CLAIM SUMMARY / DETERMINATION

Claim Number: N08057-0112
Claimant: Gulf Production Company, Inc.
Type of Claimant: Corporate
Type of Claim: Loss of Profits and Earnings
Claim Manager: [redacted]
Amount Requested: $144,920.29

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. Approximately 282,828 gallons of oil were released into the Mississippi River and the resulting spill response, coordinated by the FOSC Unified Command, initially closed the river to vessel traffic and later, when reopened, managed traffic. [1] The Industrial Canal Lock (Industrial Lock), located at Lower Mississippi River mile 92.6, was in the impacted zone of the River and vessels at the Industrial Lock were delayed due to the incident.[2]

Responsible Party

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

The Claimant and the Claim

On July 22, 2011 the Law Office of Gordon Starling, L.L.C. presented a claim to the National Pollution Funds Center (NPFC) for its client, Gulf Production Company, Inc. (Gulf Production) and its working interest owners, Gulf Explorer, L.L.C., B&L Exploration, L.L.C., Kaiser-Francis Gulf Coast, L.L.C., and Ralaco Ventures, L.L.C. in the amount of $158,835.66. During the adjudication process, the NPFC found consistent mathematical errors within the Claimant's calculations. In a letter dated March 7, 2012, the NPFC sent the Claimant a spreadsheet demonstrating the errors and asked the Claimant to confirm their calculations.[3] On May 24, 2012, the claimant sent a letter to the NPFC acknowledging the mathematical errors and withdrew two portions of the claim; tech support in the amount of $2,860.00 and the operator charge in the amount of $673.32.[4] Claimant used the NPFC's worksheet to either "agree" or

---

[1] See USCG POLREPS 1 – 18 for FPN N08057; documenting river closures and traffic management 7/23/2008 through 8/11/2008.

[2] The POLREPS provide verification that the River was initially closed from MM 99 to MM 90 and a safety zone was in effect between MM 98 and MM 11.[2] Traffic moved at the slowest and safest speed through the safety zone, causing the River to become congested with vessel traffic, which ultimately caused delays on the River and the Industrial Lock. The NPFC contacted lock operations in New Orleans to confirm delays at the Industrial Lock for the time period of 7/28/2008 through 7/30/2008. Mr. Victor Landry, who is an Operations Manager with the Army Corp of Engineers, provided a statement that confirms that there were "definitely" delays at the Lock because of the DM 932 oil spill incident, during that time period.

[3] Gulf Explorer's Financials Spreadsheet, created by NPFC.

[4] Letter to NPFC from [redacted] dated May 24, 2012, page 32.

"disagree" with the NPFC's calculations provided to the claimant for confirmation.[5] On May 24, 2012, the Claimant formally changed the sum certain to $144,920.29.[6]

When the claim was initially presented to the NPFC, the claims manager initially thought that the Claimant was presenting four different claims. The Claimant explained in its claim submission that each working interest owner was due a certain percentage of the sum certain.[7] After further analysis, the claims were then combined into one claim; N08057-0012. This was explained to the Claimant in a letter dated, October 22, 2012.[8] The Claimant confirmed that this is in fact one claim and that the operator is Gulf Production Company, Inc. (the Claimant). The Claimant will disburse the reimbursement from the Fund according to the working interests' percentage amounts, which has no bearing on the adjudication of this claim.[9]

This claim involves multiple delays incurred by the Claimant and the working interests for the various tugs, barges, drilling rig, as well as labor and equipment at the Industrial Lock. The total delay time is calculated from the arrival of each vessel at the Industrial Lock, at which point the delay commenced, until each vessel cleared the Lock.[10] The delays at the Lock resulted in the late return of the equipment, which was leased on a daily basis.

The Project

Gulf Production was the Operator (contractor responsible for the exploration) for the drilling of wells to extract petroleum products for the Lake Eugene Land & Development Co., Inc., No. 1 Well. Gulf Production, on behalf of the working interest owners, leased various pieces of equipment and hired extra laborers to drill a well in South Boudreau Bay, St. Bernard, LA. Lease payments were owed to the lessor until the equipment was returned to the vendor in Houma, LA.

To drill the well, Gulf Production leased a floating drilling rig named the *Axxis Freedom*, from Axxis Drilling Inc. In addition to the rig the Claimant leased five tugs and four barges from Delta Towing, LLC. These tugs towed the *Axxis Freedom* and the attending barges. The project also required the Claimant to lease various pieces of equipment and hire extra laborers above what was provided in the Axxis Drilling contract. Below is a table demonstrating the costs that pertain to this claim; each are discussed as separate components.

[5] *See,* Claimant's Exhibit F, NPFC worksheet, pages 1 – 4.
[6] *See* letter from Mr. [redacted] to the NPFC, dated May 24, 2012, page 32.
[7] Claim Numbers N08057-0009, N08057-0010, N08057-0011, N08057-0012.
[8] *See* letter to Mr. [redacted] from the NPFC, dated October 22, 2012.
[9] *See* letter to NPFC from [redacted] dated November 13, 2012.
[10] See vessel logs, provided by Claimant.

Tugs and Barges Leased Including Axxis rig Labor & Equip	Claimed Amount	Claimed Delay Time (Hours)
Delta Dove	$5,031.14	34.5
Capt. Ronald	$19,762.50	46.5
Delta Ranger	$19,762.50	46.5
Delta Hawk	$18,600.00	46.5
Angela A	$6,482.14	44.45
IBR-334	$395.31	34.5
B-1	$395.31	34.5
DE-29	$395.31	34.5
TR-2	$575.12	34.5
Axxis Freedom	$62,968.91	46.5
Labor	$8,680.29	46.5
Equipment	$1,871.76	46.5
Sum Certain	$144,920.29	495.95

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 or the exclusive zone is liable for removal costs and damages specified in subsection (b) of this section. 33 U.S.C. § 2702(a).

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

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

With certain exceptions all claims for removal costs and damages shall be presented first to the responsible party. 33 U.S.C. § 2713(a).

If the claim is presented in accordance with subsection (a) of this section and the claim is not settled by any person by payment within 90 days after the date on which the claim was presented the claimant may commence an action in court against the responsible party or present the claim to the Fund. 33 U.S.C. § 2713(c).

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(a-b) & 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. Further, a claim presented to the Fund should include, as applicable:

> "a description of the actions taken by the claimant, or other person on the claimant's behalf, to avoid or minimize removal costs or damages claimed." 33 CFR 136.105(e)(7); "the reasonable costs incurred by the claimant in assessing the damages claimed. This includes the reasonable costs of estimating the damages claimed, but not attorney's fees or other administrative costs associated with the preparation of the claim." 33 CFR 136.105(e)(8).

A claimant 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. 33 CFR 136.113.

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 the loss of profits or impairment of earning capacity due to injury to, destruction or, or loss or real or personal property or natural resources may be presented to the Fund by the claimant sustaining the loss or impairment.

"In addition to the requirements of subparts A & B or 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 or 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, comparable 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).

If a third party claimant or RP is able to establish an entitlement to lost profits, then compensation may be provided from the OSLTF, but the compensable amount is limited to the actual net reduction or loss of earnings and profits suffered. Calculations for the 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, and 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).

NPFC Analysis of the Claim

Findings of Facts

The NPFC reviewed all documentation submitted by Claimant.

1. In accordance with 33 U.S.C. § 2712(h)(2) and 33 CFR § 136.101(a)(1) the claim was submitted within the three year period of limitations for loss of profits under OPA.
2. In accordance with 33 U.S.C. § 2713(a) and 33 CFR § 136.103(a) the claimant properly presented its claim to the Responsible Party.
3. In accordance with 33 CFR 136.105(e)(10) copies of written communications and substance of verbal communications, between claimant and Responsible Party with the date claim was presented and the date that the claim was denied have been provided.
4. In accordance with 33 CFR § 136.105(b) claimant requested a sum certain.
5. In accordance with 33 CFR § 136.105(e)(12), claimant certified no suit has been filed in court for the claimed loss of profits.
6. In accordance with 33 CFR § 136.111(a)(2) claimant asserts that the oil spill delay is not an insured peril and it has not submitted a claim to its insurer.

NPFC Determination

Tugs Leased

Delta Dove -- $5,031.14

Contract

Gulf Production executed an oral contract with Delta Towing, L.L.C. The Delta Towing Invoice provides for a daily rate of $3,500 per day.[11] At the time of the discharge, Gulf Production was obligated to pay Delta Towing the daily rate until the *Delta Dove* was returned to Delta Towing in Houma, LA.

The Claimed Delay and Alleged Loss of Profits

The Claimant asserts that the *Delta Dove's* delay occurred July 28, 2008 (2300) through July 30, 2008 (0930), which equates to 34.5 hours of delay time to clear the Industrial Lock. Claimant's Exhibit 2[12], which includes the *Delta Dove* log for July 28, 2008, provides that at 2300 the vessel arrived at the Industrial Lock and commenced to stand by and that on July 29, 2008 the vessel was standing by all day.[13] The log for July 30, 2008 shows that the *Delta Dove* cleared the

[11] Claimant's Exhibit 2, Delta Towing, L.L.C. Invoice # 53384.
[12] Claimant's Exhibit # 2 includes Delta Towing, L.L.C. Invoice # 53384 and Delta Towing tug logs for the *Delta Dove*.
[13] Delta Towing, LLC, Tug Log.

Locks with IBR-334, B-1, and DE-29.[14] Delta Towing invoice # 53384 exhibits the number of hours and the amount that Claimant paid for the tug.[15] However, to arrive at the additional cost incurred, the Claimant took the daily rate of $3,500, divided it by 24 hours, then multiplied the cost per hour ($145.83) by the hours delayed (34.5) which results in $5,031.14.

When the claimant initially submitted this claim, it's claim consisted of a $235.17 extra fuel cost however, in a letter to the NPFC dated May 24, 2013, the claimant explains that it was an error and to disregard that charge.[16]

NPFC Findings

After a review of the documentation, Claimant was able to demonstrate that they were in fact delayed 34.5 hours at the Industrial Lock. The NPFC determines that Gulf Production incurred 34.5 hours of delay time while waiting to clear the Industrial Locks. The 34.5 hours of delay time equates to **$5,031.14** in loss of profits. This amount is payable by the OSLTF.

Captain Ronald -- $19,762.50

Contract

Gulf Production executed an oral contract with Delta Towing, L.L.C. The *Captain Ronald* was a charter hire in which the lease payment for the vessel was for towing and related services, during the project. Claimant's Exhibit 7 provides for an hourly rate of $425.00.[17] Gulf Production was obligated to pay Delta Towing for the use of the *Captain Ronald* until it was returned to Delta Towing, in Houma, LA.

The Claimed Delay and Alleged Loss of Profits

The Claimant asserts that the *Captain Ronald's* delay time occurred July 28, 2008 (1930) through July 30, 2008 (1800),[18] which equates to 46.5 hours of wait time to clear the Industrial Lock.

Claimant's Exhibit 7 is the invoice for tug *Captain Ronald* and the Delta Towing tug logs. The log for July 28 shows that the tug arrived at the Industrial Lock at 1930 and commenced standing by. Further, the log for July 30 shows that the tug was shut down in the Lock chambers for the oil spill at 1000 and remained in the Lock chamber until 1300 when it was able to back out of the Industrial Lock at 1300. The vessel cleared the Lock at 1800 on July 30, 2008.[19]

Delta Towing Invoice # 53452[20] exhibits the total number of hours and the total amount that Gulf Production paid for the tug.[21] However, to arrive at the additional cost incurred, the Claimant

---

[14] *Id.*
[15] Check #8034, with letter from Claimant, dated November 13, 2012.
[16] *See,* Letter to NPFC from Claimant, dated May 24, 2012, Page 7.
[17] *See,* Claimant's Exhibit 7, Delta Towing L.L.C. Invoice # 53452
[18] *See,* Claimant's Exhibit 7, Daily Master's Log, United Tugs, Inc. for verification.
[19] Delta Towing, LLC Tug Logs.
[20] Claimant's Exhibit 7
[21] Check # 8034

took the hourly rate of ($425) and multiplied that by the delayed time (46.5 hours) resulting in $19,762.50.

NPFC Findings

After a review of the documentation, Claimant was able to demonstrate that they were in fact delayed 46.50 hours at the Industrial Lock. The NPFC determines that Gulf Production incurred 46.50 hours of delay time while waiting to clear the Industrial Lock. The 46.50 hours of delay time equates to **$19,762.50** in loss of profits. This amount is payable by the OSLTF.

Delta Ranger -- $19,762.50

Contract

Gulf Production executed an oral contract with Delta Towing, L.L.C. The *Delta Ranger* was a charter hire in which the lease payment for the vessel was for towing and related services, during the project. Delta Towing's Invoice # 53451 provides for an hourly rate of $425.00.[22] At the time of the discharge, Gulf Production was obligated to pay Delta Towing for the use of the tug until the *Delta Ranger* was returned to Delta Towing in Houma, LA.[23]

The Claimed Delay and Alleged Loss of Profits

The Claimant asserts that the *Delta Ranger's* delay occurred July 28, 2008 (1930) through July 30, 2008 (1800),[24] which equates to 46.5 hours of wait time to clear the Industrial Lock.

Claimant's Exhibit 8 is the invoice and tug logs for the *Delta Ranger,* which was towing the *Axxis* rig. The log dated July 28, 2008 provides at 1930, the vessel stopped and commences stand by at the Industrial Lock. The log for July 29, 2008 shows the tug standing by all day and the log for July 30, 2008 provides that the vessel was shut down in the chambers for the oil spill at 1000 and was in the lock chamber until 1300 when it was able to back out. The tug cleared the Lock at 1800 on July 30, 2008.[25]

Delta Towing invoice # 53451 is the overall encompassing bill for the lease of the *Delta Ranger.* However, to arrive at the additional cost incurred, the Claimant took the rate of ($425) and multiplied that by the delayed time (46.5 hours) resulting in $19,762.50.

NPFC Findings

After a review of the documentation, Claimant was able to demonstrate that they were in fact delayed 46.50 hours at the Industrial Lock. The NPFC determines that Gulf Production incurred 46.50 hours of delay time while waiting to clear the Industrial Lock. The 46.50 hours of delay time equates to **$19,762.50** in loss of profits. This amount is payable by the OSLTF.

---

[22] *See,* Claimant's Exhibit 8, Delta Towing, L.L.C. Invoice # 53451
[23] Check # 8034
[24] *See,* Claimant's Exhibit 8, Delta Towing Tug Log for verification.
[25] *Id.*

Delta Hawk* -- *$18,600.00

Contract

Gulf Production executed an oral contract with Delta Towing, L.L.C. The lease for the *Delta Hawk* was to provide towing and related services, during the project. Claimant's Exhibit 9 provides for an hourly rate of $400.[26] At the time of the discharge, Gulf Production was obligated to pay Delta Towing for the use of the tug until the *Delta Hawk* was returned to Delta Towing in Houma, LA.[27]

The Claimed Delay and Alleged Loss of Profits

The Claimant asserts that the *Delta Hawk's* delay occurred July 28, 2008 (1930) through July 30, 2008 (1800),[28] which equates to 46.5 hours of wait time to clear the Industrial Lock.

Claimant's Exhibit 9 is the invoice for the *Delta Hawk* which towed the *Axxis Freedom* and the Delta Towing tug logs. The log for July 28 shows that at 0400 the *Delta Hawk* was towing the *Axxis Freedom* until 1930 when it stopped to wait at the Lock. The invoice for July 29, 2008 provides that the tug stood by with the *Axxis Freedom* for the entire day and continued to stand by until July 30, 2008 at 1000 when the *Delta Hawk* entered the Industrial Lock. The Delta Hawk cleared the Industrial Locks at 1800 on July 30, 2008.

To arrive at the additional cost incurred, the Claimant took the hourly rate ($400) and multiplied that by the delayed time (46.5 hours) resulting in $18,600.00.

NPFC Findings

After a review of the documentation, Claimant was able to demonstrate that they were in fact delayed 46.50 hours at the Industrial Lock. The NPFC determines that Gulf Production incurred 46.50 hours of delay time while waiting to clear the Industrial Lock. The 46.50 hours of delay time equates to **$18,600.00** in loss of profits. This amount is payable by the OSLTF.

Angela A* -- *$6,482.14

Contract

Gulf Production executed an oral contract with Delta Towing, L.L.C. This contract provides for a daily rate of $3,500 per day.[29] At the time of the discharge, Gulf Production was obligated to pay Delta Towing a daily rate until the *Angela A* was returned to Delta Towing in Houma, LA.[30]

[26] Delta Towing Invoice # 53450.
[27] Check # 8034
[28] *See*, Claimant's Exhibit 9, Delta Towing Tug Log for verification.
[29] *See*, Claimant's Exhibit 10, Delta Towing, L.L.C. Invoice # 53916
[30] Check # 8523 and Check # 9211.

The Claimed Delay and Alleged Loss of Profits

The Claimant alleges that the *Angela A's* delay time occurred July 28, 2008 (2300) through July 30, 2008 (1925),[31] and asserts that this delay time equates to 44.45 hours of wait time to clear the Industrial Lock. However, during the adjudication process of this claim, the NPFC found that the delay time between 2300 on July 28, 2008 through 1925 on July 30, 2008 equates to 44.25 hours of delay time.

The vessel logs for the *Angela A* indicate that on July 28, 2008 at 0400, the tug was pushing on the rig, and then on July 29, 2008 at 1700 the tug departed for the Pearl River Dock and did not return to the Industrial Lock until 0135 on July 30, 2008. The Angela A cleared the Lock at 1925 on July 30, 2008. In a letter dated October 22, 2012, the NPFC asked the claimant to clarify the activities of the *Angela A* for the time period away from the Lock. Claimant provided a letter to the NPFC, dated November 13, 2012 confirming that the tug did travel to the Pearl River dock but could not confirm why the log for the *Axxis* rig does not mention the *Angela A* and also stated that what the *Angela A* was doing was not important to the claim.[32]

Claimant's Exhibit 10[33] provides the overall encompassing bill for the lease of the *Angela A* however, to arrive at the additional cost incurred the Claimant took the daily rate ($3500), divided that by 24 ($145.83) and multiplied that by the compensable delayed time of 44.45 hours resulting in $6,482.14.

NPFC Findings

As stated above, Gulf Production claims 44.45 hours of delay time for the tug *Angela A*. However, during adjudication of this claim, the NPFC found that the time between July 28, 2008 (2300) and July 30, 2008 (1925) equates to 44.25 hours and not 44.45 hours which is a difference of 0.20 or 12 minutes.

The *Angela A* departed the Industrial Lock for the Pearl River Dock at 1700 on July 29, 2008 and returned to the Industrial Lock on July 30, 2008 at 0135 which equates to 8.5 hours. The claimant is unable to verify the activities for the tug during this period Mr. Starling asserts that what the tug was doing during that time is of no importance; however, it is not clear if the tug went to the Pearl River Dock due to the oil spill or for other reasons. For instance, if the *Angela A* had earned revenue during that time period, it would affect the sum certain of this claim; therefore, 8.5 hours is denied.

The documentation that was provided by the claimant supports a delay time of 35.75 (44.25 hours – 8.5 hours) which results in $5,213.42. The NPFC determines that Gulf Production incurred 35.75 hours of delay time while waiting to clear the Industrial Lock. **$5,213.42** is payable by the OSLTF however, $1,268.72 is denied.

[31] *See,* Claimant's Exhibit 10,
[32] *See,* Letter from The Law Office of Gordon Starling, L.L.C., dated November 13, 2012, at page 4 – 5.
[33] Delta Towing Invoice # 53916

Barges Leased

IBR-334, B-1,* and *DE-29 – $395.31 each

Contract

Gulf Production executed an oral contract with Delta Towing, L.L.C. for the barges, *IBR-334, B-1,* and *DE-29.* Each invoice provides for a daily rate of $275 per day, per vessel.[34] At the time of the discharge, Gulf Production was obligated to pay Delta Towing the daily rate, per day, per vessel until the barges were returned to Delta Towing in Houma, LA.[35]

The Claimed Delay and Alleged Loss of Profits

The Claimant asserts that the delay time that occurred for each barge was July 28, 2008 (2300) through July 30, 2008 (0930)[36] which equates to 34.5 hours of wait time, for each barge, to clear the Industrial Lock.

As mentioned above, regarding the *Delta Dove,* the July 28, 2008 log shows that at 2300 the barges arrived at the Lock with the tug, *Delta Dove,* and the log for July 29, 2008 shows that the tug and barges stood by at the Industrial Lock until they cleared together on July 30, 2008 at 0930.

Claimant's Exhibits 3, 4, and 5 provides the invoices[37] for each of the leased barges, however to arrive at the additional cost incurred for each vessel, the Claimant took the day rate ($275), divided that by 24, ($11.46) then multiplied that by the delayed time 34.5 hours which resulted in $395.31.

NPFC Findings

After a review of the documentation, Claimant was able to demonstrate that each barge was delayed at the Industrial Lock with the tug *Delta Dove* for 34.5 hours which results in $395.31 per vessel. The NPFC determines that Gulf Production incurred **$1,185.93** ($395.31 per barge) in lost profits, which is payable by the OSLTF.

TR-2 -- $575.12

Contract

Gulf Production executed an oral contract with Delta Towing, L.L.C. The Delta Towing invoice provides that the Claimant paid a day rate of $400.[38] At the time of the discharge, Gulf

---

[34] *See,* Claimant's exhibit 3, 4, and 5, Delta Towing Invoice # 53458, 53456, and 53347.

[35] *See,* check # 8034 for the *IBR-334* and *B-1. See,* check # 7716 for the *DE-29,* letter from Claimant, dated November 13, 2012.

[36] *See,* Claimant's exhibit 3, Delta Towing Tug Logs for the Delta Dove. The *IBR-334, B-1,* and *DE-29* cleared the locks with the *Delta Dove* on July 30 at 0930.

[37] IBR 334 – Delta Towing Invoice # 53458, B-1 – Delta Towing Invoice # 53456, and DE-29 – Delta Towing Invoice 53347.

[38] *See,* Claimant's Exhibit 6, Delta Towing, L.L.C. Invoice # 53518.

Production was obligated to pay Delta Towing a daily rate until the *TR-2* was returned to Delta Towing in Houma, LA.[39]

The Claimed Delay and Alleged Loss of Profits

The Claimant asserts that the *TR-2's* delay time occurred July 28, 2008 (2301) through July 30, 2008 (0930), when the *TR-2* allegedly cleared the Lock with the *Delta Dove* and the other barges, which resulted in a delay of 34.5 hours to clear the Industrial Lock. However, this time cannot be verified because the vessel logs do not provide when the *TR-2* cleared the Industrial Lock.[40] Claimant's Exhibit 6 provides a Delta Towing invoice for the lease of the *TR-2*. Claimants Exhibit 2 provides the vessel logs for the *Delta Dove* that demonstrates the time that each barge cleared the Industrial Lock. Claimant also provided proof of payment.[41]

The NPFC asked the Claimant to provide clarity on the whereabouts and to verify the delay time of the *TR-2*[42]. The claimant asserts that from the logs, they could not determine the activity for the *TR-2* and speculated as to what the vessel may have been doing during the wait at the Lock.[43]

To arrive at the additional cost incurred, the Claimant took the day rate ($400), divided that by 24, ($16.67) then multiplied that by the delayed time (34.5) which resulted in $575.12.

NPFC Findings

The NPFC reviewed the Tug Logs that were provided as evidence for the barge *TR-2* and found that the only mention of the *TR-2* in the logs were July 18, 2008 beginning at 1030 and then the last entry for the *TR-2* was July 19, 2008 at 1530 where the TR-2 arrived at the *Axxis Freedom* with the *Delta Dove*, then there is no other mention of the barge *TR-2* in the Tug Logs.

After a review of the documentation, the Claimant was unable to verify their claimed delay time for the *TR-2* therefore, the amount of $575.12 is denied.

Axxis Drilling, Inc.

Drilling Rig

Axxis Freedom-- $62,968.91

Contract

Gulf Production entered into a charter agreement on June 28, 2008[44] with Axxis Drilling, Inc. for the lease of the drilling rig, the *Axxis Freedom*.[45] The contracted hire rate for the *Axxis Freedom*

[39] Check # 8034
[40] *See, Delta Dove* Tug Logs.
[41] *See,* Check # 8034
[42] See, Letter to Claimant from NPFC, dated October 22, 2012.
[43] *See,* Letter from the Law Office of Gordon Starling, L.L.C. to Dawn Unglesbee, dated November 13, 2012.
[44] Claimant's Exhibit D at page 8.
[45] *See,* Claimant's exhibit D, International Association of Drilling Contractors, Drilling Proposal, and Daywork Drilling Contract - U.S.

was $32,500 per day.[46] The Drilling Contract (Claimant's Exhibit D), provides that while the rig is in transit to or from a drill site, or between drill sites, commencing on rig getting under tow, Operator (Gulf Production) is obligated to pay Contractor (Axxis Drilling) a sum of $32,500 per twenty-four hour day plus the cost of tugs to move the rig. The Contractor (Axxis Drilling) arranges for tugs to move the rig with the cost charged to Operator (Gulf Production).[47]

The Claimed Delay and Alleged Loss of Profits

The claimant alleges that the *Axxis Freedom's* delay time occurred July 28, 2008 (1932) through July 30, 2008 (1800) which equates to 46.5 hours of delay time. Claimant provided the NPFC with the Axxis Drilling invoice, proof of payment,[48] vessel logs,[49] Contract, Operations Billing Summary.

The employment of the *Axxis Freedom* was to drill a well. The Operations Billing Summary, Exhibit C, shows drilling was complete and the rig was off location and in transit on July 27, 2008. The vessel logs provided by Gulf Production[50] show that on July 27, 2008 from 0930 through 1800 the tugs, *Delta Ranger, Delta Hawk, and Captain Ronald* were pulling on the rig. The log for July 28, 2008 shows that the rig was in transit from 0600 through 1800 at which time the rig arrived near the Industrial Lock then pushed up on bank between 1930 through 0600. The log for July 29, 2008 provides that the rig was on standby at the Industrial Lock the entire day. Then, on July 30, 2008 the log provides that at 1330 the rig was waiting for the Industrial Lock to open. The *Axxis Freedom* cleared the Locks at 1800.

The Claimant asserts that the return of the leased equipment was delayed by the result of the oil spill related vessel congestion at the Industrial Lock and that the claim relating to the *Axxis Freedom* is out-of-pocket costs to a third-party as a result of the delay at the Lock.[51]

Claimant's Exhibit 13[52] is the invoice for the rental of rig *Axxis Freedom* and provides the daily rate to lease the rig. The claim for the rig is derived by taking the daily rate ($32,500), divided that by 24 to get the hourly rate ($1,354.17) then multiplied that by the delayed time (46.5 hours) to get a total of $62,968.91. It is important to note that in a letter addressed to the NPFC, dated May 24, 2012, at page 28, 13a, Claimant's Counsel transposed his numbers when addressing the potential compensation for this vessel. However, the claimant does agree to $62,968.91 as his sum certain for the *Axxis Freedom* in the spreadsheet that the NPFC sent to the claimant, dated March 7, 2012.

NPFC Findings

After a review of the documentation, Claimant was able to demonstrate that they were in fact delayed 46.50 hours at the Industrial Lock. The NPFC determines that Gulf Production incurred

---

[46] *See,* Claimant's Exhibit D at page 2.
[47] Claimant's Exhibit D, page 2, paragraph 4.3 "Moving Rate"
[48] *See;* check # 7785 for the *Axxis Freedom.*
[49] Axxis Drilling, Inc. Operations Billing Summary and Daily Drilling Report.
[50] Claimant's Exhibit 13, Drilling Logs July 27 – July 30.
[51] *See,* Check # 7785 for the *Axxis Freedom.*
[52] Axxis Drilling Invoice # FR 802

46.50 hours of delay time while waiting to clear the Industrial Locks. The 46.50 hours of delay time equates to **$62,968.91** in loss of profits. This amount is payable by the OSLTF.

Labor and Equipment

Laborers -- $8,680.29

Contract

Exhibit A, page 5 of the Drilling Contract,[53] provides for the equipment, materials, and services, including transportation, to be furnished by the Operator (Gulf Production). As part of the drilling contract, Axxis Drilling, Inc. supplied some of the laborers for the project however, it was necessary to hire additional laborers over and above those supplied by Axxis.[54] Per the contract, claimants were obligated to pay for this additional labor.[55] Claimant's Exhibit 11 provides the cost of the additional laborers.[56]

The Claimed Delay and Alleged Loss of Profits

The claim for labor is based on the extra money that Gulf Production had to pay for those laborers as a result of the rig's return being delayed by the oil spill related vessel congestion on the River. The Laborers were aboard the rig from the beginning of the project until the equipment was returned. Claimant was obligated to pay for this additional labor and did so via check # 7968.

The Claimant asserts that the delay time that occurred for the laborers was July 28, 2008 (1930) through July 30, 2008 (1800)[57] which equates to 46.5 hours for the cost for extra laborers. This period of time is based upon the logs of the tugs which were towing the rig (see above). Claimant's Exhibit 11, Invoice # FR 804, provides various day rates as the invoice is for the labor of the Night Tool-pusher, Night Cook, Motorman, (2) Roustabout(s)[58], and (2) Crane Operator(s). To arrive at the additional costs incurred, Claimant took the daily rate of each worker[59], divided it by 24 then multiplied that by the delay time of 46.5 hours to get a total of $8,680.29.

[53] *See,* Drilling Contract, Exhibit A, Pages 1 – 5.
[54] *See,* Claimant's letter to the NPFC, page 26, dated March 24, 2012.
[55] Daywork Contract -- Exhibit "A" – Page 2, # 5.
[56] Check # 7968
[57] *See,* Claimant's Exhibit 11, Axxis Drilling, Inc. Invoice # FR 804
[58] This differs from the NPFC spreadsheet figure that was sent to Claimant, March 7, 2012. During that point of adjudication, the NPFC did not realize there were (2) roustabouts and (2) crane operators, therefore Claimant added $1,656.93 to the sum certain of $146,796.68, which was one of the factors that contributed to the new sum certain of $144,920.29.
[59] See, Invoice # FR 804

NPFC Findings

The information that was provided by the claimant evidenced that there was a delay at the locks and caused the rig *Axxis Freedom* to be delayed therefore causing its Laborers to be delayed as well. Below is a table demonstrating the additional labor costs incurred by the Claimant;

Job Title	Daily Rate of Worker (divided by 24)	Delay Time	Total
Night Tool Pusher	$37.50	46.5	$1,743.75
Night Cook	$22.92	46.5	$1,065.78
Motorman	$26.04	46.5	$1,210.86
Roustabout	$23.96	46.5	$1,114.14
Roustabout	$23.96	46.5	$1,114.14
Crane Operator	$26.04	46.5	$1,210.86
Crane Operator	$26.04	46.5	$1,210.86
Proven Total for Labor			$8,670.39
Variance			$9.90
Sum Certain for Labor			$8,680.29

Claimant states that $8,680.29 is the additional costs incurred for the Laborers however, during the adjudication process, the NPFC found a variance of $9.90. The NPFC adjudicated the claim for Laborers the same way the Claimant did, using the daily rate of the worker, divided it by 24 then multiplied that number by the delay time and came to a total of $8,670.39, which leaves an unexplained variance of $9.90.

Based on the evidence provided by the Claimant, **$8,670.39** is approved and payable by the OSLTF however, $9.90 is denied.

Equipment -- $1,871.76

Contract

Exhibit A, page 1 of the Drilling Contract, provides for the equipment, materials, services, including transportation, to be furnished by the Contractor (Axxis Drilling). As part of the contract, Axxis Drilling, Inc. supplied the rig. However, in connection with the project and this contract, it was necessary for the Claimant to rent additional equipment from Axxis Drilling.[60]

[60] Axxis Drilling Contract, Exhibit "A," Page 3.

The Claimed Delay and Alleged Loss of Profits

Claimant's Exhibit 12[61] is an invoice with supporting documentation from Axxis Drilling, Inc. for equipment rentals for the same time period as the rig and the laborers.[62] This period of time is based upon the logs of the tugs which were towing the rig (see above).

Axxis Drilling Invoice # FR 803 shows each piece of equipment[63] that was rented from Axxis Drilling, Inc. and was used for the project and delayed in returning due to the oil spill incident on the river. The delay time is the same time period as the laborers, tugs, and rig. (46.5 hours).

To arrive at the additional costs incurred, the Claimant took each unit price per day for each piece of equipment, and then divided that by 24, which gives a sub total of $1,728.41. Sales tax of $143.35 was applied to the total to bring the total amount to $1875.29.

NPFC Findings

The information that was provided by the claimant evidenced that there was a delay at the Lock and caused the rig *Axxis Freedom* to be delayed therefore causing its rented equipment to be delayed as well. Below is a table demonstrating the additional equipment rental costs incurred by the Claimant.

Equipment	Daily Rate of Equipment (divided by 24)	Delay Time	Total
Trash Compactor	$2.30	46.5	$106.95
Gas Detector	$3.08	46.5	$143.22
Survey Tool	$2.92	46.5	$135.78
Air Pump	$12.00	46.5	$558.00
Heavy Weight Drill Pipe	$11.67	46.5	$542.66
Super Choke	$5.21	46.5	$242.27
Sales Tax			$142.89
Total for Equip			$1,871.76

Based on the information provided by Claimant, **$1,871.76** is approved and payable by the OSLTF.

Conclusion

For the reasons stated above the NPFC hereby determines that the OSLTF will pay **$143,066.55** as full compensation for the damage costs incurred by the claimant and submitted to the NPFC under claim # N08057-0112. All costs claimed are for charges paid for by the claimant for

[61] Axxis Drilling invoice # FR 803.
[62] *See,* Check # 7968
[63] Trash Compactor, Gas Detector System, Survey Tool, Air Pump, Heavy Weight Drill Pipe, and Super Choke.

damages as that term is defined in OPA and are compensable damages, payable, by the OSTLF as presented by the claimant.

Amount: $143,066.55

Claim Supervisor: [redacted]

Date of Supervisor's review: 8/2/2013

Supervisor Action: ***Approved***

Supervisor's Comments: