

CLAIM SUMMARY / DETERMINATION FORM

Date : March 6, 2012
Claim Number : N08057-0105
Claimant : Minotaur Navigation Co.
Type of Claimant : Corporate
Type of Claim : Profits and Earnings Capacity
Claim Manager : [REDACTED]
Amount Requested : \$148,755.00

I. Facts

On the morning of July 23, 2008, the tank barge DM 932 sank as a result of a collision and discharged oil into the Mississippi River, a navigable waterway of the United States.

II. Responsible Party

American Commercial Lines LLC (ACL) owned the barge at the time of the incident and is a Responsible Party (RP) under the Oil Pollution Act of 1990 (OPA).

III. Claimant and the Claim

Minotaur Navigation Co. (Claimant) is an international shipping company. Claimant is a Greek corporation with offices c/o Medcare Shipping S.A at 124 Vouliagmenis Avenue, 16674, Glyfada, Athens, Greece.

A. Claim Submission

On July 26, 2011, Claimant presented a claim for Loss of Profits and Impairment of Earnings Capacity damages to the NPFC, in the amount of \$148,755.00.¹ Specifically, Claimant sought (1) \$87,840.00 for 50% of the demurrage costs incurred at Grandview Anchorage, (2) \$36,390.00 for fuel and bunker costs used at Grandview Anchorage (3) \$19,215.00 in tug costs to be brought to Grandview Anchorage, and (4) \$5,310.11 in pilotage expenses incurred at Grandview Anchorage.² The costs are allegedly incurred due to a 131 hour and 50 minute vessel delay resulting from closure of the river during the oil spill response.

Claimed	Quantity	Rate	Alleged Loss
<i>Marvea</i>	7/23 0800 – 7/28 1950	\$16,000.00	\$87,840.00
Bunker IFO	30 metric tons	\$813.00	\$24,390.00
Bunker MDO	12 metric tons	\$1,000.00	\$12,000.00
Tug to GVA	1	\$19,215.00	\$19,215.00
Pilotage	1	\$5,310.11	\$5,310.00
			\$148,755.00

¹ Letter of explanation from Chalos & Co PC International Law Firm dated July 21, 2011.

² Letter of explanation from Chalos & Co PC International Law Firm dated July 21, 2011.

Claimant owns and charters a vessel named the *M/T Marvea*. The *Marvea* was chartered by Coral Marine Ltd. on July 14, 2008 for a load point in Baton Rouge and four discharge points in the Bahamas, Dominican Republic, Cayman Islands and Belize with an optional discharge in the Dominican Republic or east coast central America not to be south of Honduras.

B. Mitigation and Saved Expenses

33 C.F.R. § 136.105(d)(7) requires Claimant to provide a description of the actions taken to avoid or minimize damages claimed. The NPFC requested certain additional information from Claimant via certified letter dated August 09, 2011, including information regarding how, and to what extent Claimant may have been able to mitigate losses allegedly incurred due to the DM-932 barge oil spill.³ Claimant did not address either question in their response dated October 28, 2011 to the NPFC and as of the date of this determination has not provided further documentation.

C. Claim Submission to the Responsible Party

Claimant first presented this claim to the RP's agent Worley Catastrophe Response on September 15, 2008.⁴ Claimant's submission to the NPFC includes a copy of Worley Catastrophe's request for additional information, dated January 7, 2009.⁵ On May 26, 2009 the RP filed a Complaint for Declaratory Judgment against Claimant in the US District Court for the Eastern District of Louisiana.⁶ Claimant among others filed a motion to dismiss, and the Court granted dismissal on condition that Claimant's counterclaims be withdrawn without prejudice. Claimant withdrew their counterclaims and the Court granted the dismissal on October 28, 2010, closing the matter.⁷ Claimant asserts they have no actions currently pending in Court involving the subject matter of NPFC claim N08057-0105.⁸ On April 05, 2010 Worley reiterated the request for additional information via email.⁹ Claimant's representative Chalos & Co. submitted the additional information to the RP on December 17, 2010.¹⁰ On December 21, 2010 the RP sent the additional information to their forensic accountants and stated they would notify Claimant when they received "his analysis."¹¹ Claimant has not received any further correspondence with the RP and has brought the claim to the NPFC for adjudication citing that 90 days have elapsed since Claimant's submission to the RP.¹²

IV. Applicable Law

Each responsible party for a vessel or facility from which oil is discharged, or which poses a substantial threat of a discharge of oil, into or upon the navigable waters or adjoining shorelines is liable for removal costs and damages resulting from such incident. 33 U.S.C. § 2702(a).

"Oil" is defined in relevant part, at 33 USC § 2701(23), to mean "oil of any kind or in any form, including petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil".

³ NPFC request for additional information dated August 09, 2011, question 1 b and c.

⁴ Letter from Skuld Insurance on behalf of Claimant to Worley Catastrophes Response dated September 15, 2008.

⁵ Worley's request for additional information dated January 9, 2008.

⁶ Civil action number 2:09-cv-03657.

⁷ US District Court Eastern District of Louisiana (New Orleans) Civil Docket for Case #: 2:09-cv-03657-ILRL-KWR.

⁸ Letter of explanation from Chalos & Co PC International Law Firm dated July 21, 2011 at page 2.

⁹ Email from Nicoletti Hornig & Sweeny to Chalos Law dated April 05, 2010.

¹⁰ Email from Chalos Law to Nicoletti Hornig & Sweeny dated December 17, 2010.

¹¹ Email from Nicoletti Hornig & Sweeny dated December 21, 2010.

¹² Letter of explanation from Chalos & Co PC International Law Firm dated July 21, 2011 page 3.

Damages include damages equal to the loss of profits or earning capacity due to the injury, destruction, or loss of real or personal property or natural resources, which shall be recoverable by any claimant. 33 U.S.C. §2702(b)(2)(E).

The Oil Spill Liability Trust Fund (OSLTF), which is administered by the NPFC, is available, for the payment of claims in accordance with section 2713 of this title for uncompensated removal costs determined by the President to be consistent with the National Contingency Plan or uncompensated damages. 33 USC § 2712(a)(4).

The President shall promulgate, and may from time to time amend, regulations for the presentation, filing, processing, settlement, and adjudication of claims under this Act against the Fund. 33 U.S.C. § 2713(e). The claims regulations are found at 33 CFR Part 136.

Under 33 CFR 136.105(b) each claim must be in writing, for a sum certain for each category of uncompensated damages or removal costs resulting from an incident.

All claims for removal costs or damages shall be presented first to the responsible party or guarantor of the source designated under section 2714 (a) of this title. 33 U.S.C. §2713(a).

The Fund shall be available to the President for –

(4) [T]he payment of claims in accordance with section 2713 of this title for uncompensated removal costs determined by the President to be consistent with the National Contingency Plan or uncompensated damages. 33 U.S.C. § 2712(a)(4).

Congress directed the President to promulgate regulations “for the presentation, filing, processing, settlement, and adjudication of claims...” 33 U.S.C. §2713(e). Those regulations are found at 33 CFR Part 136.

Damage claims must be presented within 3 years after the date on which the injury and its connection with the discharge in question were reasonably discoverable with the exercise of due care. 33 U.S.C. §2712(h)(2).

In any case in which the President has paid an amount from the OSLTF for any removal costs or damages specified under 33 U.S.C. §2712(a), no other claim may be paid from the Fund for the same removal costs or damages. 33 U.S.C. §2712(i).

Under 33 CFR 136.105(a) and 136.105(e)(6), claimant bears the burden of providing all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim. Further, a claim presented to the Fund should include, as applicable:

With regard to claims for loss profits and impairment of earning capacity, the NPFC must independently determine that the proof criteria in OPA and the implementing regulations, at 33 CFR Part 136, are met, including the general provisions of 33 CFR 136.105, and the specific requirements for loss of profits and earning capacity claims in Subpart C, 33 CFR 136.231, et seq.

Pursuant to the provisions of 33 CFR 136.231, claims for loss of profits or impairment of earning capacity due to injury to, destruction of, or loss of real or personal property or natural resources may be presented to the Fund by Claimant sustaining the loss or impairment.

“In addition to the requirements of Subparts A and B of this part, 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 the 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.
- (d) Whether alternative employment or business was available and undertaken and, if so, the amount of income received. All income that a claimant receives 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.” 33 CFR 136.233 (a) – (d)

The compensable amount is limited to the actual net reduction or loss of earnings and profits suffered. Calculations for net reductions or losses must clearly reflect adjustments for the following: all income resulting from the incident; all income from alternative employment or business undertaken; potential income from alternative employment or business not undertaken, but reasonably available; any saved overhead or normal business expenses not incurred as a result of the incident; and state, local, and Federal tax savings. 33 CFR 136.235 (a) – (e).

V. NPFC Analysis and Determination

A. Claim Submission

1. Claim

Claimant alleges to have sustained lost profits and impairment of earnings capacity damages in the amount of \$148,755.00 for the delay and expenses incurred for the *M/T Marvea* at Grandview Anchorage due to the DM-932 barge oil spill and the resulting closure of the lower Mississippi River.¹³ The DM-932 barge oil spill disrupted shipping in and out of the Mississippi River. The NPFC reviewed the Coast Guard POLREPS which indicate that vessels were delayed from July 23, 2008 until after August 03, 2008.¹⁴ POLREP eight, issued on September 28, 2008, stated that the safety zone from mile marker 97 through mile marker 60 would be maintained for the indefinite future to ensure integrity of boom systems and safety of pollution response workers.¹⁵ The NPFC confirmed that Claimant docked at Grandview Anchorage at mile marker 147.60¹⁶ up river from the oil spill on the July 23, 2008 after the spill closed the lower Mississippi river impeding the *Marvea*’s travel down river to Nassau, Bahamas.¹⁷

2. Documentation Submitted

a. Original Submission July 21, 2011

- 1. Letter of explanation dated 21 July 2011. (6 pages)

¹³ Letter of explanation from Chalos & Co PC International Law Firm dated July 21, 2011.

¹⁴ Coast Guard POLREPs.

¹⁵ POLREP eight dated September 28, 2008.

¹⁶ Grandview Anchorage mile marker 147.6 from New Orleans-Baton Rouge Steamship Pilots Association invoice dated 23 July 2008.

¹⁷ Laytime statement, statement of facts, and pilot invoices.

2. USCG Press Release dated 23 July 2008 closing Mississippi River to all vessel traffic from mile marker 99 to mile marker 70.
3. CNN article titled "Spill could close part of Mississippi River for days" dated 23 July 2008.
4. Closed lawsuit in the U.S. District Court Eastern District of Louisiana filed 26 May 2009.
5. Submissions from Claimant's insurer Skuld to the responsible party's agent Worley Catastrophe Response dated 15 September 2008.
6. Email from Worley (RP agent) to *Marvea*'s insurer dated 07 January 2009 requesting additional information.
7. Emails from Claimant's representatives at Chalos & Co, PC to Nicoletti Hornig & Sweeny.
8. Charter Party contract between Claimant the Owner Minotaur Navigation Company LTD and charterer Coral Marine LTD and Charter Party ExxonMobilVoy 2005 dated 14 July 2008.
9. Statement of Facts from Inchcape Shipping from Port New Orleans dated 29 July 2008. (20 July 2008 through 29 July 2008)
10. Affidavit from Captain S. Vinogradov stating use of fuel while delayed at Grandview Anchorage of HFO at 30 MTS and MDO at 12 MTS dated 30 July 2008.
11. Invoice from Baluco S.A. to *Marvea* for IFO dated 25 July 2008 for \$325,514.50.
12. Payment to Baluco S.A. in the amount of \$325,519.27 dated 18 August 2008.
13. Fuel Bunker Delivery Receipt from Shell Marine Products to *Marvea* dated 20 July 2008.
14. Invoice from Baluco S.A. to *Marvea* for MDO dated 25 July 2008 for \$50,000.00.
15. Payment to Baluco S.A. in the amount of \$50,004.77 dated 27 August 2008.
16. Itemized invoice from River Parishes Co. Inc. to *Marvea* for Anchor, Sailing, and Fuel Surcharges to be taken to Grandview Anchorage serviced on 23 July 2008 for \$19,215.12.
17. Payment to River Parishes Co. Inc. in the amount of \$76,865.03 dated 17 September 2008.
18. Sector New Orleans Vetted List for 28 July 2008 showing *Marvea* as an Import Vessel.
19. Mutual Release and Settlement Agreement between Minotaur Navigation Company Ltd and Coral Marine Ltd dated 15 September 2009.
20. Demurrage invoice to ExxonMobil from Minotaur Navigation Company Ltd totaling \$233,188.25 dated 11 May 2009.
21. Inchcape Shipping Services Voyage Disbursement Account for customer MSH053 disbursements of \$32,975.00.
22. 20 July 2008 New Orleans – Baton Rouge Steamship Pilots Association order for pilot traveling from mm147.60 GRV to mm232.20 EXX2 and mm 221.80 DOWNUW for \$7,067.26.
23. 23 July 2008 New Orleans – Baton Rouge Steamship Pilots Association order for pilot traveling from mm232.10 EXX2 to mm147.60 GRV for \$6,825.46.
24. 28 July 2008 New Orleans – Baton Rouge Steamship Pilots Association order for pilot traveling from mm147.60 GRV to mm90.50 BOOTH for \$5,310.11.
25. Invoice from Crescent River Port Pilot's Association to Inchcape Shipping for \$4,533.62 dated 15 September 2008.
26. Pilot 92 Mr. Clasen order form for 28 July 2008.
27. Invoice for pilot from Delta Launch Services LLC to InchCape Shipping Services for \$531.30 06 dated August 2008.
28. Pilot Ticket dated 24 July 2008 for Inchcape Shipping and *Marvea*.

29. Invoice from Associated Branch Pilots for Inchcape Shipping for \$2,352.37.
30. Pilot order ticket dated 29 July 2008 for Inchcape Shipping.
31. Invoice from Port Ship Service Inc. to Inchcape Shipping dated 28 July 2008.
32. Invoice from Belle Chasse Marine Transportation, Inc. dated 29 July 2008.
33. Pilot ticket dated 23 July 2008.
34. Invoice from Shamrock Marine LLC for work performed 21 July 2008.
35. Payment to Inchcape Shipping from Claimant for \$17,158.00 dated 28 January 2009.
36. Payment to Inchcape Shipping from Claimant for \$33,004.91.

b. Chalos & Co, P.C. International Law Firm partial additional information response dated 28 October 2011.

1. Answers to NPFC's request for additional information dated 09 August 2011. (2a, b, c, d, f, g, h & 3b, c, d, and e)
2. Email from Port Agent for Inchcape Shipping dated 23 July 2008.
3. Email from Port Agent for Inchcape Shipping dated 31 July 2008.

c. Chalos & Co, P.C. International Law Firm remainder of the additional information response dated 06 December 2011.

1. Answers to NPFC's request for additional information dated 09 August 2011. (1 & 2e & 3a, f & 4a, b & 5a, b)
2. *M/T Marvea* Income and Expenses spreadsheet for 01 July 2007 through 31 August 2007 and 24 June 2008 through 30 August 2008.
3. Affidavit from Mr. Jose Tedman (Sole Director of Minotaur Navigation Co Ltd) declaring a loss from hotel consumption while at Grandview Anchorage.
4. Clearly printed copy of the Laytime Statement dated 12 June 2011.
5. *SS MV Ships* log for 23 July 2008 through 29 July 2008 from Baton Rouge.
6. *Marvea* Main Engine logs showing daily consumption of bunkers and diesel from 22 July 2008 through 29 July 2008.
7. Previously submitted three pilot invoices from New Orleans-Baton Rouge Steamship Pilots Association for 20, 23, and 28 July 2008.

B. NPFC Findings

1. Vessel demurrage damages \$87,840.00

Claimant asserts that because the vessel was delayed during the river closure, it suffered a loss of profits,¹⁸ in the form of demurrage.¹⁹ However, a loss of profits must be based on objective facts, figures or dates from which the amount of lost profits can be ascertained. *Atlas Copco Tools, Inc. v. Air Power Tool & Hoist, Inc.*, 131 S.W. 3rd 203 (Tex. App 2004). The NPFC agrees with, and the OPA regulations comport with this theory. The regulations require financial reports or income tax returns,²⁰ objective facts or figures to evidence with reasonable certainty that Claimant sustained a certain amount of damages.

¹⁸ Letter of explanation from Chalos & Co PC International Law Firm dated July 21, 2011.

¹⁹ Demurrage calculation in Letter of explanation at page 5 using demurrage rate of \$33,000 per day from charter party agreement dated July 14, 2008.

²⁰ The amount of 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. 33 CFR 136.233(c).

Once the fact of damages is established, there are several methodologies that may be used to quantify the damage, including a demurrage rate provided in a charter or contract. Demurrage or a loss of profits resulting from the loss of use of a vessel, has traditionally been an item of damages in admiralty. *Skou v. United States*, 478 F. 343, 345 (5th Cir. 1973). However, courts sitting in admiralty agree with the requirement that damages must first be established. The mere stipulation of a liquidated sum for demurrage in a charter agreement does not obviate the need to show actual damages. *Trans-Asiatic Oil Ltd. S.A. v. Apex Oil Co.*, 804 F. 2d 773, 782 (P.R. 1986). In this case Claimant originally calculated its loss of profits based on a daily or hourly rate for demurrage. However, these values do not establish a loss of profits in fact.

The Statement of Facts dated July 29, 2008 shows that the vessel was delayed from July 23, 2008 at 0800 through July 28, 2008 at 1950 by being anchored at Grandview Anchorage due to the closure of the lower Mississippi river resulting from the DM-932 oil spill.²¹ Furthermore, Claimant submitted a Laytime Statement showing demurrage time at 50%²² from July 23, 2008 at 0800 through July 28, 2008 at 1950 totaling 65.92 hours.²³ Additionally Claimant submitted vessel logs for the *Marvea* showing the vessel anchored at Grandview Anchorage from July 23, 2008 at 0800 through July 28, 2008 at 1900.²⁴ Claimant further submitted proof of payment in the form of demurrage settlement with the Charter in the amount of \$233,188.25 for the entire voyage charter including the 50% owed for the delay at Grandview Anchorage.²⁵ Although Claimant can show the vessel was delayed at Grandview Anchorage for 131 hours and 50 minutes from July 23, 2008 through July 28, 2008 this demurrage does not result in an extra expense and has not been proven to be a loss of profits for Claimant who is the owner of the *Marvea*. The Charter Party Agreement shows one load port and four discharge ports with an option of one other discharge port at the Charter's discretion with no specified end date for the return of the vessel to the owner/Claimant.²⁶ The Laytime Statement shows that the one load port and five discharge ports were all completed.²⁷ Unlike the Charterer, the owner would owe the 50% of the demurrage to themselves. Without evidencing a lost pending job due to the delay Claimant has not proven that it lost profits or had impairment of earnings capacity due to the demurrage.

The NPFC sent Claimant a request for additional information dated August 09, 2011.²⁸ In accordance with OPA 90 and 33 CFR 136.233 (b)-(d) the NPFC asked for financials from comparable periods that would show that Claimant sustained a loss of profits for the period claimed.²⁹ Claimant provided a spreadsheet showing daily profit of \$36,974.01 for July 01, 2007 through August 31, 2007 and daily profit of \$36,839.79 for June 24, 2008 through August 30, 2008.³⁰ However, this spreadsheet was created in excel and does not provide any evidence as to actual figures obtained from Claimant's financial documents. Without tax returns, profit and loss statements, or other similar financials showing a loss of profits for the time period of the July 23, 2008 through the July 28, 2008 the documentation submitted is insufficient to evidence a loss under OPA. Therefore the \$87,840.00 is denied.

²¹ Statement of Facts from Inchcape Shipping dated July 29, 2008.

²² Charter party agreement dated July 14, 2008 states "delays due to port authority to count 50% at line 206.

²³ Laytime Statement dated January 09, 2010.

²⁴ Vessel Logs for *Marvea* dated July 23-29, 2008.

²⁵ Mutual Release and Settlement Agreement dated September 15, 2009 between Claimant and Coral Marine Ltd.

²⁶ Charter party agreement dated July 14, 2008.

²⁷ Laytime Statement dated January 09, 2010.

²⁸ NPFC request for additional information dated August 09, 2011.

²⁹ NPFC request for additional information dated August 09, 2011 at question 1.

³⁰ M/T *Marvea* Income and expenses spreadsheet submitted December 06, 2011.

2. Bunkers, Intermediate Fuel Oil (IFO), and Marine Diesel Oil (MDO) totaling \$36,390.00

Claimant alleges they incurred extra fuel and diesel costs associated with waiting 131 hours and 50 minutes from July 23, 2008 at 0800 through July 28, 2008 at 1950.³¹

Claimant asserts that 30 metric tons of IFO³² at a unit price of \$813.00 totaling \$24,390.00 was consumed over the 131 hours and 50 minutes. Claimant provided vessel logs of the main engine evidencing the daily consumption of IFO indicating consumption of 30 metric tons of IFO over the 131 hours and 50 minutes at Grandview Anchorage.³³

Claimant evidenced the unit price by providing the invoice for IFO dated July 25, 2008 at \$764.50 per unit,³⁴ not as claimed of \$813.00. Claimant evidenced payment for the IFO by providing an electronic payment receipt to Baluco S.A, dated August 18, 2008.³⁵ The NPFC finds the additional fuel required to maintain the vessel while delayed compensable. However, the NPFC will pay in accordance with documentation provided by Claimant. Therefore, in accordance with the invoice³⁶ the NPFC calculates that consumption of IFO while delayed due to the DM-932 oil spill totals **\$22,935.00**³⁷ and is compensable. The additional costs on this invoice - for barging, would have to be paid regardless of the delay, since the vessel took on much more fuel than required by the delay. Therefore, the NPFC denies the remainder of the invoiced costs.

Claimant asserts that 12 metric tons of MDO³⁸ at a unit price of \$1,000.00 totaling \$12,000.00 was consumed over the 131 hours and 50 minute delay at Grandview Anchorage. Claimant provided vessel logs of the main engine evidencing the daily consumption of MDO indicating consumption of 12 metric tons of MDO over the 131 hours and 50 minutes at Grandview Anchorage.³⁹ Claimant evidenced the unit price by providing the invoice for MDO dated July 25, 2008 at \$1,000.00 per unit.⁴⁰ Claimant evidenced payment for the MDO by providing an electronic payment to Baluco S.A. dated August 27, 2008.⁴¹ Thus the NPFC finds this **\$12,000.00** cost compensable.

The NPFC finds the total compensable additional bunker costs to be \$34,395.00.⁴² The increased fuel consumption was clearly caused by the oil spill incident and subsequent river closure.

3. Tug expenses to Grandview Anchorage totaling \$19, 215.12

Claimant's vessel was finished loading in Baton Rouge on July 23, 2008 at 0630⁴³ and departed south along the Mississippi River. The Marvea was notified of the closure of the

³¹ Letter of explanation from Chalos & Co PC International Law Firm dated July 21, 2011.

³² *M/T Marvea* Captains/Master statement of IFO and MDO usage during the demurrage time.

³³ Vessel logs of main engine fuel and diesel consumption submitted December 06, 2011.

³⁴ Invoice from Baluco S.A. for IFO dated July 25, 2008.

³⁵ Payment verification for Baluco S.A. invoice for IFO dated July 25, 2008 via electronic transfer dated August 18, 2008.

³⁶ Invoice No. 9911 from Baluco S.A. for IFO dated July 25, 2008.

³⁷ 30 metric tons of IFO multiplied by unit price of \$764. 50 equals \$22,935.00.

³⁸ *M/T Marvea* Captains/Master statement of IFO and MDO usage during the demurrage time.

³⁹ Vessel logs of main engine fuel and diesel consumption submitted December 06, 2011.

⁴⁰ Invoice from Baluco S.A. for MDO dated July 25, 2008.

⁴¹ Payment verification for Baluco S.A. invoice for MDO dated July 25, 2008 via electronic transfer dated August 27, 2008.

⁴² IFO \$22,395.00 plus \$12,000.00 equals \$34, 395.00.

⁴³ Statement of Facts from Inchcape Shipping dated July 29, 2008.

lower Mississippi River and needed tugs in the amount of \$19,215.12⁴⁴ to transport the vessel to Grandview Anchorage on July 23, 2008 and depart Grandview Anchorage on July 28, 2008 due to oil spill/cargo hold.⁴⁵ Payment from Claimant to River Parishes Co. Inc., the provider of the tug to Grandview Anchorage, is evidenced by electronic payment dated September 17, 2008.⁴⁶ NPFC staff corroborated the services rendered by River Parishes Co via telephone on March 05, 2012.⁴⁷

The NPFC finds the total compensable tug costs to be **\$19,215.12**.⁴⁸ This increased tug cost to Grandview Anchorage was clearly caused by the oil spill incident and subsequent river closure. Claimant's vessel was finished loading and ready to proceed to Nassau Bahamas, its first discharge port after departing the Mississippi river. The closure of the lower Mississippi river due to the DM-932 oil spill clearly delaying the *Marvea* at Grandview Anchorage.

4. Pilotage fees of \$5,310.11

Claimant alleges extra pilot expenses amounting to \$5,310.11 due to the oil spill incident.⁴⁹ Claimant evidenced the use of three pilots through invoices provided to the NPFC on July 21, 2011. The first invoice is for transportation from Grandview Anchorage at mile marker 147.60 to Exxon Baton Rouge mile marker 232.10, and then to Dow Plaques at mile marker 221.80, ordered July 20, 2008 in the amount of \$7,067.26.⁵⁰ The second invoice is for transportation from Exxon Baton Rouge at mile marker 232.10 to Grandview Anchorage at mile marker 147.60 ordered July 23, 2008 in the amount of \$6,825.46.⁵¹ The third invoice, number 0099039, is claimed as the extra pilotage costs. This invoice is for transportation from Grandview Anchorage mile marker 147.60 to Point/Algiers at mile marker 90.50 ordered July 28, 2008 in the amount of \$5,310.11.⁵²

The NPFC reviewed all three invoices submitted. First, the claimed invoice (0099039) would not be compensable because it only shows the cost of transporting the vessel from Grandview Anchorage to Point Algiers. This portion of the river would have been traveled by a pilot whether the oil spill incident had occurred or not. No "extra" expenses have been presented. This applies to the other two pilotage invoices submitted as well. The cost, if any, of "extra pilotage" has not been proven. Therefore the NPFC denies this \$5,310.11.

VI. SUMMARY

OPA requires that the Claimant bear the burden of providing all evidence, information and documentation deemed necessary to support the claim. The claims regulations require that a Claimant establish that they sustained a loss of profits or impairment of earning capacity

⁴⁴ Invoice 216147 from River Parishes Co. Inc. for services provided July 23, 2008 from Stream zone 1 to Grandview Anchorage 145 in the amount of \$19,215.12.

⁴⁵ Statement of Facts from Inchcape Shipping dated July 29, 2008. See also call log pertaining to [REDACTED] at River Parishes Co corroborated invoice 216147 and the use of the tugs to anchor and depart at Grandview Anchorage to NPFC staff via telephone call 05 March 2012.

⁴⁶ Electronic payment to River Parishes Co. Inc. dated September 17, 2008 in the amount of \$76,865.03.

⁴⁷ [REDACTED] at River Parishes Co corroborated invoice 216147 and the use of the tugs to anchor July 23 and depart July 28 2008 at Grandview Anchorage to NPFC staff via telephone call 05 March 2012.

⁴⁸ IFO \$22,395.00 plus \$12,000.00 equals \$34,395.00.

⁴⁹ Letter of explanation from Chalos & Co PC International Law Firm dated July 21, 2011.

⁵⁰ New Orleans-Baton Rouge Steamship Pilots Association invoice 0098579 ordered July 20, 2008.

⁵¹ New Orleans-Baton Rouge Steamship Pilots Association invoice 0098832 ordered July 23, 2008.

⁵² New Orleans-Baton Rouge Steamship Pilots Association invoice 0099039 ordered July 28, 2008.

damages by income tax returns, financial statements or other similar documents.⁵³ In this case, Claimant has not established that it suffered an actual loss of profits that can then be compared to the claimed demurrage resulting from the closure of the Mississippi River due to the oil spill. Among other facts Claimant has failed to provide evidence that business was lost, pending jobs were not filled or other vessels outside of the spill area could not be utilized to complete pending jobs. Claimant failed to demonstrate a loss of profits or earning capacity regarding their alleged inability to use their vessel which can be directly attributed to the DM-932 oil spill. Furthermore Claimant has failed to answer or address the NPFC's request for information regarding saved expenses and mitigation of the alleged loss.⁵⁴


Claimant has evidenced the MDO and IFO consumption during the 131 hours and 50 minute delay in the amount of \$34,935.00.⁵⁵

Claimant has evidenced the need to be anchored upriver from the lower Mississippi river closure after loading the vessel on July 23, 2008 and proceeding south, by use of tugs.⁵⁶ The costs of the tugs used to anchor at and depart from Grandview Anchorage were \$19,215.12.⁵⁷

Claimant has not evidenced the use of extra pilotage fees during the delay from July 23, 2008 at 0800 through July 28, 2008 at 1950. None of the three invoices⁵⁸ detail extra costs incurred due to the closure of the lower Mississippi river as a result of the DM-932 oil spill.

Based on the above, the NPFC determines that \$54,150.12⁵⁹ is OPA compensable under the law and as evidenced by documentation submitted by Claimant to support the claim.

VII. DETERMINED AMOUNT: \$54,150.12

Claim Supervisor: 

Date of Supervisor's Review: 3/7/12

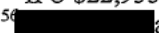
Supervisor Action: OPA APPROVED

Supervisor's Comments:

⁵³ 33 C.F.R. §136.233 (b)-(d).

⁵⁴ NPFC request for additional information dated August 09, 2011, question 1 b and c.

⁵⁵ IFO \$22,935.00 plus \$12,000.00 equals \$34,935.00.

⁵⁶  at River Parishes Co corroborated invoice 216147 and the use of the tugs to anchor and depart at Grandview Anchorage to NPFC staff via telephone call 05 March 2012.

⁵⁷ Invoice 216147 from River Parishes Co. Inc. for services provided July 23, 2008 in the amount of \$19,215.12 and Electronic payment to River Parishes Co. Inc. dated September 17, 2008 in the amount of \$76,865.03.

⁵⁸ New Orleans-Baton Rouge Steamship Pilots Association invoices 0098579, 0098832, and 0099039.

⁵⁹ \$34,935.00 for MDO and IFO consumption plus \$19,215.12 for tug fees equals \$54,150.12.