Claim Number	: N08057-0114
Claimant	: U.S. United Bulk Terminal, LLC
Type of Claimant	: Corporate
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: [redacted]
Amount Requested	: $439,701.42

I. FACTS

On the morning of July 23, 2008, the tank barge DM 932 sank as a result of a collision with the M/V TINTOMARA and discharged oil into the Mississippi River, a navigable waterway of the United States. Approximately 282,828 gallons of oil[1] 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 through at least August 11, 2008.

II. 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.

III. CLAIMANT AND THE CLAIM

On June 25, 2009, United Maritime Group, LLC (UMG), through its attorney, [redacted][2], Balch and Bingham, LLP, presented a claim to the National Pollution Funds Center (NPFC) for reimbursement of alleged loss of profits in the amount of $1,415,293.03. UMG includes subsidiaries U.S. United Barge Line, LLC (UBL)[3], U.S. United Bulk Terminal, LLC (UBT) and U.S. United Ocean Services, LLC (UOS)[4]. The original claim contained both Removal and Loss of Profit components and was assigned claim number N08057-037. Subsequently the NPFC divided the claim, keeping all Loss of Profit components in claim N08057-037 in the amount of $1,184,032.00 and moving Removal claim components to claim number N08057-038 in the amount of $231,261.03.[5] Finally, the NPFC divided the UMG loss of profits claim into three claims – one for each of the UMG subsidiaries (N08057-037 for UBL, N08057-0114 for UBT and N08057-0115 for UOS). This determination addresses only the UBT claim for loss of profits. The claims for UOS and UBL are adjudicated under N08057-0115 and –37, respectively. After several teleconferences and e-mail communications UBT determined its sum certain to be $439,701.42.[6]

Background

[1] See House Subcommittee Hearing on DM 932 Oil Spill, dated 9/15/2008.
[2] UMG was later represented by The Miller Law Firm (Miller), as Mr [redacted] switched law firms in July 2009, remaining as legal counsel for UMG.
[3] UBL includes its wholly owned subsidiary company U.S. United Inland Services, LLC
[4] Collectively known as UMG.
[5] See email from CW04 [redacted] NPFC, to Mr. [redacted] dated 7/10/2009.
[6] See email from Mr [redacted] to Ms. [redacted] NPFC, dated 7/17/2013.

According to the Claimant, United Bulk Terminal (UBT) is the nation's largest dry-bulk, full service blending and storage/transfer terminal servicing worldwide import and export customers. It is located at Davant Anchorage (Mississippi River Mile Marker 55), approximately 40 miles downriver from New Orleans, Louisiana, and approximately 44 miles downriver from the incident. The terminal was impacted by floating oil; the oil contaminated the fleet servicing the terminal and vessels at the fleets. As a result, the terminal was shut down to vessel movement and cargo operations.[7]

UBT unloads bulk products from river barges and either transfers products directly to ocean-going vessels, or to its land-based storage piles for later shipment. UBT also unloads cargo from ocean-going vessels directly to river barges or to its onsite storage for future transfer. As a subsidiary of United Maritime Group, LLC, UBT derives some of its income from services it provides to its sister companies, UOS and UBL. For instance cargos on UBL and third-party barges are unloaded at UBT and transferred to UOS and third-party vessels. UBT operates harbor boats to move barges to and from fleets and docks near the terminal.

UBT provides its Terminal Rules and Regulations to its Users, which include vessel parties and all individuals or business entities, including ocean vessels, river barges, trucks, railroad cars or other means of conveyance utilizing the services and/or facilities of UBT.[8] This document provides general and specific rules and regulations for safety, vessel filing and nomination and loading and unloading. UBT derives its revenue from varying services and cargo handling provided to Users. Its rates are provided in Appendix A to the Rules and Regulations, where it states that dockage is calculated on a rate/GRT/running day or daily minimum; river barge fleeting is based on a daily rate, and river barge shifting, river barge cover handling and discharging stacked cover barges are calculated on a per barge rate. Cargo storage is based on mutually-accepted written agreements executed prior to transferring the cargo to storage.

In addition, UBT executes contracts, product handling service agreements or transfer and storage agreements with each cargo owner that uses the terminal.[9] These contracts and agreements provide specific terms and conditions and sometimes more specific rates.

A. Claimant's Argument:

UBT seeks reimbursement of alleged loss of profits suffered when it turned away several vessels from its terminal after the incident and subsequently lost fees and charges it would have received from the cargo owners.

As a result of the spill, UBT issued a force majeure letter to its customers noticing them that its abilities to meet obligations at Davant terminal were restricted due to delays from the River closure and pollution damage and it anticipated that delays would cause a backlog and additional delays past the reopening of the River. UBT issued supplemental Terminal Rules and Regulations passing a majority of the risk on to its clients until such time as the effects of the oil spill were fully remediated.[10]

---

[7] See Letter from UBT to NPFC, Addendum 1, dated 6/15/2009.

[8] See UBT Terminal Rules and Regulations, Exhibit B, Appendix A, submitted to the NPFC by the claimant on 10/18/2011, as well as email from Mr. [redacted] to Ms. [redacted] NPFC, dated 7/17/2013.

[9] See Contracts between UBT and its customers, all found in Exhibit A, submitted to the NPFC by the claimant on 10/18/2011.

[10] See 7/28/2008 UBT Letter regarding the Force Majeure (Exh C-6), submitted to the NPFC by the claimant on 9/17/2009.

Specifically, UBT identified three vessels it turned away that requested loading windows the day after the oil spill.[11] The three vessels were the M/V Onego Tramper, the M/V Onego Forester and the M/V Clipper Mermaid. Both the M/V Onego Tramper and the M/V Onego Forester sought windows to load material for Scancarbon, Inc., a customer of UBT, and each requested load windows for 3,117 short tons of cargo per vessel.[12] The M/V Clipper Mermaid sought a loading window for 27,014 short tons of cargo for another UBT customer, Capex. Multiplying this lost cargo by Scancarbon's and Capex's respective cargo rates, UBT calculates the following profits lost for each vessel:

M/V Onego Tramper:	$ 9,351.00 (3,117 short tons[13] X $3.00/ton (Contract rate[14])) + $5,500.00 (Dockage rate[15]) = **$14,851.00**
M/V Onego Forester:	$ 9,351.00 (3,117 short tons X $3.00/ton (Contract rate[16])) + $5,500.00 (Dockage rate[17]) = **$14,851.00**
M/V Clipper Mermaid:	$59,430.80 (27,014 short tons x $2.20/ton (Contract rate[18])) + $8,914.62 (Dockage Rate[19])) = **$68,345.42**

Alleged Loss for Vessels Turned Away: ***$98,047.42***

In addition, UBT asserts a loss of profits for four vessel loadings scheduled at UBT, but were turned away and instead loaded at Cooper/Consolidated's (CC) mid-streaming facility/terminal located at Mile 161.5 of the Lower Mississippi River (Consolidated Tank Barge Services' St. James location).[20] The four vessels were contracted for TECO and are:

Vessel	**Date at CC**	**Claimed Tonnage**[21]
M/V Marie Flood	7/29/2008	36,396
M/V Doris Guenther	7/30/2008	23,481
M/V Peggy Palmer	8/01/2008	32,667
M/V Marie Flood	8/05/2008	36,604
Total Tonnage Shifted:		*129,148 tons*

[11] See both the email correspondence between UBT and the M/V Clipper Mermaid, the M/V Onego Tramper and the M/V Onego Forester (Exhibits C-3, C-4, and C-5), submitted to the NPFC by the claimant on 9/17/2009, and the Cooper Consolidated documents provided via email by Ryan Hahn on 8/06/2012.

[12] The standard for Net tons and Short tons use the same conversion rate: one metric ton equals 1.10231 net/short tons. Claimant used 1.039 as its conversion rate.

[13] Claimant's letter dated 9/17/2009, Exhibit C-4 shows this amount to possibly be 5,600 mt, or 5,818.40 short tons; however, claimant only claims 3,117 short tons.

[14] See Footnote #9 above.

