

U.S. Department of  
Homeland Security

**United States  
Coast Guard**



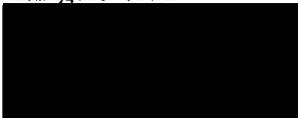
Director  
National Pollution Funds Center  
United States Coast Guard

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-npfclaimsinfo@uscg.mil  
Fax: 703-872-6113

CERTIFIED MAIL – RETURN RECEIPT REQUESTED  
Number: 7012 2210 0001 7214 9654

5890/DWHZ  
1 July 2013

Emigdio Cruz



Re: Claim Number: N10036-1904

Dear Mr. Toland:

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 N10036-1904 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 N10036-1904.

Mail reconsideration requests to:

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



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

Enclosure: Claim Summary/Determination  
cc: Emigdio Cruz  
P.O. Box AO  
Port Isabel, TX 78578

By Certified Mail:  
No. 7012 2210 0001 7214 9647

## CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1904
Claimant	Emigdio Cruz
Type of Claimant	Private (US)
Type of Claim	Loss of Profits or Impairment of Earning Capacity
Amount Requested	\$27,409.64

### ***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 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.

On 08 March 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 except as provided in that order. The TO created a Transition Process (TP) to facilitate the transition of the claims process from the GCCF to a proposed Court Supervised Settlement Program (CSSP). The Court granted Preliminary Approval of the proposed settlement agreement on 02 May 2012, and the CSSP began processing claims on 04 June 2012.

### ***CLAIM AND CLAIMANT***

On 8 April 2013, Mr. Cary Toland, legal representative for Mr. Emigdio Cruz, (collectively, "the Claimant") submitted a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$27,409.64 in loss of profits or impairment of earning capacity damages allegedly resulting from the Deepwater Horizon oil spill.<sup>1</sup>

The Claimant owns and operates a commercial freezer fishing vessel which has its home port in Port Isabel, Texas.<sup>2</sup> The Claimant alleged that the vessel "has historically shrimped [Deepwater Horizon oil spill] affected waters" and that the "closure of the fishing grounds at a time when Texas season was closed, in addition to the damage and depletion of shrimp stock, caused significant losses."<sup>3</sup>

The Claimant alleged to have sustained \$27,409.64 in loss of profits damages as a result of the effects 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 water, adjoining shorelines, or the exclusive economic zone of the United States, as described in § 2702(b) of OPA.

<sup>1</sup> Optional OSLTF Claim Form, signed on 4 April 2013.

<sup>2</sup> Optional OSLTF Claim Form, signed on 4 April 2013.

<sup>3</sup> Optional OSLTF Claim Form, signed on 4 April 2013.

The OSLTF 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. 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; and
- (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 U.S.C. § 2712(f), payment of any claim or obligation by the Fund under OPA shall be subject to the United States Government acquiring, by subrogation, all rights of the claimant or State to recover from the responsible party.

### ***DETERMINATION OF LOSS***

#### **Claimant's Submission to the NPFC**

The Claimant submitted the following documentation in support of this claim:

- Optional OSLTF Claim Form, signed on 4 April 2013;
- GCCF Full Review Final Claim Form, Claimant ID 3401314;
- Statement of Lost Earnings;
- 2010 Federal Income Tax Returns;
- Document showing landing data and expenses, 2010;

- Packing invoices, 2010;
- 2009 Federal Income Tax Returns;
- Document showing landing data and expenses, 2009;
- 2008 Federal Income Tax Returns;
- Document showing landing data and expenses, 2008;
- Letter to the GCCF, 29 June 2011;
- Business Income Tax Returns, Cruzito, 2010;
- Cruzito Profit and Loss Statements, July 2009 – November 2010 (some months not included);
- Letter to the GCCF requesting review of denial determination, 15 February 2012;
- Fax Cover Sheet for correspondence to GCCF, 12 January 2012;
- Letter from the Claimant to the GCCF requesting status update, 12 January 2012;
- Seafood Compensation Plan Form;
- Representation Letter signed by attorney, 15 November 2010;
- Cutty Sark Inc. 2007 Assets Equity.pdf;
- Objection to Proposed Seafood Compensation Plan;
- Commercial Shrimping tag;
- GCCF Full Review Final Claim Form;
- GCCF Claim Form Instructions;
- Presentment letter, 9 April 2013;
- Paul Piazza and Son purchase order;
- NOAA Vessel list form;
- Purchase orders/pack-out, Bayou Shrimp;
- Seafood Compensation Program Form.

Prior to presenting this claim the NPFC, the Claimant attempted to recover these alleged losses from the Responsible Party through the GCCF and the BP Claims Program. The Claimant alleged to have made presentment of this claim on 10 January 2013 and 15 November 2010.<sup>4</sup> The Claimant indicates that “no action” has been taken on the claim.<sup>5</sup>

On 8 April 2013, the Claimant presented this claim to the NPFC, seeking \$27,409.64 in loss of profits and impairment of earning capacity damages.<sup>6</sup> The NPFC does not have enough information to determine the extent of claims made by the Claimant to the RP, nor can the NPFC determine the extent of payments already made to the Claimant.<sup>7</sup> The NPFC will adjudicate this claim to the extent that presentment requirements under OPA have been satisfied. Any amount of this claim which was not first presented to the RP, or which was presented to and compensated by the RP, is denied for improper presentment.<sup>8</sup>

### **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)

<sup>4</sup> Optional OSLTF Claim Form, signed on 4 April 2013.

<sup>5</sup> Optional OSLTF Claim Form, signed on 4 April 2013.

<sup>6</sup> Optional OSLTF Claim Form, signed on 4 April 2013.

<sup>7</sup> Tax returns provided in support of this claim indicate that the Claimant or an entity solely owned by the Claimant was compensated \$21,600.00 in “BP Oil Spill Income.”

<sup>8</sup> 33 C.F.R. § 136.103(c)(2).

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.

In order to prove a claim for loss of profits or impairment of earning capacity damages, a claimant must provide evidence sufficient to prove that (1) the Claimant sustained an uncompensated loss or reduction in income and (2) that the financial loss was caused by damage to real property or natural resources resulting from the discharge of oil caused by the Deepwater Horizon oil spill.

The Claimant provided various pieces of evidence to prove that he was unable to shrimp in Louisiana waters as a result of the Deepwater Horizon oil spill. However, evidence was insufficient to allow the NPFC to determine (1) what payments, if any had been made to the Claimant for the same losses as are now before the NPFC, (2) whether or not the Claimant had joined Multi-District Litigation 2179 in the U.S. District Court for the Eastern District of Louisiana or (3) the amount of shrimp the Claimant caught in closure areas in unaffected years.

As such, the NPFC sent the Claimant a letter, dated 31 May 2013, requesting that the Claimant provide certain additional information to more fully develop this claim. The Claimant was asked to respond to the documentation requests within 30 days of the date of the letter. As of the date of this determination, the Claimant has failed to respond. Therefore, because the documentation provided in the Claimant's original submission fails to allow the NPFC to determine the extent of uncompensated losses, if any, the Claimant sustained, or that the Claimant was indeed planning on, but unable to fish in Louisiana waters as a result of the oil spill, this claim is not compensable under OPA.

Based on the foregoing, this claim is denied because the Claimant has failed to provide evidence sufficient to prove (1) that he sustained a financial loss in the amount \$27,409.64, or (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 discharge of oil. Additionally, the OSLTF is not available to compensate the Claimant because it is unclear whether or not damages that are subject of this claim are currently being pursued in an action in federal court.

  
Claim Supervisor: *NPFC Claims Adjudication Division*

Date of Supervisor's Review: *7/1/2013*

Supervisor's Action: *Denial approved*

Supervisor's Comments: