

U.S. Department of
Homeland Security

**United States
Coast Guard**

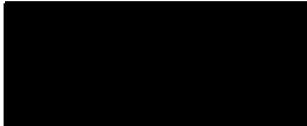


Director
National Pollution Funds Center
United States Coast Guard

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: 7012 2210 0001 7214 9852

5890/DWHZ
22 July 2013



Re: Claim Number: N10036-1951

Dear Mr. Cuevas:

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 N10036-1951 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 N10036-1951.

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

CLAIM SUMMARY/DETERMINATION FORM

Claim Number	N10036-1951
Claimant	Cuevas Trawlers, Inc.
Type of Claimant	Private (US)
Type of Claim	Loss of Profits or Impairment of Earning Capacity
Amount Requested	\$13,956.80

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 29 May 2013, Mr. Jose Cuevas, on behalf of Cuevas Trawlers, Inc., ("the Claimant") submitted a claim to the Oil Spill Liability Trust Fund (OSLTF) for \$13,956.80 in loss of profits or impairment of earning capacity damages allegedly resulting from the Deepwater Horizon oil spill.¹

The Claimant is the owner and operator of Cuevas Trawlers, Inc., located in Port Isabel, Texas.² The Claimant alleged that the Deepwater Horizon Oil Spill affected the shrimping industry in the Gulf of Mexico, thereby causing harm to his business.³ The Claimant does not specifically indicate how this business was affected by the oil spill.

In determining the extent of his losses, the Claimant calculated the average poundage of his catch in "Louisiana-Gulf of Mexico" over a three year period and then multiplied his losses by 16 cents per pound, which he identifies as the average price per "pound of shrimp unloaded during [2007, 2008 and 2009]."⁴

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

¹ Optional OSLTF Claim Form, unsigned.

² See, Manta business profile. Available at, <http://www.manta.com/c/mm8mt8m/cuevas-bait-shrimp-co>. The Claimant did not provide evidence to indicate how this business operates or how it was affected by the oil spill.

³ Claim Cover Letter, dated 19 April 2010.

⁴ Document, "Basis for Claim."

water, adjoining shorelines, or the exclusive economic zone of the United States, as described in § 2702(b) of OPA.

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:

- Claim Cover Letter, 19 April 2013;
- Loss Calculation page, "Basis for "Claim";
- 2010 Federal Income Tax Returns with schedules and attachments;

- 2010 Form 1120, showing gross sales of \$3,364,211.00 and total income of \$221,699.00;
- 2009 Federal Income Tax Returns with schedules and attachments;
- 2009 Form 1120, showing gross sales of \$2,498,028.00 and total income of \$166,059.00;
- 2008 Federal Income Tax Returns with schedules and attachments;
- 2008 Form 1120, showing gross sales of \$2,911,675 and total income of \$304,751.00;

Prior to presenting this claim the NPFC, the Claimant alleged to have originally filed this claim against the BP Claims Program, the GCCF and the Deepwater Horizon Claims Center.⁵ The Claimant alleged that all claims were denied. The Claimant does not provide evidence indicating the amount of claims submitted to any of these entities.

On 29 May 2013, the Claimant submitted this claim to the NPFC, seeking to recover \$13,956.80 in loss of profits or impairment of earning capacity damages resulting from the Deepwater Horizon oil spill. The NPFC will adjudicate this claim to the extent presentment requirements have been satisfied. If any of the damages now presented to the NPFC, were not first presented to and denied by the RP or an agent acting on its behalf, these damages are denied for improper presentment.⁶

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 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 damages, a Claimant must provide evidence sufficient to prove (1) that 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 due to the discharge of oil resulting from the Deepwater Horizon oil spill.

1. Failure to document a loss or reduction in income.

The Claimant seeks to recover the value of one year of lost earnings due to effects of the oil spill on the Gulf of Mexico shrimping industry. However, financial documentation presented in support of this claim fails to indicate that the Claimant sustained a loss or reduction in income in 2010. Rather, it appears as though the Claimant's income increased substantially in 2010 over 2009.⁷ In 2009 and 2010, the Claimant reported total income of \$166,059.00 and \$221,669.00, respectively. As such, it does not appear as though the Claimant sustained a loss or reduction in income following the oil spill.

2. Failure to prove effect of oil spill on business.

Furthermore, the Claimant has not provided any evidence to prove that his business was somehow affected by the Deepwater Horizon oil spill. In a letter dated 29 April 2013, the NPFC requested that the Claimant provide certain additional information to support this claim, including fishing licenses, trip tickets and landing data to prove that the Claimant indeed relied on fisheries in the Gulf of Mexico that were affected by closures implemented as a result of the

⁵ Claim Cover Letter, 19 April 2013.

⁶ 33 C.F.R. § 136.103(a).

⁷ 2009, 2010 Forms 1120.

oil spill.⁸ The Claimant failed to provide this requested evidence or any other evidence to identify the locations where he usually fished, or to prove that he was prepared to, but unable to fish in waters closed as a result of the oil spill.

Based on the foregoing, this claim is denied because the Claimant has failed to provide evidence sufficient to prove (1) that he sustained an uncompensated financial loss in the amount of \$13,956.80 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.

Claim Supervisor: *NPF [REDACTED] ication Division*

Date of Supervisor's Review: *7/22/2013*

Supervisor's Action: *Denial approved*

Supervisor's Comments:

⁸ NPFC additional information request, 29 April 2013.