[15] See Footnote #8 above.

[16] See Footnote #9 above.

[17] See Footnote #8 above.

[18] See Footnote #9 above, as well as the email from Mr. [redacted] to Ms. [redacted] NPFC, dated 7/18/2013.

[19] See Footnote #8 above.

[20] See UBT Ship Schedule document (Exh D-3), submitted to the NPFC by the claimant on 9/17/2009.

[21] The actual tonnage shifted is: 36,395.61 tons for the M/V Marie Flood; 23,481.28 for the M/V Doris Guenther; 32,667.14 for the M/V Peggy Palmer; and 36,604.20 for the M/V Marie Flood. All totals have been rounded up or down by the claimant, and these totals will be used in the adjudication of this claim. See Cooper Consolidated invoices (Exhibits E-1 through E-4), submitted to the NPFC by the claimant on 10/18/2011), and the Cooper Consolidated documentation provided via email by [redacted] on 8/06/2012.

Finally, one ocean vessel loading (M/V Barbara Vaught) was cancelled completely.[22] The M/V Barbara Vaught completed loading under Voyage # 8019 at the TECO Bulk Terminal in Tampa, FL on August 10, 2008, but was diverted to unload at Houston on August 16, 2008. The total claimed tonnage lost was 18,800 net tons.

The total combined claimed tonnage lost is 147,948 tons:

Tonnage Shifted to Midstream: *129,148 net tons*
Tonnage Cancelled: *18,800 net tons*

Total Tonnage Claimed Lost: *147,948 net tons*

UBT asserts that it would have realized **$411,296.00** in charges for the TECO vessels ($362,472.60 ($2.45/net ton[23] X 147,948 tons = $362.472.60) + $48,822.84 ($0.33/net ton X 147,948 tons = $48,822.84[24]) = $411,296.00).

Total Loss of Revenue Claimed (before deducting saved expenses): $509,343.42

B. Saved Expenses

UBT deducted its saved costs for not servicing the three vessels and the five TECO vessels from its loss of revenue. These costs include saved power expenses, tug costs and the per-ton variable lease cost for the land at the terminal, each of which is based on rate per ton on each vessel.

For the vessels explicitly turned away (M/V Onego Forester, M/V Onego Tramper and the M/V Clipper Mermaid), UBT backs out saved costs in power, **$3,757.00** (33,248 tons x $0.113/net ton[25] = $3,757.02, or rounded to $3,757.00); lease costs, **$4,954.00** (33,248 tons x $0.149/net ton[26] = $4,953.95, or rounded to $4,954.00); and tug costs, **$2,883.00** (33,248 tons x $0.09/net ton[27] = $2,992.32, erroneously rounded by the claimant to $2,883.00). These **costs saved total $11,594.00** ($3,757.00 + $4,954.00 + $2,883.00) in saved costs at the facility for the tonnage explicitly turned away.

For the tonnage moved and canceled (the M/V Marie Flood, the M/V Doris Guenther, the M/V Peggy Palmer, the M/V Marie Flood and the M/V Barbara Vaught) UBT backs out saved costs in power, **$16,718.00** (147,948 tons x $0.113/net ton[28] = $16,718.12, or rounded to $16,718.00); lease costs, **$22,044.00** (147,948 tons x $0.149/net ton[29] = $22,044.25); and tug costs (147,948

[22] See The Miller Law Firm letter dated October 18, 2011, Exhibit D-1 UOS Coal Delivery Schedule; and The Miller Law Firm letter dated September 17, 2009 Exhibit D-3 (UBT Ship Schedule) and Exhibit I (UOS Operations Report.

[23] See Footnote #9 above.

[24] See Footnote #9 above.

[25] See both the UBT Revenue Impact Report and the General Ledger Report for fuel (Exhibits D-1 and D-8, respectively), submitted to the NPFC by the claimant on 9/17/2009.

[26] See Wire Transfer—[redacted]Lease payment (Exhibit D-7), submitted to the NPFC by the claimant on 9/17/2009.

[27] The only document that references this amount for tug costs of $0.09/net ton is Exhibit H of the October 18, 2011 Supplemental Claim Submission, which is an internal document. It is calculated on the yearly tug costs per year ($882,575.00) divided by the amount of tons moved (9,334,336). This amount/documentation appears reasonable and is accepted by the NPFC for use in evaluating saved expenses.

[28] See both the UBT Revenue Impact Report and the General Ledger Report for fuel (Exhibits D-1 and D-8, respectively), submitted to the NPFC by the claimant on 9/17/2009.

[29] See Footnote #28 above.

tons x $0.09/net ton[30] = $13,315.32, erroneously rounded by the claimant to **$12,829.00**). These **costs total $51,591.00** ($16,718.00 + $22,044.00 + $12,829.00) which represents saved costs at the facility for the tonnage shifted to Midstream or cancelled.

UBT also shows a credit to its loss of **$6,457.00**, representing the margin UBT made in transferring the four vessels to Cooper Consolidated. For the four vessels that were moved to Cooper Consolidated, Tampa Electric Company paid UBT at a rate of $2.45/net ton[31] and UBT paid Cooper Consolidated for the services it provided, at a rate of $2.40/net ton.[32] Thus, UBT mitigated its loss from the four vessels that were transferred from UBT to Cooper Consolidated by **$6,457.00** ($2.45/ net ton (amount TECO paid to UBT) - $2.40/net ton (amount charged by Cooper Consolidated) = $0.05/per net ton x 129,148 net tons as transferred from UBT to Cooper Consolidated = $6,457.00).

Total Saved Costs: $69,642.00

<u>Claim Total:</u>

Total Claimed Loss of Revenue Claimed:	***$509,343.42***
Less Total Claimed Costs Saved:	***<u>$69,642.00</u>***
Total Claimed Amount of Lost Profits:	***$439,701.42***

C. RP Presentment

UBT presented its claim to the responsible party, Worley Catastrophe Response, on December 1, 2008. The claim was not settled by payment by any party within 90 days of presentment. The clamant presented its claim to the Fund on June 15, 2009.

IV. <u>APPLICABLE LAW</u>

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. 33 U.S.C. § 2702(a).

"Oil" is defined in relevant part, at 33 U.S.C. § 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".

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).

In general, claims for the removal costs or damages must first be presented to the RP per 33 USC 2713(a). If the RP denies the claim or does not settle the claim within ninety days, the claimant may commence an action in court against the RP or present the claim to the Fund. 33 U.S.C. 2713(c).

---

[30] See Footnote #29 above.
[31] See Footnote #9 above.
[32] See Cooper Consolidated Invoices (Exh E-1 through E-4), submitted to the NPFC by the claimant on 10/18/2011.

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 by the President to be consistent with the National Contingency Plan or uncompensated damages. 33 U.S.C. § 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. S 2713(e). The Claims Regulations are found at 33 CFR Part 136.

Damage claims must be presented to the Fund 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 USC § 2712 (h)(2).

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).

With regard to claims for loss of 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).

V. NPFC Determination

The NPFC reviewed all documentation submitted with the claim and supplemental submission packages, including e-mails between Claimant/its attorney and the NPFC, submitted by Claimant (the administrative record).

A. Findings of Fact:

1. In accordance with 33 U.S.C. § 2712(h)(2) and 33 CFR § 136.101(a)(1) the claim was presented to the Fund within the three year period of limitations for recovery of damages.
2. In accordance with 33 U.S.C. § 2713(a) and 33 CFR § 136.103(a) the claimant 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 demanded 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.

B. NPFC Analysis:

UBT bases its loss of profits solely on revenue it did not realize when it turned three vessels away and four vessels were shifted to another terminal. As a result it did not provide services and tugs to these vessels, for which it would have received fees and charges.

<u>Turned Away Vessels</u>

A. M/V Clipper Mermaid

Claimant asserts that it lost profits in the amount of the **$68,345.42** when it turned away the M/V Clipper Mermaid on July 24, 2008. In an e-mail to UBT dated July 23, 2008, the vessel was nominated for acceptance for an August 3-7, 2008 laycan. The vessel was anticipating 26,000 MT of product.[33] UBT, in an e-mail dated July 24, 2008, notified the vessel that it could not accept the vessel due to the backlog that would be caused by the oil spill. This amount is approved.

B. M/V Onego Tramper

In an e-mail dated July 22, 2008 Scancarbon sought a delay in arriving at UBT because there was not sufficient cargo (coal) to load UBL barges that would subsequently transfer the cargo to UBL for transfer to the Onego Tramper. According to the e-mail UBL could not deliver the barges because of certain river closures caused by low water. Scancarbon estimated that approximately 5600 tons would be available to load by August 10, 2008. Claimant, in an e-mail dated July 24, 2008 that it would not accept vessels until the force majeure was lifted and a determination made on how the backlog would affect future scheduling.

[33] 26,000 MT converts to 27,014 short tons.

In this case it appears that the Onego Tramper sought a delay until August 10, 2008 and did not arrive at the terminal due to insufficient cargo for UBL barges to transfer at UBT and subsequently load on the Onego Tramper. The lack of cargo was due to river closures due to low water and was not due to the incident. Thus, even if the vessel could have reached the terminal, which it did not, there would not have been cargo available for loading onto the Onego Tramper. Therefore, the claimed revenue for this vessel is denied.[34]

C. Onego Forester

In an e-mail dated July 24, 2008 the agent for the M/V Onego Forester requested a laycan from August 20 – September 5, 2008 of 2500-3000 MT of cargo.[35] In a reply e-mail that same day, UBT did not accept the vessel and stated that it could not do so until the force majeure was lifted and it could determine how the resulting backlog would affect scheduling. UBT claims the entire 3000 MT (which converts into approximately 3,117 short tons), but, as there is no documentation to support this, the actual amount lost cannot be ascertained. Therefore, the NPFC finds it reasonable to compensate claimant for the minimum tonnage lost, which was 2500 MT, or 2,597.50 short tons after conversion. Therefore, the M/V Onego Forester's compensable costs are **$13,292.50** ($7,792.50 (Contract rate of $3.00/ton X 2,597.50 short tons) + $5,500.00 (Dockage rate). The **$1,558.50** difference is denied.

The NPFC finds the claimed costs for the M/V Onego Forester and M/V Clipper Mermaid accurate and compensable. Total compensable costs for these vessels are **$81,637.92** ($13,292.50 + 68,345.42). Total denied costs equal **$16,409.50**.

Vessels Shifted to Cooper/Consolidated

Claimant provided documentation to prove that it lost tonnage that could have been earned by UBT. The vessels M/V Marie Flood (2 voyages), M/V Doris Guenther and M/V Peggy Palmer were shifted to Cooper Consolidated due to the oil spill and subsequent river delays. Claimant provided documents which show the rate UBT would have charged TECO ($2.45/net ton), plus the average dockage rate ($0.33/net ton) UBT would have charged these vessels. Proof of payment was also provided for the tonnage transferred. Therefore, NPFC finds the total compensable costs for the vessels shifted to Cooper/Consolidated to be **$359,031.44** ($316,412.60 tonnage lost + $42,618.84 dockage).

Barbara Vaught Shifted to Houston

UBT claims the M/V Barbara Vaught was originally scheduled to load approximately 18,800 tons of coal at UBT, between July 30-31, 2008. The vessel eventually offloaded in Houston.[36] Claimant's UOS Vessel Utilization Report (September 17, 2009 Supplemental Submission, Exhibit I) documents the Barbara Vaught loaded 17,000 MT at Tampa, instead of UBT, and off-loaded the same amount at Houston under Voyage # 8019. Therefore, the Fund may compensate Claimant for the 17,000 MT business lost. Applying the UBL conversion rate of one metric ton equals 1.039 short tons (which, though the claimant has not clearly specified that it does apply, the contract states it does), the amount loaded still only totals approximately 17,663 net tons.

[34] See Exhibits C-3, C-4 and C-5 in the September 17, 2009 Supplement Submission to the NPFC.
[35] See Miller Law Firm letter dated September 17, 2009, Exhibit C-5.
[36] See UOS Vessel Utilization (Exhibit I), submitted to the NPFC by the claimant on 9/17/2009.

Utilizing the rate UBT would have charged TECO ($2.45/net ton), plus the average rate ($0.33/net ton), UBT charged as dockage for vessels it handles for TECO, the NPFC finds the total compensable costs for the Barbara Vaught being shifted to Houston to be **$49,103.14** ($43,274.35 + $5,828.79).

The claimed amount for total tonnage lost, which includes the M/V Marie Flood (2x), M/V Doris Guenther, M/V Peggy Palmer and Barbara Vaught was $411,296.00. The NPFC finds **$408,134.58** ($359,031.44 + 49,103.14) compensable. Total denied is **$3,161.42**, which encompasses the tonnage loading difference for the Barbara Vaught and some rounding up/down of numbers by the Claimant.

Total denied costs for Claim # N08057-0114 before adjusting for saved expense credits (below), is **$19,570.92.**

<u>Saved Expenses</u>

When UBT calculated its sum certain, it based its saved expenses on its original tonnage calculations. The NPFC found errors, and denied the difference in costs for actual tonnage lost based on the documentation provided, and adjusted the amount saved, crediting UBT with certain costs.

For the tons shifted to Cooper Consolidated, UBT correctly calculated the margin of $0.05 between what its contract rate for the four vessels was ($2.45/net ton) and the amount paid to Cooper/ Consolidated ($2.40/net ton) to be a savings of **$6,457.00** ($0.05 x 129,148 net tons = $6,457.00).

For the tonnage lost from the M/V Barbara Vaught and the vessels shifted to Cooper Consolidated, UBT based its saved expenses on the originally calculated 147,948 tons that amounted to $51,591.00.[37] However, the actual amount of tonnage shifted/lost was 146,811 net tons (as a result of the M/V Barbara Vaught's actual tonnage being 17,663 net tons vs. the claimed 18,800 net tons claimed), and thus the total amount saved should be **$51,677.47** (power costs (146,811 tons x $0.113/net ton = $16,589.64) + lease costs (146,811 tons x $0.149/net ton = $21,874.84) + tug costs (146,811 tons x $0.09/net ton = $13,212.99[38])).

UBT correctly calculated the tonnage for the M/V Onego Tramper and the M/V Clipper Mermaid. However, as only 2,597.50 short tons for the M/V Onego Forester were turned away, the total amount of tonnage turned away for all three vessels is 32,728.50 short tons, as opposed to the claimed 33,248 short tons. Thus the amount of saved costs for the three vessels turned away at UBT equals **$11,520.44** (power costs (32,728.50 short tons x $0.113/net ton = $3,698.32) + lease costs (32,728.50 short tons x $0.149/net ton = $4,876.55) + tug costs (32,728.50 short tons x $0.09/net ton = $2,945.57[39])

Combining the costs above (as based on the documentation presented), the correct amount of saved expenses equals **$69,654.91.** The difference of **$12.91** ($69,654.91 (actual saved expenses) - $69,642.00 (original claimed saved expenses) = $12.91) is added to the $19,570.92

---

[37] This total is based on the Claimant's miscalculations for the tug costs in Exhibit C of the October 18, 2011 Supplemental Submission.

[38] This total is based on the true calculation of the approved, compensable tonnage multiplied by the tug rate provided by the claimant in Exhibit H of the October 18, 2011 Supplemental Submission.

[39] See footnote #39 above.

denied above, thus increasing the total amount denied to **$19,583.83** ($19,570.92 + $12.91 = $19,583.83).

C. Determination:

The NPFC hereby determines that the OSLTF will pay **$420,117.59** as compensation for the claimed lost profits incurred by UBT and submitted to the NPFC under claim # N08057-0114. As discussed above, $19,583.83 in claimed costs are denied.

VI. DETERMINED AMOUNT: $420,117.59

Claim Supervisor: [redacted]

Date of Supervisor's review: 9/12/2013

Supervisor Action: Approved

Supervisor Comments: