

CLAIM SUMMARY / DETERMINATION

Claim Number:	J13014-0006
Claimant:	[REDACTED]
Type of Claimant:	Individual
Type of Claim:	Loss of Profits and Earning Capacity
Claim Manager:	[REDACTED]
Amount Requested:	\$67,985.25

INCIDENT

On June 30, 2013, the F/V LONE STAR sank and discharged oil into the Igushik River, posing a substantial threat of a discharge of oil into Bristol Bay, a navigable water of the United States. There were approximately 14,500 gallons of diesel, hydraulic and lube oil, and gasoline on board the vessel. At the time of the incident [REDACTED] owned the vessel and Burrece Fisheries, Inc. operated the vessel; all are responsible parties under OPA.

Following the incident fishing closures began June 30, 2013 for a six mile radius around the LONE STAR near the mouth of the Igushik River. The fishery reopened at 12:30 PM on July 1, 2013 and remained open until 1 PM, July 5, 2013 when the fishery remained closed until July 22, 2013.

CLAIMANT AND CLAIM

Claimant

The Claimant, [REDACTED] is a commercial drift-gillnet, salmon fisherman who owns and operates the F/V LULU. He holds two permits to fish for salmon in Bristol Bay, Alaska.

Claim

The NPFC received the claim on December 2, 2014. [REDACTED] seeks \$67,985.25 for lost profits alleged to have resulted from the LONE STAR incident and subsequent closure of the Igushik River to salmon fishing. Claimant seeks 8 days worth of lost fishing time that he alleges was due to the Igushik River closure. The claimed costs are derived by claimant averaging the pounds of fish caught during the same 8 day period from 2009-2012, which comes to 45,323 pounds. He then multiplies a set price of \$1.50 per pound to come to the claimed loss.

APPLICABLE LAW:

The Oil Spill Liability Trust Fund (OSLTF), which is administered by the NPFC, is available, pursuant to 33 USC §§ 2712(a)(4) and 2713 and the OSLTF claims adjudication regulations at 33 CFR Part 136, to pay claims for uncompensated removal costs that are determined to be consistent with the National Contingency Plan and uncompensated damages.

33 U.S.C. §2713(d) provides that "If a claim is presented in accordance with this section, including a claim for interim, short-term damages representing less than the full amount of damages to which the claimant ultimately may be entitled, and full and adequate compensation is

unavailable, a claim for the uncompensated damages and removal costs may be presented to the Fund.”

Under 33 CFR 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.

Additionally, under 33 CFR 136.233(b) the claimant must prove that its income was reduced as a consequence of the injury to, destruction of, or loss of the property or natural resources and the amount of that reduction. 33 CFR 136.233(c) also requires the amount of the claimant's profits or earnings in comparable periods and during the period when the claimed loss or impairment was suffered be 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.

“Damages” means damages specified in section 2702(b)...and includes the costs of assessing these damages. 33 U.S.C. § 2701(5).

DETERMINATION:

Claimant states that he has fished exclusively in the Nushagak and Igushik Districts for over 20 years. The Bristol Bay area of Alaska has five Salmon commercial fishing districts: Togiak, Nushagak, Ugashik, Egegik and Naknek-Kvichak. The Nushagak District is further broken down into “Sections”, which include the Igushik Section and Nushagak Section. The LONE STAR oil spill incident occurred on June 30, 2013 near the mouth of the Igushik River. A six mile radius around the LONE STAR was closed at that time; then reopened July 1, 2013 at 12:30 PM until July 5, 2013 at 1PM and remained closed until July 22, 2013. The spill effectively shut down fishing in the Igushik River during this time, along with about three miles of the Igushik Section outside of the river. However, the majority of the Igushik Section and all of the Nushagak Section remained open to fishing before, during and after these closure periods.

██████████ provided partial tax returns for 2009-2013¹, fish ticket data for 2009-2013, and fishing logs for June and July of 2013. Claimant states that he holds two permits for drift gillnet salmon fishing in Bristol Bay. Claimant alleges that he lost fish he would have caught in the Nushagak/Igushik sections of the Nushagak District of Bristol Bay, but didn't because the spill and river closure forced him to relocate and fish in alternative areas/districts. He states that it cost him 8 days of fishing from July 2nd through July 9, 2013. Claimant argues that the lost 8 days of fishing were because he transferred to the Naknek District from the Nushagak/Igushik District on July 2nd and didn't start fishing in the Naknek District until July 10. ██████████ states that the Naknek District has not been historically good for the LULU. ██████████ calculated his claimed loss by figuring the average catch for the period July 2nd through July 9th for 2009 through 2012. He then applied the 2013 Iccle Seafoods sockeye salmon price of \$1.50 per pound to his average pounds of fish (45,323 lbs) to arrive at his claimed loss of \$67,985.25.

¹ The tax returns are for ██████████ Beef Trail Inc. and cover more than just fishing income.

Under OPA, the claimant must prove that its income was reduced as a consequence of the injury to, destruction of, or loss of the property or natural resources and the amount of that reduction.² The evidence provided in this claim does not support that [REDACTED] fished exclusively in the Nushagak and Igushik sections of the Nushagak District, or that his income was reduced because of the 6 mile radius closure of the Igushik section. First, according to his fishing logs, [REDACTED] was in the Naknek and Egegik districts prior to transferring to the Nushagak district June 22, 2013.³ On July 2, 2013, he transferred to the Ugashik district and on July 3rd, he transferred to the Egegik district and then to the Naknek district. Additionally, the fishing logs do not indicate why [REDACTED] did not fish until July 10th, except it appears he had some crew issues, and he engaged in some repair, maintenance, side work, and other activities. Not one entry in the fishing logs indicates that [REDACTED] was fishing in the Igushik Section, much less the Igushik River. Only the log page for June 30, 2013 mentions the LONE STAR sinking, but does not indicate where the F/V LULU was at that point in time. Further, the fish tickets provided by the claimant do not show any fish deliveries in the Igushik section prior to the incident and closure. There is no evidence in the record that [REDACTED] was ever in the Igushik River or within the closure area at all.

Second, [REDACTED] presented contradictory statements in his submission. He stated that he fished exclusively in the Nushagak/Igushik districts for over 20 years, and he also stated that the Naknek district is not historically good for his boat. However, claimant's fish tickets show deliveries to tenders in the Naknek district over several of the previous years. Though [REDACTED] fish tickets show deliveries to tenders only in the Nushagak section in 2013 leading up to the spill, [REDACTED] has not established that he exclusively fished the Igushik River, the Igushik Section, or that he was fishing it at the time of the incident and closure. Further, even if he had established these, he did not establish that he still couldn't catch salmon in the Igushik Section or the entire Nushagak Section after the closure or for the eight days he claims he couldn't fish.

Most of the Nushagak District was open where [REDACTED] could have caught salmon. Being a drift net fisherman, [REDACTED] had the ability and opportunity to fish anywhere in Bristol Bay as his permit allowed. Only a six-mile-radius area was closed around the mouth of the Igushik River within the Igushik section of the entire Nushagak District and this was a small area of the District. This was the only area where [REDACTED] could not fish. Therefore, claimant has not proven its income was reduced as a consequence of the spill as required under 33 CFR 136.233(b).

With regard to the financials provided to support the claim, there is no evidence of a loss. [REDACTED] provided a worksheet with each partial tax return for 2009-2013. Each had an entry for Bristol Bay fish sales. The entries show that [REDACTED] had higher fish sales in the years 2009 (\$141,221.66), 2010 (\$161,905.79) and 2011 (\$128,197.37). However, 2012 was a very low catch year at \$79,391.35. 2013's (\$120,618.75) fish sales were much better than 2012, but only marginally lower than 2011. The Fish Ticket Detail Reports provided by [REDACTED] included fish tickets for two other men, [REDACTED]. It appears that they may be fishermen who worked under [REDACTED]'s employment. Their catch appears to be included in

² 33 CFR 136.233(b)

³ See June 19, 20 and 21 entries.

Beef Trail's fish sale totals.⁴ The Fish Ticket Detail Reports show [REDACTED] s salmon totals and amounts of the fish sales. Fish Ticket Detail Reports were a bit confusing to read with duplicate entries. However, the Fish Ticket Detail Report for 2013 shows catch totals of \$116,286.10, which is more than a 50% increase over 2012 (\$58,789.50). Fish Ticket totals appear to fluctuate between 2009 – 2013 with all yearly catch totals above 2012.⁵ The evidence provided by the claimant, does not prove a loss of profits.

If claimant comes in for reconsideration of its claim, it must provide evidence that it fished in the 6 mile radius closed spill area and that because of this closure, claimant suffered a loss of profits. The alleged loss will have to be proven through clearly documented financials and other similar documents as required by 33 CFR 136.233(c). This claim is denied.

Claim Supervisor: [REDACTED]

Date of Supervisor's review: June 1, 2015

Supervisor Action: *Denial Approved*

Supervisor's Comments:

⁴ [REDACTED] provided several fish ticket summaries that appear to be the same summaries as others, but with different final totals at the end. We do not know why these differences are present.

⁵ See Fish Ticket Detail Report totals for 2009-2013.