



U.S. DEPARTMENT OF COMMERCE  
 NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION  
**FISHERMEN'S CONTINGENCY FUND CLAIM APPLICATION**

NOAA FORM 88-164  
 Revised 10-2014  
 OMB Control No. 0648-0082  
 Expiration Date: 01-31-2015

**INFORMATION**

Claimant's Name			SSN
Business Name			Tax ID #
Mailing Address			Citizenship
City	State	Zip	Occupation
Email Address			Cell
Vessel Name		Vessel #	Phone
Home Port		Vessel Type	Tonnage
Locational coordinates of obstruction (GPS)			Date 15-day Report filed
Did you recover the obstruction? (Y/N) If yes, keep it as evidence.		Was a Surface marker attached to or near the obstruction? (Y/N)	
If obstruction dragged, at what location was it left?		Do you have photos of obstruction &/or damage? (Y/N) If yes, attach.	
Describe obstruction and include if surface marker was attached or near the obstruction. State why you believe the obstruction is associated with oil and gas activities on the Federal Outer Continental Shelf.			

Circumstances of Casualty (Damage or Loss)		Amount Claimed	
Date of Casualty		Gear Loss (from page 3)	
Time of Day		Gear Damage (from page 3)	
Water Depth		Vessel Damage (from page 3)	
Visibility		Vessel Loss	
Vessel's Speed		Economic Loss (from page 3)	
Vessel's Direction		Fuel (from page 3)	
How much time did casualty involve?		Other Expenses (from page 4)	
How many fishing days did you lose due to casualty?		Total	

Explain the Vessel's activity at the time of casualty.

Explain how the captain and crew responded.			
Explain any attempts to retrieve gear. State the number of gear units deployed and the number lost.			
Explain the extent of damage.			
Explain what captain and crew did after casualty. For example, did the vessel continue to fish or return to port?			
If returned to port, why?			
How much time did the casualty involve?			
Names of other vessels in the vicinity at the time of casualty.			
<b>Witnesses</b>			
Each claim must contain notarized statements from any material witnesses to the casualty. Statements must describe the basic circumstances (i.e. who, when, what was lost/damaged, etc.) under which the casualty occurred and any knowledge as to cause of the casualty. Statements must include the occupational status (i.e. vessel owner, vessel operator, crew, etc.). Provide the following information and attach the notarized statements. Attached additional sheets if more than 3 witnesses.			
Name 1		Street Address	
City	State	Zip	Phone
Name 2		Street Address	
City	State	Zip	Phone
Name 3		Street Address	
City	State	Zip	Phone
<b>Fuel – Complete this section if you are claiming for extra fuel consumed as a result of the casualty.</b>			
List the dollar amount for fuel you are claiming for extra fuel consumption. Explain how you calculated this amount.			
How many days had you been fishing when the casualty occurred?		On the casualty trip, how many hours (total) of running time was used to go to/from your port to casualty fishing site?	
How many extra hours of running time are you claiming because of casualty?		What was the price per gallon (receipts must be submitted) did you pay for the fuel burned on the casualty trip?	

**Economic Loss Claimed**

Provide the data for the following five (5) fishing trips: (a) three (3) trips prior to the casualty; (b) the casualty trip; and (c) the post-casualty trip. Attach copies of the fish trip tickets.

Date of Trip Ticket To From		Number of Pounds of Fish Caught	Number Days Spent Fishing	Dollar Value of Catch
1				
2				
3				
Total				
Average				

Take number of days lost fishing due to casualty and multiply by Average Dollar Value of Catch	=		Then multiply it by .50 for maximum amount economic loss allowed	=	
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Date of Trip Ticket To From		Number of Pounds of Fish Caught	Number Days Spent Fishing	Dollar Value of Catch
4				
Casualty Trip				
5				
Post-Casualty				

**Claimed Gear – Lost or Damaged**

List each gear item for which you seek compensation. Describe item and include quantity and size.

Item	Lost or Damaged	Date of Purchase	Purchase Price	Replacement or Repair Date	Replacement or Repair Cost
Total					

Attach additional sheet(s) if needed. Submit proof of purchase (i.e. sales receipts, affidavits, etc.), an estimate for repair or replacement, and documentation for the date repair began and ended or date the replacement gear ordered and received.

**Other Expenses**

List any other expenses you have incurred as a result of the casualty for which your claim is filed. Submit receipts.

Item	Amount

**Other Information**

Provide a statement on the amount of time lost from fishing because of the damage or loss and a full explanation of why the time period is reasonable.

Remarks and additional information.

