

U.S. Department of  
Homeland Security

United States  
Coast Guard



Director  
National Pollution Funds Center

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16480

April 10, 2013

*CERTIFIED MAIL Number: 7011 1570 0001 4802 9877*

Miryam Esteves

RE: Claim Number: N10036-1897

Dear Mrs. Esteves:

The National Pollution Funds Center (NPFC) has reviewed your claim for lost subsistence use of natural resources following the Deepwater Horizon oil spill. We have determined that you are not eligible to recover funds from the Oil Spill Liability Trust Fund (OSLTF) for this claim.

### ***Background***

On or about April 20, 2010, the Mobile Offshore Drilling Unit 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 claims process under the federal Oil Pollution Act (OPA). On August 23, 2010, the Gulf Coast Claims Facility (GCCF) began accepting and adjudicating individual and business claims on behalf of BP.

On or about March 8, 2012, the United States District Court, Eastern District of Louisiana, issued a "Transition Order" (TO) limiting the GCCF's ability to accept, process, or pay claims. The TO created a process to facilitate the transition of the claims from the GCCF to a Court Supervised Settlement Program (CSSP), whereby claimants within each of four designated zones are subject to court jurisdiction and the CSSP unless they opt out. The CSSP began processing claims on June 4, 2012.

### ***The Claim***

On June 19, 2012, the NPFC received an Optional OSLTF Claim Form regarding your claimed damages, as previously discussed in a telephone conversation on May 23, 2011<sup>1</sup>. The NPFC

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<sup>1</sup> Initial phone conversation on May 23, 2011 with Mr. Esteves, requesting information about the claim submission process.

subsequently informed you on June 19, 2012 that the form you submitted was incomplete and required a sum certain to meet OPA requirements for a claim<sup>2</sup>.

On February 19, 2013, the NPFC notified you by letter that the Optional OSLTF Claim Form dated June 7, 2012 was incomplete and that you had thirty days to comply with providing a sum certain<sup>3</sup>.

On March 5, 2013, you updated your claim submission to include a sum certain of \$3,400 for lost subsistence use of natural resources over the three years following the Deepwater Horizon oil spill<sup>4</sup>. You submitted no documentation to support the claim.

### ***Applicable Law***

The Fund is available to pay claims for uncompensated removal costs determined by the President to be consistent with the National Contingency Plan or damages. 33 U.S.C. §2712(a)(4)

A claim is a request, made in writing, for a sum certain, for compensation for damages, or removal costs resulting from an incident. 33 U.S.C. § 2701(3).

Damages include damages for loss of subsistence use of natural resources, which shall be recoverable by any claimant who so uses the natural resources which have been injured, destroyed, or lost, without regard as to the ownership or management of the resources. 33 U.S.C. § 2702(b)(2)(C).

With certain exceptions a claim must first be presented to the responsible party and if the claim is not settled by payment by any person within 90 days the claimant may elect to commence an action in court against the responsible party or may present the claim to the Fund. 33 U.S.C. § 2713(c).

No claim may be presented to the Fund for recovery of damages unless the claim is presented within three years after the date on which the injury and its connection with the discharge in question were reasonably discoverable with the exercise of due care. 33 U.S.C. § 2712(h)(2).

OPA also provides that no claim of a person against the Fund may be approved or certified during the pendency of an action by the person in court to recover costs which are the subject of the claim. 33 U.S.C. § 2713(b)(2).

### **General Claim Requirements**

The regulations at 33 C.F.R. Part 136 include general claim requirements and requirements specific to lost subsistence use claims.

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<sup>2</sup> Correspondence via telephone with voicemail on June 19, 2012

<sup>3</sup> See letter from NPFC to claimant dated February 19, 2013

<sup>4</sup> See letter from claimant to NPFC dated March 5, 2013

A claimant bears the burden of providing all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim. 33 C.F.R. § 136.105.

### 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;
- 5) be based on the reasonable cost to replace the lost subsistence use of natural resources; and
- 6) be reduced by the amount of all compensation made available to the claimant to compensate for the loss, all income which was derived by 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.

NPFC has provided more detail about these claim requirements at:  
[http://www.uscg.mil/npfc/Claims/DWH\\_faqs.asp](http://www.uscg.mil/npfc/Claims/DWH_faqs.asp).

### ***NPFC Determination***

Your claim for loss of subsistence use and damages in the amount of \$3,400.00 is denied for two reasons.

First, you provided no documentation or information to support the claim. Despite guidance from the NPFC, you did not provide any information or evidence with your OSLTF Claim Form or with your subsequent letter updating your sum certain, but rather indicated that this information would be "impossible to produce"<sup>5</sup>. Therefore, you have not established that you suffered a loss of subsistence use or a damage associated with that loss of use as required by the claims regulations.

Second, even if you had established a loss your claim would be denied because your claim is part of an action in court and it cannot be approved or certified during the pendency of this action. Based on your claim submission and your home address, you are subject to the Court's jurisdiction because you reside within one of the four court designated zones; therefore, you were automatically placed in the Settlement Program. (Settlement offers and payments may not be complete at this time.) The Court procedures for this case provide that persons placed in the Settlement Program may opt out and present claims to the Fund; however, you have not provided

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<sup>5</sup> See letter from claimant to NPFC dated March 5, 2013

evidence that you opted out of the program; therefore, you are not eligible to submit a claim to the Fund.

If you disagree that you are subject to court jurisdiction and its Settlement Program, you should submit evidence upon reconsideration to indicate that you have either opted out or are excluded from the Settlement Program. Further, in a request for reconsideration you must provide evidence establishing that you suffered a loss of subsistence use in the amount of \$3,400.00. To provide you with further guidance on the type of documentation that should be submitted to support your claim for loss of subsistence use, I have included a copy of the information which is also made available to the public online at:  
[http://www.uscg.mil/npfc/Claims/DWH\\_faqs.asp#faq-15](http://www.uscg.mil/npfc/Claims/DWH_faqs.asp#faq-15).

***Request for Reconsideration***

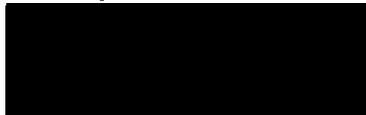
Under OPA, you may ask the NPFC to reconsider this determination. Reconsideration requests must be received by the NPFC in writing within 60 days of the date of this letter, and will be based upon the additional factual or legal information that you provide with your request. A claim may be reconsidered 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 (N10036-1897) 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 the NPFC at the above address or by phone at 800-280-7118.

Sincerely,



EUGENE ELLIOTT  
Claims Manager  
Natural Resource Damage Claims Division

Enclosure

***FAQ-15: If I opt out of the Deepwater Horizon oil spill class action settlement and wish to present a loss of subsistence use claim to the NPFCA, how can I best support my claim for loss of subsistence use of fish, shellfish or other natural resources as a result of the oil spill?***

**A: Document that you are a subsistence user.** (a) Identify the specific natural resource(s) that you use for subsistence purposes, (b) describe the frequency or degree of subsistence use (for self and/or household), (c) explain your use of the resource(s) for food, shelter, clothing, medicine, or other minimum necessities of life, and (d) provide supporting information such as appropriate license/authority to harvest, affidavits and/or statements from you or others that attest to your subsistence use.

Explain how the oil spill impacted your use. For example, fish consumption advisories or access restrictions may have prevented you from fishing or gathering shellfish or caused you to use alternative fishing areas. Claims in connection with impacts in areas well outside the spill zone, or well after fish, shellfish or resources were determined to be safe may not be compensated by NPFCA.

Describe your efforts to mitigate the lost subsistence use. Describe your efforts to find reasonable alternatives to replace the lost resources, such as fishing or gathering shellfish from nearby areas unaffected by the spill. Or describe why mitigation was not feasible (e.g., due to a lack of comparable substitute resources in nearby areas, an inability to travel to or access alternate locations, a lack of information about viable alternate sites, etc.).

Describe how you determined the amount claimed. Determine your loss as the reasonable cost you incurred to replace the lost fish, shellfish or other natural resources you used for subsistence. Reasonable replacement costs are the costs you actually incurred either to acquire substitute resources (e.g. food purchased at a market in lieu of fishing or gathering) or the additional, incremental costs associated with traveling farther to fish, gather shellfish or collect other resources from areas unaffected by the spill.

The costs you claim should be reduced by any other compensation you received for the subsistence loss; all income you derived using the time that otherwise would have been used to obtain natural resources for subsistence use; and saved overheads or other normal expenses of your subsistence use.