

U.S. Department of  
Homeland Security

**United States  
Coast Guard**

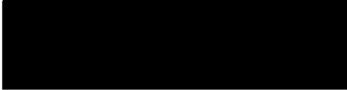


Director  
National Pollution Funds Center  
United States Coast Guard

NPFC CA MS 7100  
US COAST GUARD  
4200 Wilson Blvd. Suite 1000  
Arlington, VA 20598-7100  
Staff Symbol: (CA)  
Phone: 1-800-280-7118  
E-mail:  
arl-pf-npfcclaimsinfo@uscg.mil  
Fax: 202-493-6937

**CERTIFIED MAIL – RETURN RECEIPT REQUESTED**  
Number: 7010 1060 0001 7082 8225

5890/DWHZ  
Claim # N10036-1308  
18 August 2011

Laura Willis Flaherty  


Re: Claim Number: N10036-1308

Dear Ms. Flaherty:

The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq. (OPA) and the associated regulations at 33 C.F.R. Part 136, denies payment on the claim number N10036-1308 involving the Deepwater Horizon oil spill. Please see the attached Claim Summary/Determination Form for further explanation.

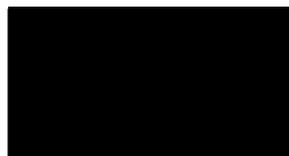
You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claim. However, if you find that you will be unable to gather particular information within the time period, you may include a request for an extension of time for a specified duration with your reconsideration request.

Reconsideration of the denial will be based upon the information provided. A claim may be reconsidered only once. Disposition of that reconsideration in writing will constitute final agency action. Failure of the NPFC to issue a written decision within 90 days after receipt of a timely request for reconsideration shall, at the option of the claimant, be deemed final agency action. All correspondence should include claim number N10036-1308.

Mail reconsideration requests to:

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

Sincerely,



Division  
National Pollution Funds Center  
U.S. Coast Guard

Enclosure: Claim Summary/Determination Form

## CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1308
Claimant	Ms. Laura Flaherty
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earning Capacity
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 15 August 2011, Ms. Laura Flaherty (Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$5,000.00 in loss of profits and impairment of earnings capacity resulting from the Deepwater Horizon oil spill.<sup>1</sup>

Claimant alleged that she had earned income "fishing, shrimping and crabbing since 1970," and makes about \$5,000.00 per year.<sup>2</sup> Claimant seeks \$5,000.00 in loss of profits damages, stating that she has not earned any income since "seafood died down" following the oil spill.<sup>3</sup>

### ***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

<sup>1</sup> Letter from Claimant to NPFC, undated.

<sup>2</sup> Letter from Claimant to NPFC, undated.

<sup>3</sup> Letter from Claimant to NPFC, undated.

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:

- Copy of GCCF Deficiency Denial Letter on Interim Payment/Final Payment Claim, Claimant ID 1055728, 30 July 2011;
- Letter from Claimant to NPFC, undated.

Prior to presentation to the NPFC, Claimant presented an Interim Payment/Final payment Claim to the RP/GCCF, and was assigned Claimant ID 1055728 and claim # 9209487.<sup>4</sup> This claim was denied on 30 July 2011.<sup>5</sup>

On 15 August 2011, Claimant presented a claim for loss of profits and earnings capacity to the NPFC in the amount of \$5,000. This NPFC determination shall address all claims for lost profits and wages presented to the RP/GCCF to the extent now presented to the NPFC, in the amount of \$5,000.00.

### **NPFC Determination**

Under 33 U.S.C. § 2702(b)(2)(E) and 33 C.F.R. Part 136, a Claimant must prove that her loss of income was due to injury, destruction or loss of real or personal property or of a natural resource as a result of a discharge or substantial threat of a discharge of oil. Under 33 C.F.R. § 136.105(a) and § 136.105(e)(6), the Claimant bears the burden of providing to the NPFC all evidence, information, and documentation deemed necessary by the Director, NPFC, to support her claim.

<sup>4</sup> Optional OSLTF Claim Form dated 13 May 2011

<sup>5</sup> GCCF Denial Letter provided by Claimant.

In order to prove a claim for loss of profits and earnings capacity, the Claimant must demonstrate (1) that she has sustained a financial loss, and (2) that there is a causal link between the Claimant's loss and the Deepwater Horizon oil spill.

This Claimant has not provided documentation, such as a fishing license or trip tickets, that would indicate that she actually earned income fishing before the oil spill. Furthermore, the Claimant has not provided any documentation to show that she lost income after the oil spill. Therefore, the Claimant has failed to demonstrate that she either sustained a financial loss or that she was somehow affected by the Deepwater Horizon oil spill.

This claim is denied because the Claimant failed to meet her burden to demonstrate (1) that she has an alleged loss of \$5,000.00 as claimed, and (2) that the alleged loss is due to the injury, destruction or loss of property or natural resources as a result of a discharge or substantial threat of a discharge of oil.

  
Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *8/18/11*

Supervisor's Action: *Denial approved*

Supervisor's Comments: