

The Oil Pollution Act of 1990 (OPA90) created the Oil Spill Liability Trust Fund (Fund). Under OPA90, a party responsible for an unlawful discharge of oil is liable for the removal costs and damages of the oil spill. Removal costs include all costs of removing and cleaning up oil from water and shorelines. Damages include injury to property, economic losses resulting from destruction of property, loss of subsistence use of natural resources, and loss of profits or earning capacity. The Fund may be used to pay for removal costs and damages resulting from an oil spill. The Fund is financed primarily through taxation. Currently, the financing rate is 8 cents per barrel for crude oil and petroleum products. The total amount that may be paid out of the Fund for one oil spill incident is \$1 billion. The Fund is administered by the U.S. Coast Guard's National Pollution Funds Center (NPFC).

BEFORE MAKING A CLAIM TO THE FUND

Before any claims may be presented to the Fund, you must first present your claim to the responsible party (RP). If the RP denies the claim, or does not settle the claim within 90 days, you may either file a lawsuit against the RP or file a claim with the Fund. If you file both a lawsuit against the RP and a claim with the Fund, the NPFC will not approve your claim while the lawsuit is pending.

The RP must establish a procedure for the payment and settlement of claims. If your damages are related to the Deepwater Horizon event, claims can be submitted to BP by phone (1-800-440-0858) or online at www.bp.com/claims. If a RP's payment or settlement of a claim is for less than the full amount of your damages, you may be able to recover the remaining damages in the future. This will depend on the terms of any release signed with the RP.

CLAIMS TIMELINE UNDER THE FUND

To qualify for compensation under the fund, you must make your claim within certain time limitations. Claims for clean-up costs must be brought within 6 years from the date of completion of all removal actions. Claims for damages must be brought within 3 years after the date on which the injury and its connection with the oil spill was reasonably discoverable.

LOAN PROGRAMS

The OPA90 requires that the President establish a loan program under the Fund to provide interim assistance to fishermen and aquaculture producers affected by an oil spill while their claims are pending. To be eligible for a loan, fishermen and aquaculture producers must have incurred damages, made a claim to the RP or the Fund that is pending, and have not received a payment from the RP for interim or short-term damages for a claim to the RP that is pending.

CONTENT OF CLAIMS TO THE OSLTF

You are responsible for providing all evidence, information, and documentation deemed necessary by the NPFC to support your claim. General requirements include the following:

- The claim must be in writing and for a specified dollar amount for uncompensated damages or removal costs.
- If, at any time during the pendency of your claim against the Fund, you receive any compensation for the claimed amounts, you must immediately amend the claim.
- You must specify all of your known removal costs or damages arising out of the oil spill.
- You must provide information concerning any insurance which may cover the removal costs and damages for which compensation is claimed.
- You must include an accounting, including the source and value, of all other compensation received, applied for, or potentially available as a consequence of the incident out of which the claim arises, including, but not limited to, monetary payments, goods or services, or other benefits.

REIMBURSEMENT OF REMOVAL COSTS

To make a claim for removal costs, you must show that:

1. The actions taken were necessary to prevent, minimize, or mitigate the effects of the oil spill;
2. The removal costs were incurred as a result of those actions; and
3. The actions taken were determined by the Federal On-Scene Coordinator (FOSC) to be consistent with the National Contingency Plan or were directed by the FOSC.

DAMAGES TO PROPERTY & ECONOMIC LOSSES FROM DESTRUCTION OF PROPERTY

To make a claim for damages to property or for economic losses resulting from destruction of property, you must prove:

1. Ownership or leasehold interest in the property;
2. That the property was injured or destroyed;
3. The cost of repair or replacement; and
4. The value of the property both before and after the injury occurred.

A claim for economic loss resulting from destruction of property also requires:

- Proof that the property was not available for use, and if it had been, the value of that use;
- Whether substitute property was available and, if used, the costs of using substitute property; and
- That the economic loss claimed was incurred as the result of the injury to or destruction of the property.

LOST PROFITS OR IMPAIRED EARNING CAPACITY

To make a claim for lost profits or impaired earning capacity resulting from property damage or natural resource damage, you must show:

- Your actual loss or impairment, without regard to the ownership or management of the property or natural resources;
- That the property or natural resources have been injured, destroyed, or lost;
- That your income was reduced because of that injury and the amount of that reduction in income;
- The amount of profits or earnings in comparable periods and during the period when the

claimed loss or impairment was suffered, established by tax returns, financial statements, and similar documents, including comparative figures for profits or earnings for the same or similar activities outside of the area affected by the incident;

- Whether alternative employment or business was available and undertaken, and if so, the amount of income received; and
- All income that you 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.

If you are also making a claim for property damage and/or economic losses resulting from that damage, you must file the two claims together, with the loss of profits claim a subpart of the damage and/or economic loss claim.

DAMAGES FOR LOSS OF SUBSISTENCE USE OF NATURAL RESOURCES

To make a claim for the loss of subsistence use of natural resources, you must provide:

- Proof of your actual use, for subsistence, of the natural resources which have been injured, destroyed, or lost, without regard to the ownership or management of those resources;
- The identification of each specific natural resource for which compensation for loss of subsistence use is claimed;
- A description of the actual subsistence use made of each specific natural resource;
- A description of how and to what extent your subsistence use was affected by the injury to or loss of each specific natural resource;
- A description of each effort made by you to mitigate your loss of subsistence use; and
- A description of each alternative source or means of subsistence available to you during the period of time for which loss of subsistence is claimed, and any compensation available to you for loss of subsistence.

Subsistence is defined as: “means of subsisting ... the minimum (as of food and shelter necessary to support ... life ... a source or means of obtaining the necessities of life.” *Webster’s Dictionary*. Subsistence use refers to using natural resources to obtain minimum necessities of life and not simply business activities.

If you are making a claim for loss of subsistence use of natural resources and also for the loss of profits or impairment of earning capacity due to that loss, you must file the two claims together, with the loss of profits claim a subpart of the loss of subsistence use claim.

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This product was prepared by the Mississippi-Alabama Sea Grant Legal Program under award number NA10OAR4170078 from the National Oceanic and Atmospheric Administration, U.S. Department of Commerce. The statements, findings, conclusions, and recommendations are those of the authors and do not necessarily reflect the views of NOAA or the U.S. Department of Commerce. The above information is intended as advisory research only and does not constitute legal representation.

MASGP 10-008-07 (May 2010)

RESOURCES

Deepwater Horizon Unified Command

For the latest news and information about the federal government's response to the spill, visit the official site of the Deepwater Horizon Unified Command at <http://www.deepwaterhorizonresponse.com/go/site/2931/>.

BP's Claims Information

Phone: 1-800-440-0858

Online at www.bp.com/claims

National Pollution Funds Center

If you are not satisfied with BP's resolution of your claim, you may contact the NPFC at 1-800-280-7118. For more information, visit their website at <http://www.uscg.mil/npfc/Claims/default.asp>

Small Business Administration

Business Recovery Centers are set to open Tuesday, May 18. Businesses may obtain loan information and application forms by calling SBA's Customer Service Center at (800) 659-2955 or (800) 877-8339 for the hearing impaired, e-mailing disastercustomerservice@sba.gov, visiting SBA's website at www.sba.gov/services/disasterassistance, or visiting a local Business Recovery Center.

Alabama Bar Association

You can call the Mobile Bar Association Lawyer Referral Service at (251) 433-1032 or Alabama State Bar Lawyer Referral Service at (800) 392-5660. Additional information can be found online at <http://www.alabar.org/>.

Alabama Attorney General

The Alabama Attorney General has a website dedicated to oil spill information available online at <http://oilspill.ago.alabama.gov/>.

Mississippi Bar Association

You may contact the Consumer Assistance Program of the Mississippi Bar at (601) 948-2344. A state attorney directory is also available online at <https://www.msbar.org/lawyerdirectory.php>. Their website also provides additional information to assist the public, such as guidance on how to choose a lawyer, https://www.msbar.org/how_to_choose_a_lawyer.php.

Mississippi Attorney General

The State Attorney General's website on the oil spill provides additional information on BP claims offices and the Small Business Administration's Loan Process. http://www.ago.state.ms.us/index.php/alerts/bp_oil_spill/

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As information comes available, MASGLP will post additional resources relating to the oil spill online at <http://masglp.olemiss.edu/oilspill.htm>