



Deepwater Horizon Oil Spill

Making Claims for Damages



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Florida Department of Financial Services

DEEPWATER HORIZON
Protecting Florida's Future



BP Claims Process



- File a claim in one of three ways:
 - Visit www.bp.com/claims
 - Call 1-800-440-0858
 - Visit a BP Claims Office

- Claimants should file a claim online or by phone before walking into a claims office to speak with an adjuster.

- For more information and a listing of BP Claims offices please visit www.MyFloridaCFO.com.

BP Claims Process



- Claimant info is entered into database, assigned a number and forwarded to adjusters to then investigate/evaluate.
- Adjuster will require some substantiation of income such as a copy of current licenses or permits, documentation of loss of income, and possibly tax returns or other financial information to document comparable past income.
- Reasonable effort will also be made to act on lost income claims up to \$5,000 within 48 hours of receipt.
- Typically, claim payment covers a 30-day period. After 30 days, you may reapply for another short-term payment.
- Larger and more complex claims may require additional investigation and documentation prior to evaluation and resolution.

BP Claims Process



- BP indicates that 90% of claimants make their living from the water. Florida's Sea Grant program urges consideration of the following:
 - BP will require commercial fishermen, and most likely for-hire operators, to indicate the location of their fishing activities and species targeted.
 - Commercial fisherman may want to extract their fishing location data that can be found from their archived Trip Tickets and ensure that any estimated losses are linked with a specific area that they have historically fished, but is now off-limits due to the spill.
 - Fishermen may also inquire with the National Marine Fisheries Service (NMFS) regarding their logbooks for various fisheries (reef fish, sharks, tilefish, pelagic, etc). Fishermen often record lat/long data, as well as grid zone codes and depth, all of which will help narrow down fishing locations on a much more detailed basis than is required for the Florida Trip Ticket system.
 - In addition, VMS data may be potentially useful. Vessel operators would need to check with the NMFS Southeast Regional Office (727-824-5301) regarding VMS data and the Southeast Fisheries Science Center (305-361-5761) about log book data.
- Any claims that are denied or that are not resolved within 90 days after the date of submission to the BP Exploration claims representative may be submitted to the US COAST GUARD STOP (ca), 4200 Wilson Boulevard, Suite 1000, Arlington, Virginia 20598-7100 for consideration.

What Claims are covered?



- "Removal Costs" – Reasonable and necessary costs to cleanup or remove the oil.
- Damages for injury to, or economic losses resulting from, destruction of real or personal property.
- Damages for loss of subsistence use of natural resources, such as hunting or fishing.
- Damages equal to the loss of taxes, royalties, rents, fees or net profit shares due to the destruction or loss of real or personal property or natural resources.
- Damages equal to the loss of profits or impairment of earning capacity due to the injury, destruction, or loss of real or personal property or natural resources.
- Damages for net costs of providing increased or additional public services during or after remove activities.

Please refer to the Oil Pollution Act (OPA) for more detailed information on oil spill claims coverage information.



How often should I make a Claim?

- Only file your claim once.
- Later you may provide your adjuster with supplemental information and claims once assigned your initial claims number.
- You will not be required to file again for subsequent payments.

What documentation is necessary?



- All claims and supporting documentation will be reviewed by an adjuster who will assist you in determining the best way to substantiate your claim.
- Examples of various types of supporting documentation (if applicable):
 - Tax Records
 - Wage Statements
 - Deposit Slips
 - Boat Registration
 - Occupancy Rates
 - Cancellation Records
 - Bookkeeping Records

Claims Adjuster Information



- Adjusters meet with claimant individually.
- If represented by an attorney, they must pursue the claim for you.
- Adjuster will review claim information and determine if it is sufficient to support the claim.
- Adjuster has the authority to pay an advance as dictated below if documentation provided supports such a payment.
 - \$5,000 for captain or owner of boat
 - \$2,500 for deckhand
 - Estimate of one month of lost wages

Accepting Claim Money from BP



- Before accepting funds from BP for a claim and signing any documents, please be sure you understand the implications of what you are doing.
- Do the documents indicate that you agree to release BP from any further damage claims?
- It would be acceptable to release BP from liability for the damages claimed, but since it is not yet possible to know the full extent of damages due to the ongoing nature of the Deepwater Horizon leak, you will want to maintain your ability to present further claims if you have additional damages not included in your original claim.
- Please consult with a legal professional before signing any claims settlement documents. This may include even signing and cashing a claim check paid to you, as sometimes signing such checks may waive some legal rights.

Other Options for Assistance



○ National Pollution Funds Center (Source: Florida Sea Grant Program)

- The Oil Pollution Act (OPA) of 1990 set up a system of liability and funding for responding to oil spills. To remedy this, the act created the Oil Spill Liability Trust Fund. That fund is administered by the National Pollution Funds Center. In addition to funding cleanup activities, the NPFC can also accept applications for payment of damages due to an oil spill and pay for such damages out of the liability trust fund.
- You **must** submit claims to BP **before** you can submit a claim to National Pollution Funds Center.
- If BP **denies your claim or does not pay within 90 days** of filing, you may file a claim with the National Pollution Funds Center, www.uscg.mil/npfc/Claims/default.asp.

Types of Claims Available to the Public Under the National Pollution Funds Center



- **Real or Personal Property Damage:** damage or economic loss related to destruction or harm of real or personal property. For example, if you own a boat or property that is oiled, the owner or lessee may submit a claim to have the boat or property cleaned.
- **Loss of Profits and Earning Capacity:** damages for loss of profits or impairment of earning capacity due to the injury, destruction, or loss of real property, personal property, or natural resources. For example, shrimpers who cannot operate due to closed Gulf waters will suffer lost profits. Others who could apply for damages may potentially include businesses dependent on the fishing industry, such as seafood processors, packers and distributors, or tourism concerns like hotels, restaurants, fishing guides and charter operators. Any business that can document loss may file a claim, but there is no guarantee that claims will be determined acceptable and paid.

Making a Claim: Information Required by the NPFC and Suggested for BP Claims



- The National Pollution Funds Center does not have a required format for claims to the oil spill trust fund, but it has provided an optional claim form. The optional claim form is available as an appendix to its "Claimant's Guide" at two online locations:
- <http://www.uscg.mil/npfc/docs/PDFs/urg/Ch6/NPFCClaimantGuide.pdf>
- http://www.uscg.mil/npfc/docs/PDFs/Forms/Claims_Form.pdf.

Types of information required by the NPFC regulations include:



- Type and amount of damages for each type of claim
- Total amount claimed
- Your full name, street and mailing address(es), and telephone numbers for your home and business
- Time, date, and geographic location of the oil spill; identification of the navigable water impacted; and an explanation of how the oil impacted the water
- Identify the vessel, facility, or person causing or suspected of causing the spill, if possible, and include an explanation of why you suspect the vessel, facility, or person to have caused the spill
- A general description of the impact of the spill, including the removal costs or damages claimed by category
- Explanation of how the damage happened, the location, and the date and time (this may/may not be the same as the location, date, or time of the spill)
- Descriptions of actions taken to minimize or avoid damages

Types of information required by the NPFC regulations include:



- Costs of assessing the damage (do not include attorney's fees or other costs for claim preparation or filing)
- Name, street and mailing address(es), and telephone numbers of any witnesses and a brief description of what the witness knows
- Copies of any written communications and content of any verbal communications with the Responsible Party, including any claims submitted to it.
- Information on any attempts to submit claims to the person or company responsible for the oil pollution
- Information on any insurance claim made for removal costs or damages
- Any compensation you have received for removal costs or damages from the spill
- Statement that no action has been taken in court or, if action has been taken, the status of the pending court case
- Certification statement of the accuracy of the claim to the best of your knowledge and belief
- Your signature and, if applicable, your legal representative's signature

Specific Information About NPFC Claims



Regulations also include specific information for two kinds of claims.

- **Real or Personal Property Damages Claims:**

- If your claim includes only property damage, you may only file if you can document that you owned or leased the property at the time of the damage.
- Damage-to-property claims should include a description of the property and pictures of the damage. You should also give a specific cost for each item or parcel of property, including any costs you have incurred to remedy or decrease the harm (for example, if you have already paid to have an oiled boat cleaned or removed from the water).

- **Loss of Profits and Earnings Capacity Claims:**

- Claims for lost profits or earnings capacity due to property damages or natural resource damages are a separate category of claim that involves greater complexity in proof. You should only use this category of claim if you are not also claiming property damages.
- If you claim damages both for property and lost profits, you should file as a claim for property damages, and add the specific information for both the property damages and the lost profits and earnings.

What Happens Next?



- NPFC reviews claims in the order received and will request additional information if necessary. The need for additional information is the leading cause of delay for claims, so be sure to include all information requested and as much detailed evidence and documents as possible for any damages claimed.
- Once NPFC makes a claim determination, you must respond in 60 days or the offer to pay is voided and the claim closed. You have two options:
 - 1) accept the determination and sign a release, which will result in processing of the agreed-upon payment; or
 - 2) reject the claim, provide additional information, and request reconsideration. If you receive reconsideration, this second determination is final and cannot be "reconsidered" again.

SBA Loans



- SBA is offering working capital loans up to \$2 million at an interest rate of 4 percent with terms up to 30 years. Businesses in designated counties must demonstrate economic injury as part of their loan application.
- The loans may be used by small businesses that are unable to pay fixed debts, payroll, accounts payable and other bills that can't be paid because of the disaster's impact.
- SBA encourages businesses to also file claims with BP. Borrowers may be required to use any claim payments to help repay these SBA loans.

SBA Loans



- Eligible small businesses include those engaged in shrimping, crabbing and oyster fishing in the waters affected by the closure (employees or crew members are not small businesses and are not eligible); small businesses dependent on the catching or sale of shrimp, crabs and oysters, suppliers of fishing gear and fuel; docks, boatyards, processors, wholesalers, shippers, retailers and other small businesses dependent on revenue from fishing, recreational and sports fishing small businesses, and coastal small businesses.
- Obtain loan information and application forms by either calling SBA's Customer Service Center at (800) 659-2955 (800-877-8339 for the hearing impaired), e-mailing disastercustomerservice@sba.gov, or visiting SBA's Web site at www.sba.gov/services/disasterassistance.

References



- BP's Deepwater Horizon Response
<http://www.deepwaterhorizonresponse.com/go/site/2931/>
- Oil Spill Claims—U.S. Coast Guard National Pollution Funds Center
<http://www.uscg.mil/npfc/Claims/default.asp>
- Claimant's Guide (2003, updated 2009), published by the National Pollution Funds Center
<http://www.uscg.mil/npfc/docs/PDFs/urg/Ch6/NPFCClaimantGuide.pdf>
- The Oil Pollution Control Act
<http://www.epa.gov/oem/content/lawsregs/opaover.htm>