**Statements and Signatures**

**CRIMINAL PENALTY FOR FRAUDULENT CLAIM.** Any person who files a fraudulent claim is subject to criminal prosecution under 18 U.S.C. Section 284 and 1001, each of which, upon conviction, imposes a penalty of not more than a \$10,000 fine and 5 years imprisonment, or both.

**Privacy Act Statement.** Section 3701 (c) of title 31, United States Code, authorizes collection of this information. This information is part an application for benefits and is required to obtain those benefits. The primary use of social security numbers or taxpayer identification numbers is to verify the identity of the applicant(s) and to allow preparations of IRS 1099s for claim payments as required pursuant to Section 6109 of the Internal Revenue code.

**Public reporting burden for this collection of information for a complete FCF claim (both forms 88-164 and 88-166) is estimated to average 8 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other suggestions for reducing this burden to National Marine Fisheries Service (NMFS or NOAA Fisheries), Financial Services Division, F/MB5 FCF, 1315 East West Hwy, 13<sup>th</sup> Floor, Silver Spring, MD 20910. Confidential name and address information will be released via a NOAA Fisheries website for informational purposes. All other data submitted will be handled as confidential Fishery Statistics. Notwithstanding any other provisions of the law, no person is required to respond to, nor shall any person be subjected to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.**

**SURROGATION AGREEMENT.** I, \_\_\_\_\_(name) , on behalf of individual/corporation, in consideration of the compensation received pursuant to the provisions of the Outer Continental Shelf Lands Act Amendments of 1978, Title IV, from the United States of America, represented by the Secretary of Commerce, acting by and through the Administrator for the National Oceanic and Atmospheric Administration (the Secretary) on the date hereof, I do hereby subrogate, assign, transfer and set over to the Secretary and the Secretary's successors and assigns, any and all rights and remedies, sums of money now due or owing to and nature, which I have had, or now have, or may have arising out of the loss, damage or destruction to our fishing vessel or gear for which the compensation has been granted. I hereby appoint the Secretary, the Secretary's successors and assigns, myself true and lawful attorney and attorneys, with full power of substitution and revocation, for me and in my name, or otherwise, but for the sole use benefit of the said Secretary, the Secretary's successors and assigns, to ask, demand, sue for the said claim or claims, or any part thereof.

I agree to provide the Secretary with all available and relevant information concerning the circumstances surrounding the events leading to the loss, damage or destruction for which the aforementioned compensation has been received. I also undertake to furnish the Secretary with such affidavits or declarations and to give such oral evidence as the Secretary may, in his/her discretion, deem necessary for the lawful pursuit of any claim arising from the aforementioned subrogated rights.

In witness whereof, I have hereunto set my hand on the date indicated below.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

I, \_\_\_\_\_ (name), a U.S. citizen, am the \_\_\_\_\_ Owner \_\_\_\_\_ Operator of the \_\_\_\_\_ (vessel) and have read all of the foregoing statements and supporting documents relating to this claim, and to the best of my knowledge all statements and documents are true and correct. No portion of the claimed loss and/or damage may be recoverable through an insurance claim. I also agree to repay all or any part of the award if the award should for any reason be subsequently reduced.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

### INSTRUCTIONS TO CLAIMANTS

I. GENERAL. The Fishermen's Contingency Fund (FCF) is authorized by Title IV of the Outer Continental Shelf (OCS) Lands Act Amendments of 1978. Its purpose is to compensate commercial fishermen for damage or loss caused by obstructions associated with OCS oil and gas activities in U.S. Federal waters. The Program is administered by the NMFS FCF, Financial Services Division F/MB5, 1315 East-West Hwy, 13<sup>th</sup> Floor, Silver Spring, MD 20910.

- A. PRESUMPTION OF CAUSATION. A presumption that the damage or loss was caused by items associated with OCS oil and gas activities is allowed if you report the damage or loss to NMFS FCF within 15 days after the date your vessel first return to port after discovering damage or loss and report the required information. If the report is not submitted within the 15 day period, the presumption exception will not be allowed and you will have to prove that the obstruction causing the damage was related to OCS oil and gas activities.
- B. NEGLIGENCE OR FAULT. Casualties occurring within a one-quarter (1/4) mile radius of obstructions so recorded or marked are presumed to involve your negligence or fault.
- C. FILING YOUR CLAIM. You must file a complete and accurate claim within 90 days after the date you first discovered the damage or loss. The term "file" means delivered in person or mailed to NMFS FCF at the address above. Claims not filed within 90 days may not be eligible for FCF compensation. NMFS FCF suggests that claims be sent by registered or certified mail with return receipt requested.
- D. FAILURE TO MEET THE FILING REQUIREMENTS. NMFS FCF may reject your Claim if it does not meet the filing requirements. If your claim is rejected, NMFS FCF will give you written notice of the reasons for rejection. If you do not refile an acceptable claim within 30 days after the date of this written notice, you will not be eligible for FCF compensation unless there are extenuating circumstances.
- E. AGGREGATING CLAIMS. If more than one commercial fisherman suffers loss or damage from the same casualty, the losses should be included in one claim application.
- F. AMENDMENT TO CLAIMS. You may amend your claim any time before the NMFS FCF initial determination.

II. WHAT CAN BE CLAIMED. You may file for actual and consequential damages as follows:

- A. ACTUAL DAMAGES. The lesser of the gear's repair or reasonable replacement cost.
- B. RESULTING ECONOMIC LOSS. Up to 50% of gross income loss, as estimated by NMFS FCF, you will lose because of not being able to fish, or having to reduce fishing effort, during the period before the damaged or lost fishing gear is repaired or replaced. This period must be reasonable and supportable by the facts and documents.
- C. ATTORNEY, CPA, AND CONSULTANT FEES. Reasonable fees paid to an attorney, CPA, or other consultant for the preparation of your claim. NMFS FCF will determine what amounts are reasonable. You will not be compensated for these fees if the claim is denied.
- D. CONSEQUENTIAL (OTHER) DAMAGES. Damage or loss, except personal injury, that was incurred as a consequence of the fishing gear damage or loss.

III. NEGLIGENCE CLAIMANT. An award will be reduced to the extent that the damage or loss was caused by your negligence or fault. Basic grounds for finding a claimant negligent or at fault are listed in the FCF Regulations. Negligence of the owner or operator of fishing gear will affect crew member awards.

IV. INSURANCE PROCEEDS. An FCF award will be reduced by the amount of any compensation you are entitled to receive from insurance.

V. PENALTY FOR FALSE CLAIMS. Any person who files a fraudulent claim is subject to prosecution under 18 USC sections 2187 and 1001, each of which, upon conviction, imposes a penalty of not more than \$10,000 fine and 5 years imprisonment, or both.

VI. REQUIRED DOCUMENTATION. Documents which must be submitted with your claim are:

- A. Proof that you purchased the fishing gear damaged or lost. Submit copies of the best evidence available (i.e. sales receipts, affidavits, cancelled checks, or other evidence).
- B. Written estimate showing repair or replacement costs for the damaged and/or lost fishing gear.
- C. Prior to payment of any claim, claimant must submit documentation that the replacement gear ordered and received and/or the date gear repair began and ended.
- D. Trip tickets for the three (3) vessel trips immediately before the trip during which the casualty was discovered, the casualty trip, and for the trip immediately following the trip during which the casualty occurred.
- E. Photographs (if available) of the obstruction and of any damage to your gear.
- F. Signed notarized statements from each witness.
- G. The name, address and phone number of each person, if any, to whom you have given oral or written notice that such person caused or may have caused the damage or loss, together with a copy of any written notice given each such person and a statement whether each such person has paid or will pay you for any portion of your claim.

VII. NMFS PROCESSING OF CLAIMS.

- A. NMFS FCF will process your claim and mail a written initial determination to you within 60 days of the date it is complete with regard to the information required for compensation from FCF. An initial determination will state:
  - (1) If the claim is disapproved, the reason for disapproval, or
  - (2) If the claim is approved, the amount of compensation and the basis on which amount was determined.
- B. If you disagree with the initial determination, you or any other interested person who submitted evidence relating to the initial determination, may request a review of the initial determination.
  - (1) Your written request must be postmarked within 30 days of the date of the initial determination and must fully state your reason(s) for disagreement; and
  - (2) If a petition for review of an initial determination is timely filed, the NOAA Fisheries Assistant Administrator, or designee, will conduct a review of the initial determination, and issue a final determination within 60 days after the day on which the request for review of the initial determination was received.
- C. If no request for initial review is submitted within 30 days, the initial determination will become a final determination.

VIII. PAYMENT OF AWARD FOR CLAIM. When an initial determination becomes final, NMFS FCF shall disburse the amount awarded.

IX. SUBROGATION. NMFS must obtain a subrogation agreement signed by you which assigns to the NMFS your rights against third parties and provides that you will assist NMFS in any reasonable way to pursue those rights.

Authority: Public Law 97-212 (43 USC 1841 *et seq.*). Regulations: 50 CFR Part 296.

Contact information: NMFS F/MB5 FCF, 1315 East West Highway, 13<sup>th</sup> Floor, Silver Spring, MD 20910. Telephone: 301.427.8725. Fax: 301.713.1306. Additional information at [www.nmfs.noaa.gov/mb/financial\\_services/fcf.htm](http://www.nmfs.noaa.gov/mb/financial_services/fcf.htm)