injury or destruction or loss of real or personal property or a natural resource as a result of a discharge or substantial threat of a discharge of oil, this claim is DENIED.

Claim Supervisor 

Date of Supervisor's Review: *5/5/11*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

Enclosure (2): Summary of Documentation Provided

1. OSLTF Claim Form signed by Claimant and dated 18 March 2011
2. Invoice regarding loss profit damages claimed for GCCF for \$6,000
3. GCCF Form
4. GCCF Denial Letter Re: Claimant's Emergency Advance Payment claim, dated 13 December 2010
5. Spreadsheet detailing profit and loss figures from 01 January 2009 to 31 December 2010
6. Spreadsheet detailing monthly landing details from 2007-2010
7. Chart listing lost profit calculations based on 2008-2010 gross sales
8. spreadsheet listing financial data from 2008-2010
9. Fax from FL Fish and Wildlife Conservation Commission regarding commercial landings from January 2010 to 31 March 2011
10. Fax from FL Fish and Wildlife Conservation Commission regarding commercial landings from January 2007 to 30 November 2010
11. Release letter allowing GCCF materials to be viewed by NPFC
12. Email from [REDACTED]
13. Claimant Additional Information to the NPFC, dated 13 April 2011.
14. Bank statement detailing activity from 01 May 2009 to 31 May 2009
15. Bank statement detailing activity from 01 June 2009 until 30 June 2009
16. Bank statement detailing activity from 01 July 2009 to 31 July 2009
17. Bank statement detailing activity from 01 August 2009 to 31 August 2009
18. Bank statement detailing activity from 01 September 2009 to 30 September 2009
19. Bank statement detailing activity from 01 October 2009 to 31 October 2009
20. Bank statement detailing activity from 01 November 2009 to 30 November 2009
21. Bank statement detailing activity from 01 December 2009 to 31 December 2009
22. Bank statement detailing activity from 01 January 2010 to 31 January 2010
23. Bank statement detailing activity from 01 February 2010 to 28 February 2010
24. Bank statement detailing activity from 01 March 2010 to 31 March 2010
25. Bank statement detailing activity from 01 April 2010 to 30 April 2010
26. Bank statement detailing activity from 01 May 2010 to 31 May 2010
27. Bank statement detailing activity from 01 June 2010 to 30 June 2010
28. Bank statement detailing activity from 01 July 2010 to 31 July 2010
29. Bank statement detailing activity from 01 August 2010 to 31 August 2010
30. Bank statement detailing 01 September 2010 to 30 September 2010
31. Bank statement detailing activity from 01 November 2010 to 30 November 2010
32. Bank statement detailing activity from 01 December 2010 to 31 December 2010
33. Spreadsheet detailing profit and loss figures from 10 January 2010 to 10 December 2010
34. Letter from [REDACTED] to Department of Homeland Security
35. Map of oil spill traveling towards FL
36. Map of oil spill traveling towards FL
37. Letter from [REDACTED] to [REDACTED] requesting a determination of a commercial fishery failure
38. Announcement of declaration of Fishery Failure
39. Letter from [REDACTED] to [REDACTED] regarding FL response to oil spill
40. [REDACTED] request for Fishery Failure granted
41. Announcement of FL response to the BP oil spill
42. Order from [REDACTED] declaring a state of emergency
43. Permit for [REDACTED]
44. Federal Fisheries permit for [REDACTED]
45. Federal Fisheries license expiring 10 June 2010

U.S. Department
of Homeland
Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

NPFC CA MS 7100
US COAST GUARD

Fax: 202-493-6937

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim # N10036-0593
04 May 2011

Re: Claim Number: N10036-0593

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act of 1990, U.S.C. § 2701 et seq. (OPA) and the associated regulations at 33 C.F.R. Part 136, denies your claim, # N10036-0593, relating to the Deepwater Horizon oil spill. Please see the enclosed 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 N10036-0593.

Mail reconsideration requests to:

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

Sincerely,

[REDACTED]
U. S. Coast Guard
Claims Manager

Enclosures: (1) Claim Summary/Determination Form
(2) Summary of Documentation Provided by Claimant

Date	26 April 2011
Claim Number	N10036-0593
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
Claim Manager	[REDACTED]
Amount Requested	\$100,706.63

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 was 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.

CLAIM AND CLAIMANT

On 17 March 2011, [REDACTED] (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Funds Center (NPFC) for \$100,706.63 in lost profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.¹

Claimant offers wealth, risk and asset management services to LA customers through his affiliation with [REDACTED] and [REDACTED] as a Licensed [REDACTED]. In this capacity, the Claimant receives commissions reported on Form 1099-MISC's. In addition to this form of income, the Claimant is also the sole shareholder of an accountancy firm, the [REDACTED]. Claimant indicated that he finds clients for the sale of his wealth, risk and management services through the CPA firm; however, the Claimant also stated that any reduction in income from Rigby Financial Group is not subject of this claim submission.²

Claimant entered into a registered representative contract with [REDACTED] Inc. on 28 September 2007 and began selling financial products on 18 January 2008. Claimant indicated that 2008 was a "building" year and 2009 showed "exponential growth, despite the national recession."³ Claimant alleged that as a result of the Deepwater Horizon oil spill, he lost commissions totaling \$100,706.63.

APPLICABLE LAW

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a). Damages include the loss of profits or impairment of earning capacity due to the injury,

¹ Claimant's OSLTF claim form, dated 17 March 2011.

² Claimant's response to NPFC's request for information, dated 12 April 2011. The reduction in income from [REDACTED] Financial Group is separately claimed and presented to the NPFC as N10036-0591.

³ Id.
09/14/11

destruction or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant. 33 U.S.C. § 2702(b)(2)(E).

The OSLTF, which is administered by the NPFC, 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. With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

Pursuant to the claims regulations, 33 C.F.R. § 136.233, a claimant must establish the following to prove loss of profits or impairment of earning capacity:

- (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.
- (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.

DETERMINATION OF LOSS

Claimant's Submission

To support the claim, Claimant provided various documents including financial statements and a claim calculation prepared by a consultant. Upon receipt of the initial claim submission, the NPFC requested additional information and documentation regarding the background of the business activities and supporting documentation including commission statements. Documentation presented by Claimant is listed in Enclosure (2).

On 02 November 2010, Claimant presented a six-month Emergency Advance Payment claim for \$60,787.00 in lost profits or earnings to the GCCF. Claimant was assigned GCCF Claimant ID # [REDACTED] and Claim # [REDACTED]. On 12 November 2010, Claim [REDACTED] was denied by the GCCF.⁴

On 17 March 2011, Claimant presented this claim to the NPFC for \$100,706.63 in lost profits and impairment of earnings capacity. On the same day, Claimant also presented a Full Review Final Payment claim (Claim [REDACTED]) for \$102,787.22 in lost profits and earnings to the GCCF.

On 22 April 2011, Claim [REDACTED] was denied by the GCCF.⁵

The NPFC notes that a related claim, N10036-0591 for [REDACTED] is under review at the NPFC. Although [REDACTED] claim and the claim for [REDACTED] were consolidated by the GCCF, the NPFC addresses these claims separately because they involve separate income streams allegedly impacted by the Deepwater Horizon oil spill.

NPFC Determination

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. The NPFC considered all documentation presented by Claimant.

This claim is denied because Claimant failed to demonstrate (1) that he has an alleged loss in the amount of \$100,706.63 as claimed, and (2) the correlation, if any, between his alleged loss and the Deepwater Horizon oil spill.⁶

Claimant alleged that he lost \$100,787.22 in commission as a result of the Deepwater Horizon oil spill. Claimant computed this loss through applying a growth rate of 168% to his projected 2010 gross sales. Claimant's actual gross sales are documented as \$43,268.95 in 2008, \$116,159.12 in 2009, and \$114,465.32 in 2010.⁷ These numbers simply do not support a 168% growth rate into the beginning of 2010. Additionally, trending from 2008 to 2009 should not be applicable to 2010 since 2008 was described as a "building" year by the Claimant so it is not representative of a typical year.

The Claimant's Year to Year Income from Tax Forms provided were as follows:

Gross Income from	2008	2009	2010
[REDACTED] (Schedule C)	\$25,628	\$86,179	(not provided)
Partnerships (Schedule E)	\$23,030	\$25,700	(not provided)
1040 Wages (W-2s) [REDACTED]	\$34,000	\$30,132	\$12,874

⁴ GCCF Denial Letter Re: Claimant's EAP claim, dated 12 November 2010.

⁵ GCCF Denial Letter Re: Claimant's Final Payment claim, dated 22 April 2011.

⁶ Additionally, under 33 C.F.R. § 136.103(a), all claims for removal costs or damages must be presented first to the responsible party (RP). When a claim is not settled by any person by payment within 90 days after the date upon which the claim was presented, the claimant may elect to present the claim to the OSLTF. 33 C.F.R. § 136.103(c)(2). Although Claimant did not present the lost profits and earnings claim for \$100,706.63 (to the RP first) in accordance with 33 C.F.R. § 136.103(a), this presentment defect was cured on 22 April 2011, the date the GCCF denied Claimant's Full Review Final claim for \$102,787.22.

⁷ Claimant's Lost Profits Calculation.

F&D Advisors

\$ 1,877

\$0.00

(not provided)

Additionally, the Claimant's 2009 and 2010 IRS Form 1099-MISC from [REDACTED] Services lists non-employment compensation in the amounts of \$122,814.37 and \$118,370.31, respectively. Although this information supports a marginal loss, the Claimant failed to provide evidence demonstrating the correlation to the Deepwater Horizon incident.

On his OSLTF Claim Form, Claimant stated that "...many of our clients' businesses have suffered direct financial losses as they are part of the following industries: offshore marine services, hospitality, tourism and many other professions." The NPFC requested documentation from the Claimant that would provide specific examples of the services and income directly impacted by the incident. This documentation has not been provided.

This claim is denied because the Claimant failed to demonstrate (1) that he has an alleged loss of \$100,706.63 as claimed, and (2) the correlation, if any, between his alleged loss and 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: [REDACTED]

Date of Review: *5/4/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

Summary of Documentation Provided by Claimant N10036-0593

1. OSLTF claim form dated 17 March 2010.
2. Letter from Claimant authorizing release of documentation from GCCF, dated 16 March 2011.
3. Letter of explanation from [REDACTED], consultant, dated 15 March 2011.
4. Claimant's lost profit calculation.
5. Claimant 2008, 2009, and 2010 1099-MISC's.
6. GCCR Invoice.
7. 2008, 2009, and 2010 monthly income breakdown (P&L's).
8. Claimant's letter to the GCCF, dated 18 November 2010.
9. Claimant's profit and loss statements for the following periods:
 - 1 January 2010 through 22 October 2010
 - January 2010 through April 2010
 - May 2010 through September 2010
 - 1 January 2009 through 22 October 2009
 - 1 January 2008 through 22 October 2008
10. 2008 and 2009 Schedule Cs of Income Tax Returns.
11. Deficiency letter from GCCF to Claimant, dated 23 March 2011.
12. Document request from GCCF, dated 4 February 2011.
13. GCCF claim packet dated 18 November 2010.
14. Denial letter from GCCF, dated 15 November 2010.
15. 2008 and 2009 1040 Individual Income Tax Return filings.
16. 2009 and 2010 Earnings Statements and Form W-2's from [REDACTED]
17. Letter from Claimant dated 14 April 2011.
18. Commission Statements from [REDACTED], for [REDACTED] from 2008, 2009, 2010 and Q1 2011.
19. "Finra" Broker Report for [REDACTED]
20. Claimant's response to NPFC's request for information, dated 12 April 2011.
21. Claimant's response to NPFC's request for information, dated 15 April 2011.
22. [REDACTED]. Contract, signed 28 September 2007.

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



5890
4/14/2011

BY MAIL AND EMAIL



RE: Claim Number: N10036-0594

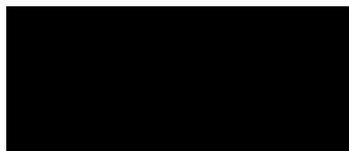


The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq. (OPA 90) and the associated regulations, 33 C.F.R. Part 136, denies payment on claim # N10036-0594. Please see the enclosed Claim Summary/Determination Form for further explanation.

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 N10036-0594.

Mail reconsideration requests to:

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



Claims Manager
U.S. Coast Guard

Encl: Claim Summary / Determination Form

09/14/11

FOIA2011-3380-00002332

CLAIM SUMMARY / DETERMINATION FORM

Date	: April 14, 2011
Claim Number	: N10036-0594
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$30,000.00

FACTS:

On or about April 20, 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 was 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 August 23, 2010, the Gulf Coast Claims Facility (GCCF) began accepting and adjudicating claims for certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT:

On March 19, 2011, the National Pollution Funds Center (NPFC) received a claim from Carroll Wilson (Claimant) for lost profits and earnings in the amount of \$30,000.00. The Claimant asserted that his earnings decreased as result of the Deepwater Horizon incident. As stated by the Claimant, he was working offshore for [REDACTED] when the oil spill occurred and was laid off shortly after because "work got slow."¹

The Claimant filed an emergency advance payment (EAP), interim, and final claim with the GCCF and was given claim [REDACTED]. The EAP claim was denied on October 23, 2010 followed by the interim/final claim denial on March 9, 2011. A copy of both denial letters were provided by the Claimant.

APPLICABLE LAW:

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a). Damages include the loss of profits or impairment of earning capacity due to the injury, destruction or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant. 33 U.S.C. § 2702(b)(2)(E).

The OSLTF, which is administered by the NPFC, 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. With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

Pursuant to the claims regulations, 33 C.F.R. § 136.233, a claimant must establish the following to prove loss of profits or impairment of earning capacity:

- (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.
- (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.

DETERMINATION OF LOSS:

Claimant's Submission

To support the claim, the Claimant submitted the following documents:

- NPFC OSLTF Claim form, received March 18, 2011;
- 2009 and 2010 W-2s;
- 2009 and 2010 Individual Income Tax Returns;
- 2010 Schedule C (Form 1040)

NPFC Determination

Under 33 CFR 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 CFR § 136.233, a claimant must establish loss of profits or impairment of earning capacity. The NPFC considered all the documentation submitted by the Claimant.

On March 29, 2011 the NPFC contacted [REDACTED] and spoke to the Human Resources Director [REDACTED] who stated that no employees at [REDACTED] were terminated or

laid off due to the Deepwater Horizon incident. After the discussion with [REDACTED] the NPFC contacted the Claimant and informed him that he must provide proof that his lay off was due to the injury, destruction or loss of real property, personal property, or natural resources, and the NPFC allowed him one (1) week to provide such documentation. The Claimant contacted the NPFC on April 13, 2011 to determine if the NPFC received a fax from [REDACTED] stating why the Claimant was laid off. To date, the NPFC has not received a fax from [REDACTED]. The NPFC offered to give the Claimant additional time to acquire the document from Parker Drilling but the Claimant stated that he did not want to.

As per 33 C.F.R. § 136.9, persons submitting false claims or making false statements in connection with claims under this part may be subject to prosecution under Federal law, including but not limited to 18 U.S.C. 287 and 1001. In addition, persons submitting written documentation in support of claims under this part which they know, or should know, is false or omits a material fact may be subject to a civil penalty for each claim. If any payment is made on the claim, the claimant may also be subject to an assessment of up to twice the amount claimed. These civil sanctions may be imposed under the Program Fraud Civil Remedies Act, 31 U.S.C. 3801–3812, as implemented in 49 C.F.R. § 31.

After reviewing the documentation provided by the Claimant and after discussions with [REDACTED] Drilling, the NPFC has determined that the Claimant failed to demonstrate that his alleged loss, had there been one, was due to the injury, destruction or loss of real property, personal property, or natural resources. Additionally, the Claimant failed to provide a signature on his OSLTF claim form and therefore has failed to meet his burden in accordance with 33 CFR § 136.105 (c) Each claim must be signed in ink by the claimant certifying to the best of the claimant's knowledge and belief that the claim accurately reflects all material facts.

Based on the foregoing information, this claim is denied.

Claim Supervisor: [REDACTED]

Date of Supervisor's review: *4/14/11*

Supervisor Action: *Denial approved*

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

Fax: 202-493-6872

CERTIFIED MAIL - RETURN RECEIPT REQUESTED
Number: [REDACTED]

5890/DWHZ
Claim# N10036-0595
14 April 2011



RE: Claim Number: N10036-0595

Dear [REDACTED]

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 claim number N10036-0595 involving the Deepwater Horizon oil spill. Please see the enclosed 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 N10036-0595.

Mail reconsideration requests to:

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

Sincerely,



U. S. Coast Guard
Claims Manager

Enclosure: Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00002336

CLAIM SUMMARY / DETERMINATION FORM

Date	12 April 2011
Claim Number	N10036-0595
Claimant	[REDACTED]
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Earning Capacity
Claim Manager	[REDACTED]
Amount Requested	\$17,600.00

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 was 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.

CLAIM AND CLAIMANT

On 18 March 2011, [REDACTED] Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form to the National Pollution Funds Center (NPFC). The OSLTF claim form alleged \$17,600.00 in lost profits and earning capacity resulting from the Deepwater Horizon oil spill.

In January 2010, the Claimant started working as a part-time housekeeper, cleaning rental and vacation properties on St. George Island in Franklin County, Florida.¹ Claimant worked directly for [REDACTED], who in turn contracted to provide housekeeping services exclusively for a local company known as [REDACTED]. Claimant only worked on weekends while employed by [REDACTED] and allegedly received \$250.00 in cash per weekend as compensation for her services.³

Claimant asserted that she was "laid off" by [REDACTED] on 04 May 2010 due to a lack of business caused by the Deepwater Horizon oil spill.⁴ The Claimant's requested amount encompasses the loss of \$9,900 between May 2010 and February 2011, plus \$7,700 in prospective losses for March 2011 through December 2011. At the time Claimant began working for [REDACTED] the Claimant concurrently held a position with the [REDACTED] which she continued to work until mid-June 2010. The Claimant then commenced employment with the [REDACTED], where she continues to work at present.⁵

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 waters or adjoining shorelines or the exclusive economic zone, as described in Section 2702(b) of OPA.

¹ Claimant hardship letter to the NPFC dated 18 March 2011.

² PHONECON between NPFC and [REDACTED] on 25 March 2011.

³ Claimant hardship letter to the NPFC dated 18 March 2011; Claimant letter in response to NPFC request for additional information, received on 04 April 2011.

⁴ Id.

⁵ Claimant letter in response to NPFC request for additional information, received on 04 April 2011.

The OSLTF which is administered by the NPFC, is available, pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136, to pay claims for uncompensated damages. 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.
- (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.

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

In support of her claim, Claimant presented the following documentation to the NPFC:

- OSLTF claim form, signed by Claimant and dated 18 March 2011;
- Claimant letter of hardship to the NPFC, dated 18 March 2011;
- Letter of Verification of Income from [REDACTED], undated;
- Letter of Verification of 2010 Wages from [REDACTED] undated;
- W-2 from The [REDACTED] Foundation for 2010;
- W-2 from the [REDACTED] for 2010;
- GCCF Claim Form;
- Earnings statements from the [REDACTED] for pay periods ending 07 January 2010 through 10 June 2010;
- Earnings statements from [REDACTED] and [REDACTED] for pay periods ending 19 June 2010 through 18 December 2010;
- Federal income tax return (Form 1040s) for 2008, 2009 and 2010; and
- Letter in response to request for additional information, received on 04 April 2011.

On 29 November 2010, the Claimant presented a Final Payment claim to GCCF in the amount of \$17,600.00.⁶ GCCF assigned Claimant ID [REDACTED] and Claim [REDACTED], and subsequently denied the claim on 09 March 2011.⁷

Claimant then filed this claim for \$17,600.00 in lost profits and earnings capacity with the NPFC.

NPFC Determination

The claim is denied. 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. The NPFC considered all documentation presented by Claimant.

Claimant has not proven that she suffered a loss resulting from the Deepwater Horizon oil spill. Claimant's alleged damages stem solely from a loss of available housekeeping jobs with [REDACTED] and vicariously, [REDACTED]. The Claimant began working in this capacity in January 2010, and is therefore unable to provide historical earnings data to show what she would have made in the absence of the oil spill.

The loss calculations provided by the Claimant suggest that she would have remained steadily employed by [REDACTED] throughout the remainder of 2010, earning \$1,100 per month through November.⁸ However, the fact that the Claimant only earned \$2,500 from January through April 2010 belies that estimation, as does the part-time, supplemental nature of the Claimant's work.⁹ Claimant has also not proven that her release from part-time employment was due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil, as opposed to other extraneous economic factors or business decisions.

This claim is denied because (1) the Claimant failed to meet her burden to demonstrate that her alleged financial loss was due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil and (2) the Claimant's calculation of her alleged loss is not supported by the actual information provided and therefore the Claimant has failed to meet her burden in proving her alleged loss in the amount claimed.

Claim Supervisor [REDACTED]

Date of Supervisor's Review: 4/14/11

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

⁶ GCCF Claim Submission Form included in Claimant's original submission package.

⁷ GCCF denial of interim/final payment claim, dated 09 March 2011.

⁸ Letter from Claimant to NPFC in response to request for additional information, received on 04 April 2011 (see lost profits calculation). Claimant's damages calculation also encompasses prospective losses for all of 2011; prospective losses are non-compensable under OPA per the OSLTF claim regulations at § 136.235.

⁹ In a phone conversation dated 25 March 2011, [REDACTED] stated that she would contact Claimant whenever extra work was available, suggesting that her demand for Claimant's services was sporadic from the outset.

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

5890
3/22/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]



RE: Claim Number: N10036-0596

Dear [REDACTED]

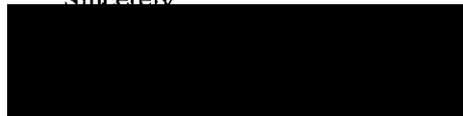
The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq. (OPA) and the associated regulations at 33 C.F.R. Part 136, denies payment on claim number N10036-0596 involving the Deepwater Horizon oil spill. Please see the enclosed Claim Summary/Determination 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 N10036-0596.

Mail reconsideration requests to:

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

Sincerely,



Claims Manager
U.S. Coast Guard

Encl: Claim Summary / Determination Form

09/14/11

FOIA2011-3380-00002340

CLAIM SUMMARY / DETERMINATION FORM

Date	: 3/22/2011
Claim Number	: N10036-0596
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$10,000.00

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 was 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 claims for certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On March 19 2011, [REDACTED] (Claimant) presented a lost profits & earnings claim in the amount of \$10,000.00 to the National Pollution Funds Center (NPFC) for reimbursement. Claimant provided a blank OSLTF Claim Form with the exception of the amount requested, name and address, date and signature, and indicated he had presented to the RP but was denied. Claimant has failed to provide any documentation other than his 2009 and 2010 W2s nor has the Claimant explained how she derived the amount requested or what it was for.

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

The OSLTF which is administered by the NPFC, is available, pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136, to pay claims for uncompensated damages. 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.

- (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.

DETERMINATION OF LOSS

Claimant's Submission

To support the claim, the Claimant submitted the following documentation:

- NPFC OSLTF Claim form, dated March 18, 2011;
- 2009 and 2010 W2s from [REDACTED]

NPFC Determination

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. § 136.233, a Claimant must establish loss of profits or impairment of earning capacity. The NPFC considered all the documentation submitted by the Claimant.

The Claimant has failed to provide sufficient documentation and explanation for the amount requested. The Claimant did provide a copy of his 2009 and 2010 W2s for the City of Crestview although she has not explained the nature of his claim, what he is seeking and why, or even how she arrived at the loss of profits he is claiming in the amount of \$10,000.00. This claim is denied as the Claimant has failed to meet her burden to substantiate his claim and demonstrate his 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 

Date of Supervisor's review: *3/22/11*

Supervisor Action: *Denial approved*

Supervisor's Comments:

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

Fax: 202-493-6937

BY MAIL AND EMAIL

5890
5/11/2011

RE: Claim Number: N10036-0597

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act of 1990, U.S.C. § 2701 et seq. (OPA) and the associated regulations at 33 C.F.R. Part 136, denies payment on the claim number N10036-0597 involving Deepwater Horizon. 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 N10036-0597.

Mail reconsideration requests to:

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

Sincerely, [REDACTED]

[REDACTED]
Claims Manager
U.S. Coast Guard

Encl: (1) Claim Summary/Determination Form

09/14/11

FOIA2011-3380-00002344

CLAIM SUMMARY / DETERMINATION FORM

Date	: May 10, 2011
Claim Number	: N10036-0597
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$58,000.00

FACTS:

On or about April 20, 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 was 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 August 23, 2010, the Gulf Coast Claims Facility (GCCF) began accepting and adjudicating claims for certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On March 19, 2011, [REDACTED] presented a lost profits & earnings claim on behalf of his company [REDACTED] dba [REDACTED] (Claimant), in the amount of \$58,000.00 to the National Pollution Funds Center (NPFC) for reimbursement.

Based on the information provided by the Claimant, the NPFC understands that the Claimant is the co-owner of [REDACTED] with [REDACTED]. In response to a question posed by the NPFC in regards to the basis of the claim, the Claimant stated, "2010 1st Quarter media coverage of the real estate industry recovery brought investors and homeowners security in purchasing real estate and showed increasing valuations for property in the Florida coastal communities. This trend was affected on or about April 20, 2010, when the explosion of Deepwater Horizon incident in Gulf waters created a flow of crude oil and chemical dispersants which resulted in mass media coverage saturating the national news reporting networks as well as local news reporting agencies and networks.

This wellhead leak directly affected the market environment in the Northwest Florida real estate sales and valuations. This event caused a chain reaction that resulted in a depressed real estate market going forward. The evidence of this depression is public knowledge. All businesses are affected by the chain reaction and many sustained losses."

The Claimant filed an Interim claim with the GCCF and was given claimant id # [REDACTED]. The Interim claim was denied by the GCCF on March 9, 2011.

APPLICABLE LAW:

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a). Damages include the loss of profits or impairment of earning capacity due to the injury,

destruction or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant. 33 U.S.C. § 2702(b)(2)(E).

The OSLTF, which is administered by the NPFC, 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. With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

Pursuant to the claims regulations, 33 C.F.R. § 136.233, a claimant must establish the following to prove loss of profits or impairment of earning capacity:

- (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.
- (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.

DETERMINATION OF LOSS

Claimant's Submission

To support the claim, the Claimants submitted the following documentation:

- NPFC Optional OSLTF Claim Form dated 18 March 2011;
- Letter from [REDACTED] of [REDACTED] accompanying claim submission;
- GCCF Interim Payment Claim Form;
- Denial Letter from GCCF dated 9 March 2011 for Interim/ Final Payment;

- 2008, 2009 and 2010 Income Tax Returns for [REDACTED] (S-Corporation);
- [REDACTED] Articles of Incorporation;
- Various Business and Personal Licenses as follows:
 - Real Estate Broker License for [REDACTED]
 - Business License for [REDACTED]
 - Real Estate Sales Associate License for [REDACTED]
- [REDACTED] Tax Receipt;
- Various Maps of local area;
- HUD-1 Settlement Forms for all transactions completed in 2008, 2009, and 2010;
- 2010 Listing agreements and map identifying coastline properties;
- 2010 Buyer's Representation Documents.

NPFC Determination

Under 33 CFR 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 CFR § 136.233, a claimant must establish loss of profits or impairment of earning capacity. The NPFC considered all the documentation submitted by the Claimant.

The Claimant stated that the oil spill negatively impacted housing sales in the market but provided no proof and stated that it was, "public knowledge". It appears as though the Claimant was relying on 2010 1st Quarter media coverage of the real estate industry recovery when forecasting profits in 2010. To receive compensation from the OSLTF for lost profits and earnings, the Claimant must establish that the loss of profits and earnings was due to the injury, destruction or loss of real property, personal property or natural resource in order to have an OPA compensable damage.

Based on the evidence provided, it is impossible for the NPFC to determine what costs are associated with the Claimant's alleged loss of \$58,000.00. While the Claimant provided income tax documents showing a decline from 2009 to 2010, the mere reduction in annual earnings is not enough to demonstrate the cause of such a reduction without further details. Also, the Claimant has not provided documentation demonstrating if any of the properties were under contract at the time of the incident and whether any of the intended buyers canceled contracts along with why such contract cancellations occurred, if any had occurred.

This claim is denied because the Claimant has failed to meet the burden to demonstrate (1) that there was a loss of profits in the amount alleged and (2) that the loss was due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil, this claim is DENIED.

Claim Supervisor: [REDACTED]

Date of Supervisor's review: 5/11/11

Supervisor Action: *Denial approved*

U.S. Department
of Homeland
Security

United States
Coast Guard



Director
United States Coast Guard
National Pollution Funds Center

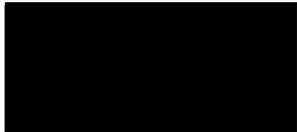
NPFC CA MS 7100
US COAST GUARD



CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]

5890/DWHZ
Claim # N10036-0598
01 June 2011



Re: Claim Number: N10036-0598

Dear [REDACTED]

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 claim number N10036-0598 involving the Deepwater Horizon oil spill. Please see the enclosed 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 N10036-0598.

Mail reconsideration requests to:

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

Sincerely,



U.S. Coast Guard

Enclosure: Claim Summary/Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	N10036-0598
Claimant	Claimant
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$5,207.00

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 was 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 claims for certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On 19 March 2011, [REDACTED] (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$5,207.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.

The Claimant owns and manages two condo units in the [REDACTED] in Orange Beach, AL. Claimant asserted that he lost earnings from both rental units due to the Deepwater Horizon oil spill.¹ The Claimant provided comprehensive documentation of rental reservations and cancellations, as well as financial documentation to substantiate his claim.

Prior to the formation of the GCCF, the Claimant received payment from BP in the amount of \$6,050.00.² On 1 September 2010, the Claimant filed an Emergency Advance Payment (EAP) claim of \$11,938.45 with the GCCF for lost profits and earnings.³ Claimant was assigned GCCF Claimant ID # [REDACTED] and Claim [REDACTED]. Claimant was paid \$12,000 by the GCCF.⁴ Claimant additionally filed Interim and Final claims with the GCCF.⁵ On 6 March 2011, the GCCF sent the Claimant a determination letter dictating that the Claimant had no uncompensated loss for the Interim claim and offered the Claimant a Final offer of \$25,000.00.⁶

Claimant asserted that the GCCF's calculations for the Interim claim were flawed. The GCCF multiplied the Claimant's calculated lost rentals by 76.14%, which the letter explained is performed to account for saved or discontinued expenses.⁷ Claimant indicated that he was told by the GCCF that this percentage decrease was used to reflect rental management fees, which typically amount to around 24%.⁸ Claimant stated that since he manages the properties, he should have gotten 100% of the lost rental amount. Claimant's calculated damages are the 24% of lost rentals earnings not compensated by the GCCF.

¹ Letter of claim explanation from Claimant to "whom it may concern" at the NPFC, dated 19 March 2011.

² GCCF Determination Letter on Interim Payment/Final Payment Claim, dated 6 March 2011.

³ Report from the GCCF, dated 20 May 2011.

⁴ GCCF Notice of Determination for Emergency Advance Payment.

⁵ Report from the GCCF, dated 20 May 2011.

⁶ GCCF Determination Letter on Interim Payment/Final Payment Claim, dated 6 March 2011.

⁷ Id.

⁸ Letter of claim explanation from Claimant to "whom it may concern" at the NPFC, dated 19 March 2011.

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

The OSLTF which is administered by the NPFC, is available, pursuant to 33 U.S.C. § 2712(a)(4) and § 2713 and the OSLTF claims adjudication regulations at 33 C.F.R. Part 136, to pay claims for uncompensated damages. 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.
- 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.

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

To support the claim, the Claimant submitted the following documentation:

- Optional OSLTF claim form for Claimant, dated 18 March 2011;
- Letter of claim explanation from Claimant to "whom it may concern" at the NPFC, dated 19 March 2011;

- GCCF Determination Letter on Interim Payment/Final Payment Claim, dated 6 March 2011;
- GCCF Interim Payment Claim Form, dated 30 December 2010;
- Federal Tax Returns from 2008, 2009, and 2010, including Schedule C's;
- [REDACTED]s from 2008 and 2009;
- Rental reservations and cancellations for [REDACTED] 804 and 505 from 2008, 2009, and 2010;
- Checks from Claimant to two renters for deposit refunds;
- Monthly rental statements from 2008 through 2010 for [REDACTED] 804 and 505;
- Answers in response to the NPFC's request for additional information, dated 20 April 2011;
- Email from Claimant to NPFC Representative on 11 May 2011;

Claimant seeks a total of \$5,207.00 in loss of earnings allegedly resulting from the Deepwater Horizon oil spill.

NPFC Determination

The claim is denied. 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. The NPFC considered all documentation presented by the Claimant.

The claim is denied because, based on a review of the documentation provided and the Owner's admissions, the NPFC concludes that the Claimant has already been fully compensated by the RP for all potential losses sustained. The GCCF has already paid the Claimant \$18,500.00, which exceeds the potential losses for the Claimant as calculated by the NPFC based on the supporting documentation provided.

Claim Supervisor: [REDACTED]

Date of Supervisor's Review: *6/1/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments:

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

Fax: 202-493-6937
5890
3/28/2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Number: [REDACTED]



RE: Claim Number: N10036-0599

Dear [REDACTED]

The National Pollution Funds Center (NPFC), in accordance with 33 CFR Part 136, denies payment on the claim number N10036-0599 involving Deepwater Horizon. Please see the attached Claim Summary / Determination Form for an explanation regarding the denial.

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 N10036-0599.

Mail reconsideration requests to:

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

Sincerely, [REDACTED]

Claims Manager
U.S. Coast Guard

CLAIM SUMMARY / DETERMINATION FORM

Date	: March 28, 2011
Claim Number	: N10036-0599
Claimant	: [REDACTED]
Type of Claimant	: Private (US)
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [REDACTED]
Amount Requested	: \$2,350.00

FACTS:

On or about April 20, 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 was 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 August 23, 2010, the Gulf Coast Claims Facility (GCCF) began accepting and adjudicating claims for certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On March 21, 2011, [REDACTED] Claimant) presented a lost profits & earnings claim in the amount of \$2,350.00 to the National Pollution Funds Center (NPFC) for reimbursement. The Claimant asserted that he was unable to coach tennis during the summer as he has from 2005-2009. The Claimant's statement stated that he contacted every single club in the Sarasota, FL area and he was denied employment at each facility and he stated that he believes it was due to reduced tourism caused by the oil spill since he was able to find work the last four summers.

The Claimant provided no information regarding his claim with the GCCF but stated 90 days had passed since his submission.

APPLICABLE LAW:

The Oil Pollution Act of 1990 (OPA) provides that each responsible party for a vessel or facility from which oil is discharged into or upon the navigable waters or adjoining shorelines or exclusive economic zone is liable for removal costs and damages. 33 U.S.C. § 2702(a). Damages include the loss of profits or impairment of earning capacity due to the injury, destruction or loss of real property, personal property, or natural resources, which shall be recoverable by any claimant. 33 U.S.C. § 2702(b)(2)(E).

The OSLTF, which is administered by the NPFC, 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. With certain exceptions a claim must first be presented to the responsible party. 33 U.S.C. § 2713(a). If the claim is either denied or not settled by any person by payment within 90 days after the date on which it was presented, the claimant may elect to commence an action in court or present the claim to the OSLTF. 33 U.S.C. § 2713(c).

Pursuant to the claims regulations, 33 C.F.R. § 136.233, a claimant must establish the following to prove loss of profits or impairment of earning capacity:

- (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.
- (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.

DETERMINATION OF LOSS

Claimant's Submission

To support his claim, the Claimant submitted the following documentation:

- NPFC Optional OSLTF Claim Form not dated;
- Personal narrative describing the claim;
- Paypal account history from July 13, 2009 to August 24, 2009;
- Herald Tribune newspaper article dated June 9, 2010;
- Statement on how the spill caused a loss of income. Includes list of tennis clubs the Claimant was denied employment;
- 2010 W-2

NPFC Determination

Under 33 CFR 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 CFR § 136.233, a claimant must establish loss of profits or

impairment of earning capacity. The NPFC considered all the documentation submitted by the Claimant.

The claim is denied because the evidence provided by Claimant, as described above, does not demonstrate that that the Claimant (1) has incurred a loss of profits or (2) that the alleged loss (if one had occurred) was due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil.

Claim Supervisor: 

Date of Supervisor's review: *3/28/11*

Supervisor Action: *Denial approved*

Supervisor's Comments: