

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: 800-280-7118
E-mail: arl-pf-npfcclaimsinfo@uscg.mil
Fax: 703-872-6113

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
Number: 7011 1570 0001 4803 7414

5890/DWHZ
6 June 2012

Mr. John Harrison



Re: Claim Number: N10036-1768

Dear Mr. Harrison:

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 N10036-1768 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 N10036-1768.

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	N10036-1768
Claimant	Mr. John Harrison
Type of Claimant	Private (US)
Type of Claim	Subsistence Use/Loss of Profits and Impairment of Earning Capacity
Amount Requested	\$5,000.00/\$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 certain individual and business claims on behalf of BP.

CLAIM AND CLAIMANT

On 17 April 2012, Mr. John Harrison (the Claimant) presented a claim to the Oil Spill Liability Trust Fund (OSLTF) seeking \$5,000 in lost subsistence use damages as well as \$40,000.00 in loss of profits and impairment of earning capacity damages resulting from the Deepwater Horizon oil spill.¹

The Claimant, who resides in Dayton, Texas, alleged that his inability to catch shrimp in the months following the oil spill caused him to sustain both subsistence and lost profits damages. Specifically, the Claimant stated that,

due to the closure of the federal gulf water, I was unable to shrimp for four months. Shrimp prices [were] at an all-time low due to fear of contaminated shrimp from [the] oil spill.²

The Claimant estimated that by missing approximately four months of the shrimp season, he lost \$40,000.00 in earnings in 2010, and \$5,000.00 in loss of subsistence use damages as a result of the Deepwater Horizon oil spill.

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.

Loss of Profits and Impairment of Earning Capacity Claims Requirements

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 Optional OSLTF Claim Form, received on 17 April 2012.

² Optional OSLTF Claim Form, received on 17 April 2012.

- (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.

Subsistence Use Claims Requirements

Under 33 C.F.R. §§ 136.219-223, each claim for subsistence use must:

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

DETERMINATION OF LOSS

Claimant's Submission to the OSLTF

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

- Optional OSLTF Claim Form, received on 17 April 2012;
- Certificate of Vessel Documentation, issued 18 February 2010;

- Texas Parks and Wildlife Tag, 2010;
- Federal Fisheries Permit, Gulf of Mexico Shrimp (Moratorium), effective 10/1/2010;
- Federal Fisheries Permit, Gulf of Mexico Shrimp (Moratorium), effective 5/1/2009;
- Copy of vessel tag;
- 2010 Form 1040, showing wages of \$72,708.00;
- Letter from the Claimant describing loss of profits claim;
- Letter from the Claimant describing loss of subsistence use claim.

On 22 January 2012, the Claimant submitted two First Quarter Interim Payment claims (ICQ12011a, ICQ12011b) to the RP/GCCF, seeking an unidentified amount of loss of wages and earnings damages, as well as \$160,000.00 in loss of subsistence use damages.³ The Claimant was assigned Claimant ID 3049769, and the claims were collectively assigned claim #'s 9203219. The RP/GCCF denied payment on each of these claims.

On 29 March 2012, the Claimant submitted a Full Review Final (FRF) claim to the RP/GCCF, seeking loss of wages and earnings damages in the amount of \$50,000.00.⁴ The FRF claim was assigned claim # 9584446. As of the date of this letter, the RP/GCCF has not issued a determination on this claim.⁵

On 17 April 2012, the Claimant submitted this claim to the NPFC, seeking \$5,000.00 in loss of subsistence use damages, as well as \$40,000.00 in loss of profits and impairment of earning capacity damages.⁶ Because these damages have been presented first to the RP/GCCF in Claimant's ICQ12011a and ICQ12011b claims, the NPFC may properly adjudicate this claim.⁷ Accordingly, this claim summary determination considers and addresses the sufficiency of both of the Claimant's ICQ12011 claims.

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, 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 this claim.

This claim is denied because (1) the Claimant has not provided documentation to prove that he sustained a financial loss as a result of the Deepwater Horizon oil spill; and (2) the Claimant has not provided documentation to indicate how or to what extent the Claimant's alleged subsistence use was affected by the Deepwater Horizon oil spill.

1. Loss of Subsistence Use

In order to prove a claim for loss of subsistence use damages, a claimant must provide evidence to meet certain evidentiary requirements regarding how and to what extent the claimant's subsistence use was affected by the injury to or loss of each specific natural resource.⁸ Furthermore, the amount of compensation allowable is,

³ Transition Program United States Coast Guard Report, 13 May 2012.

⁴ Transition Program United States Coast Guard Report, 13 May 2012.

⁵ Transition Program United States Coast Guard Report, 13 May 2012.

⁶ Optional OSLTF Claim Form, received on 17 April 2012.

⁷ 33 C.F.R. § 136.103(a).

⁸ 33 C.F.R. § 136.221(c).

the reasonable replacement cost of the subsistence loss suffered by the claimant if, during the period of time for which the loss of subsistence is claimed, there was no alternative means of subsistence available.⁹

The amount of compensation potentially available to a claimant must be reduced to account for (1) expenses saved due to the claimant's inability to fish, (2) all income the claimant earned during the time which otherwise would have been used to fish.¹⁰

In a letter dated 2 May 2012, the NPFC requested that the Claimant provide certain additional documentation to meet the requirements of law listed above, including (1) financial records such as receipts or bank account statements documenting the replacement cost of the subsistence loss sustained, and (2) evidence that the Claimant usually fished for shrimp in waters that were closed for a particular period of time following the oil spill.¹¹

The NPFC requested that the Claimant respond to the additional information request within 14 days of the date of the letter. As of the date of this determination, the Claimant has failed to respond. Information included in the Claimant's original submission is insufficient to prove that the Claimant actually incurred certain costs to replace the shrimp he was unable to catch, or to prove that waters in which the Claimant usually fished were indeed closed in the period following the oil spill.

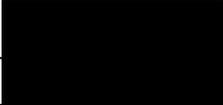
This claim for loss of subsistence use damages in the amount of \$5,000.00 is therefore denied.

2. Loss of Profits and Impairment of Earning Capacity Damages

In order to prove a claim for loss of profits and impairment of earning capacity damages, a claimant must prove (1) that the claimant sustained a financial loss, and (2) that the loss was caused by the discharge of oil resulting from the Deepwater Horizon oil spill.

The Claimant's original submission to the NPFC contains no evidence to indicate that the Claimant sustained a loss of earnings in the period following the oil spill. The NPFC requested that the Claimant provide certain additional financial documentation that would indicate if, and to what extent, the Claimant's earnings were affected in the period following the oil spill.¹² As indicated above, the Claimant has failed to respond to the NPFC request, thereby failing to provide documentation sufficient to prove that the Claimant sustained a financial loss, or to prove that the Claimant's alleged loss was caused by the Deepwater Horizon oil spill.

This claim is therefore denied because the Claimant has failed to meet his burden to prove (1) that the Claimant sustained a loss or reduction in profits, or (2) that the loss was caused by the discharge or substantial threat of discharge of oil resulting from the Deepwater Horizon oil spill.

Claim Supervisor:  *NPFC Claims Adjudication Division*

Date of Supervisor's Review: 6/6/12

Supervisor's Action: *Denial approved*

Supervisor's Comments:

⁹ 33 C.F.R. § 136.223(a).

¹⁰ 33 C.F.R. § 136.223(b)(1-3).

¹¹ NPFC request for additional information, 2 May 2012.

¹² NPFC request for additional information, 2 May 2012.