

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
United States Coast Guard
National Pollution Funds Center

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CERTIFIED MAIL - RETURN RECEIPT REQUESTED
Number: 7011 1150 0000 4636 4995

5890/DWHZ
12 October 2011

Juan Perez Hernandez


RE: Claim Number: N10036-1359

Dear Mr. Hernandez:

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 N10036-1359 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 N10036-1359.

Mail reconsideration requests to:

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

Sincerely,


Claims Adjudication Division
National Pollution Funds Center
U.S. Coast Guard

Enclosure: Claim Summary/Determination Form

CLAIM SUMMARY / DETERMINATION FORM

Claim Number	N10036-1359
Claimant	Juan Perez Hernandez
Type of Claimant	Private (US)
Type of Claim	Loss of Profits and Impairment of Earnings Capacity
Amount Requested	\$14,040.00

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 01 September 2011, Juan Perez Hernandez (Claimant) presented an optional Oil Spill Liability Trust Fund (OSLTF) claim form seeking \$14,040.00 for loss of profits and impairment of earnings capacity to the National Pollution Funds Center (NPFC) alleging damages resulting from the Deepwater Horizon oil spill.

The Claimant works as an oyster fisherman for various employers in the Gulf of Mexico.¹ The Claimant alleged that he lost wages and impairment of earnings capacity as a result of his inability to harvest oysters due to the Deepwater Horizon oil 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 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 Letter explaining employment dated 19 April 2011.

² Optional OSLTF claim form undated.

- (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:

- 1) Optional OSLTF claim form undated;
- 2) GCCF Full Review Final claim form;
- 3) 2007 1099-MISC from Candido H Jiron;
- 4) 2010 1099-MISC from LeRay N. Billiot;
- 5) Invoices for 2010 from LeRay N. Billiot;
- 6) Letter from Claimant explaining he cannot obtain 1099s or W-2s to the GCCF dated 17 November 2010 ;
- 7) Deckhand Certification form from Willie Daisy dated 02 October 2010;
- 8) Letter from Claimant explaining different employers dated 09 September 2010;
- 9) Receipts for 2008 from Jessica B;
- 10) Letter explaining employment dated 19 April 2011;
- 11) GCCF deficiency denial letter for Interim Payment/Final Payment claim dated 27 may 2011;
- 12) IRS Individual Taxpayer Identification Number card;
- 13) Mexico Matricula Consular, consular ID card.

Claimant seeks lost profits and impairment of earnings capacity in the amount of \$14,040.00.

Prior to presenting his claim to the NPFC, Claimant filed an Emergency Advance Payment (EAP) with the GCCF on 21 September 2010 in the amount of \$6,000.00.³ He was assigned Claimant ID #3023493 and claim #78229. This claim was denied on 10 December 2010.⁴ Additionally, Claimant filed a Full Review Final claim (FRF) which was assigned GCCF claim #9318309. The FRF claim was filed on 09 March 2011 for \$14,040.00 and was denied on 26 May 2011.⁵ Based upon the evidence provided by the Claimant, it appears that the subject matter for each of the GCCF claims is the same as the subject matter of his claim before the NPFC, i.e., that he lost earnings as a result of the Deepwater Horizon oil spill. The NPFC deems each of Claimant's two denied GCCF claims to be properly presented to the responsible party and properly presented to the NPFC. Accordingly, this Claim Summary determination for NPFC Claim N10036-1359 considers and addresses the earnings claimed in both of the claims presented to the responsible party, specifically; GCCF Claim #'s 78229 (EAP) and 9318309 (FRF).

NPFC Determination

Under 33 U.S.C. § 2702(b)(2)(E) and 33 C.F.R. Part 136, a claimant must prove that any loss of income was due to injury 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 the documentation submitted by the Claimant.

The NPFC sent the Claimant a request for additional information to obtain documentation of the Claimant's earnings dated 15 September 2011. The NPFC received the Claimant's response on 04 October 2011; however the Claimant did not provide any of the documentation requested in order to verify his earnings and alleged lost earnings. Specifically, the Claimant failed to provide the requested form 1099s, W-2s, and his tax returns.⁶ Accordingly, the Claimant has not established his sum certain as presented to the NPFC by a preponderance of the evidence.

Regarding the causation of the Claimant's alleged damages; the NPFC requested a letter from his employer at the time of the oil spill explaining the impact of the oil spill upon their business. Neither the Claimant nor the employer provided the requested information to the NPFC.⁷ The NPFC also contacted the Claimant's 2010 employer, LeRay N. Billiot, on 07 October 2011. The employer stated that the Claimant was not working with him at the time of the oil spill and, to his knowledge; the oil spill had no negative impact on the Claimant's employment.⁸ As such, the Claimant has not established by a preponderance of the evidence that his alleged loss of earnings was due to the oil spill.

³ Report from the GCCF dated 06 October 2011.

⁴ GCCF Denial Letter dated 10 December 2010.

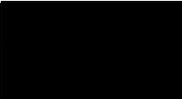
⁵ Report from the GCCF dated 06 October 2011.

⁶ Response to the NPFC's request for additional information received 04 October 2011.

⁷ Response to the NPFC's request for additional information received 04 October 2011.

⁸ NPFC telephone conversation with the Claimant's 2010 employer on 07 October 2011.

This claim is denied because the Claimant failed to meet his burden to demonstrate (1) that he has an alleged loss in the amount claimed, and (2) 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.

Claim Supervisor:  *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *10/12/11*

Supervisor's Actions: *Denial approved*

Supervisor's Comments: