

## CLAIM SUMMARY / DETERMINATION FORM

Date	: 3/30/2010
Claim Number	: N08057-057
Claimant	: New Orleans Paddlewheels, Inc.
Type of Claimant	: Corporate
Type of Claim	: Loss of Profits and Earning Capacity
Claim Manager	: <u>Alyssa Lombardi</u>
Amount Requested	: \$111,132.13

### **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. Approximately 282,828 gallons oil<sup>1</sup> 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.

### **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. The Claimant and the Claim**

New Orleans Paddlewheels, Inc. (NOP) submitted a claim into the National Pollution Funds Center (NPFC) for physical and economic damages sustained as a result of the DM 932 oil spill. At the time of the collision, the M/V Creole Queen (owned and operated by NOP) was in business providing tours to groups and individually-ticketed customers. It was docked at the Poydras Street Wharf, where the vessel utilized an electrical feed to power the vessel and had ready access to water and sewage disposal. Following this spill, operations were relocated away from the customary berth at Poydras Street Wharf so that limited operations could commence once the Mississippi River was open for operations.<sup>2</sup>

As a direct result of the spill, NOP claims the M/V Creole Queen sustained damage to its air filtration system which needed to be cleaned and repaired.

NOP also claims economic losses due to additional fuel, signage, transportation and labor expenses incurred as a direct result of the spill and the operator's efforts to minimize damages. Additionally, walk-up sales were curtailed and pre-paid and pre-booked tickets were refunded.<sup>3</sup>

### **IV. APPLICABLE LAW**

Claims may be presented first to the Fund if the President or his delegated representative has advertised or notified claimants that the Fund is accepting claims resulting from an oil discharge. 33 U.S.C. §2713(b)(1)(A).

<sup>1</sup> See House Subcommittee Hearing on DM 932 Oil Spill, dated 9/15/2008

<sup>2</sup> See Claim Submission Forms, submitted to the NPFC by DeSalvo, Blackburn and Kitchens, LLC for NOP on 9/17/2009

<sup>3</sup> See Claim Submission Forms, submitted to the NPFC by DeSalvo, Blackburn and Kitchens, LLC for NOP on 9/17/2009

The uses of the OSLTF are described at 33 U.S.C. §2712. It provides in relevant part that:

“(a) Uses generally

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; . . .

(b) Defense to liability for Fund

The Fund shall not be available to pay any claim for removal costs or damages to a particular claimant, to the extent that the incident, removal costs, or damages are caused by the gross negligence or willful misconduct of the claimant.”

Damages include damages for injury to natural resources, injury to or economic losses from the destruction of real or personal property, loss of subsistence use of natural resources, Government loss of revenues, loss of profits or earning capacity as a result of loss or destruction of real or personal property or natural resources, and costs of increased public services. 33 U.S.C. §2702(b). Damages are further defined in OPA to include the costs of assessing the damages. 33 U.S.C. §2701(5).

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).

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.

Under 33 CFR 136.105(a) and 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:

“[T]he 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 preparation of the claim.” 33 CFR 136.105(e)(8).

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 the 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)

If a third party claimant or an 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 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).

Under 33 CFR 136.115(d), the Director, NPFC, will, upon written request of the claimant or the claimant's representative, reconsider any claim denied. The request for reconsideration must be in writing and include the factual or legal grounds for the relief requested, providing any additional support for the claim. The request for reconsideration must be received by the NPFC within 60 days after the date the denial was mailed to the claimant or within 30 days after receipt of the denial by the claimant, whichever date is earlier.

## **V. DETERMINATION OF LOSS:**

### ***A. Overview:***

1. FOSC coordination has been established under the Federal Project by way of Incident Action Plans and United States Coast Guard (USCG) Pollution Reports under Federal Project Number N08057.
2. Real or personal property or natural resources have been injured, destroyed, or lost; specifically oil was released into and injured the Mississippi River, a natural resource of the United States.
3. The incident involved the discharge and continuing substantial threat of discharge of "oil" as defined in OPA 90, 33 U.S.C. § 2701(23), to navigable waters.
4. In accordance with 33 CFR § 136.105(e)(12), the claimant has certified no suit has been filed in court for the claimed uncompensated removal costs.
5. The claim was submitted on time.
6. The claimant seeks \$111,132.13 in loss of profits, as a consequence of the additional fees and costs due to additional fuel, signage, transportation and labor expenses, as well as refunded pre-paid and pre-booked tickets.
7. The claimant asserts that, if not for the oil spill, NOP would not have incurred the claimed loss of profits and additional expenses, as stated in Section A, Sub-point 6 above.

8. Presentment of costs to the RP was made by NOP, prior to the submission of the claim. The NPFC also made presentment of costs to the RP for which the RP responded denying these costs.
9. In the process of adjudicating this claim, the NPFC Claims Manager collected additional information from the claimant to document what took place at the time of the incident.

**B. Causation:**

The Barge DM 932 oil spill did in fact release significant amounts of oil into and causing damage and injury to the Mississippi River, a natural resource of the United States. The resulting damage, injury and removal response disrupted shipping in and out of the Mississippi River. At the time of the spill, many vessels were detained and most river operations ceased. The M/V Creole Queen was, in fact, one of these vessels. The USCG provided POLREPS to substantiate that the Mississippi River was either closed to vessel traffic or open to limited traffic during the response period.<sup>4</sup>

**C. Additional Fuel Costs**

NOP is claiming that the oil spill directly caused them loss of profits in the amount of **\$17,643.81**. The M/V Creole Queen was relocated to the Orange Street Wharf, where no land-based power was available (as it was at the Poydras Street Wharf). The normal “day” aboard the Creole Queen is 12-13 hours out of a 24-hour day. While operations were up and running during the spill period, the Creole Queen was operating on a 24 hour day basis.<sup>5</sup> NOP states that the increased diesel fuel and lube consumption is due to powering the generator and for shifting the vessel to and from the Orange Street Wharf.

NOP claims additional fuel costs totaling \$17,533.81\* (see following page for explanation) as a result of the additional 3787 gallons of diesel fuel consumed. NOP breaks down the fuel costs as follows:

#2 Diesel= 4.395/gal <sup>6</sup>	3787 X \$4.395 = \$16,643.87
Freight Diesel = \$.059/gal	3787 X \$.059 = \$223.43
	Subtotal: \$16,867.30
LA State Sales Tax = 4% of total diesel	\$16,643.865 X .04 = \$665.75
<b>Total (\$16,867.298+ \$665.755):</b>	<b>\$17, 533.05*</b> (see following page)
<b>Divided by 3787 gallons:</b>	<b>\$4.63 per gallon</b>

The breakdown of the additional 3787 gallons of fuel is broken down even further, as follows, based on the cost of \$4.63 per gallon:<sup>7</sup>

<sup>4</sup> Polreps 1-21; documenting river closures and traffic management through August 18, 2008.

<sup>5</sup> See Fuel Loss Explanation and Spreadsheet, in the supplemental documents submitted by NOP to the NPFC on 2/25/2010

<sup>6</sup> See Retif Oil and Fuel Invoice, submitted to the NPFC with the claim by DeSalvo, Blackburn and Kitchens, LLC for NOP on 9/17/2009

<sup>7</sup> See “Standby Time,” “Total Standby Hours,” “Fuel Burned in Standby” and “Standby Cost Per Day,” in the Fuel Usage Breakdown taken from the M/V Creole Queen Log Book, submitted to the NPFC by Oats and Hudson Louisiana for NOP on 11/04/2010

<b>Date</b>	<b>Standby Time</b>	<b>Total Standby Hours</b>	<b>Fuel Burned in Standby</b>	<b>Standby Cost Per Day</b>
7/28/2008	10:00 to 19:00; 22:00 to 24:00 hours	10 hours	101 gallons	\$467.63
7/29/2008	00:00 to 19:00; 22:00 to 24:00 hours	21 hours	211 gallons	\$976.93
7/30/2008	00:00 to 19:30; 22:00 to 24:00 hours	19.5 hours	197 gallons	\$912.11
7/31/2008	00:00 to 19:00; 22:00 to 24:00 hours	21 hours	211 gallons	\$976.93
8/01/2008	00:00 to 24:00 hours	24 hours	242 gallons	\$1120.46
8/02/2008	00:00 to 19:30; 22:00 to 24:00 hours	19.5 hours	197 gallons	\$912.11
8/03/2008	00:00 to 19:00; 22:00 to 24:00 hours	21 hours	211 gallons	\$976.93
8/04/2008	00:00 to 24:00 hours	24 hours	242 gallons	\$1120.46
8/05/2008	00:00 to 19:00; 21:00 to 24:00 hours	21 hours	211 gallons	\$976.93
8/06/2008	00:00 to 24:00 hours	24 hours	242 gallons	\$1120.46
8/07/2008	00:00 to 24:00 hours	24 hours	242 gallons	\$1120.46
8/08/2008	00:00 to 19:00; 21:00 to 24:00 hours	21 hours	211 gallons	\$976.93
8/09/2008	00:00 to 24:00 hours	24 hours	242 gallons	\$1120.46
8/10/2008	00:00 to 24:00 hours	24 hours	242 gallons	\$1120.46
8/11/2008	00:00 to 24:00 hours	24 hours	242 gallons	\$1120.46
8/12/2008	00:00 to 24:00 hours	24 hours	242 gallons	\$1120.46
8/13/2008	00:00 to 24:00 hours	24 hours	242 gallons	\$1120.46
8/14/2008	00:00 to 06:00 hours	6 hours	59 gallons	\$273.17
<b>Total:</b>		<b>376 hours</b>	<b>3787 gallons</b>	<b>\$17,533.81*</b>

*\*As the total number of gallons remains the same for the calculations, and the estimated cost per gallon totals approximately \$4.63, the NPFC will consider \$17,533.81 to be the most accurate when considering additional fuel costs, as opposed to the \$17,533.05 total determined using the fuel invoice.*

NOP is claiming that a total of 10 gallons of lube was used during this additional run time that would not have been consumed otherwise. At a cost of \$55.00 per 5-gallon pail, the total lube claim amounts to **\$110.00**.<sup>8</sup> Adding \$110.00 to the diesel fuel total amounts to **\$17,643.81** in additional fuel costs.

#### **D. Extraneous Transportation Costs**

NOP states that, once the M/V Creole Queen was relocated to the Orange Street Wharf, it became necessary to transport the patrons from the Poydras Street Wharf to the dock at the Orange Street Wharf. NOP therefore contracted with New Orleans Tours to transport patrons between wharfs. NOP is claiming **\$9,500.00** in additional busing charges.<sup>9</sup>

<sup>8</sup> See Wes-Pet., Inc. Lube Costs affidavit, dated 2/25/2010, submitted to the NPFC by NOP on 2/26/2010

<sup>9</sup> See New Orleans Tours invoices, submitted to the NPFC with the claim by **DeSalvo, Blackburn** and Kitchens, LLC for NOP on 9/17/2009

NOP breaks down these costs as follows:

<b>Date</b>	<b>Invoice Number</b>	<b># of Units</b>	<b>Cost per Unit</b>	<b>Fuel Surcharge</b>	<b>Total Charge</b>
7/28/2008	27429	3	\$475.00	\$285.00	\$1710.00
7/29/2008	27442	1	\$475.00	\$95.00	\$570.00
7/30/2008	27448	9	\$475.00	\$855.00	\$5130.00
8/01/2008					
8/02/2008					
8/03/2008					
8/05/2008					
8/08/2008	27467	3	\$475.00	\$95.00	\$1520.00
8/09/2008	27481	1	\$475.00	\$95.00	\$570.00
<b>Total Extraneous Transportation Costs:</b>					<b>\$ 9500.00</b>

**E. Additional Staff**

NOP asserts that the delay resulted in a necessary increase of staff required for preparing and monitoring the new gangway at the Orange Street Wharf, as well as assisting with assisting with loading patrons on to buses. The claimed additional labor costs totaled **\$2778.80**.<sup>10</sup>

NOP breaks down these costs as follows:

<b>Employee</b>	<b># of Additional Hours</b>	<b>Rate per Hour</b>	<b>Additional Staff Costs</b>
Paul Bair	34	\$29.00	\$986.00
John Abbott	35.5	\$26.00	\$923.00
Michelle Poole	8	\$16.85	\$134.80
Craig Smith	21	\$35.00	\$735.00
<b>Total Overtime Combined Additional Staffing Costs:</b>			<b>\$2778.80</b>

**F. Filtration System Repair**

NOP claims that work was required to ventilate the vessel and sanitize the vessel's air filtration system, repair costs of which caused them a claimed loss of approximately **\$1269.08**.<sup>11</sup> NOP breaks down these costs as follows:

**Materials:**

<b>Item</b>	<b>Cost per Item</b>	<b>Total Cost</b>
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<sup>10</sup> See Additional Staff Hours, submitted to the NPFC by Oats and Hudson Louisiana for NOP on 1/29/2010 and email from Mr. Paul Bair to Ms. Alyssa Lombardi, NPFC, dated 3/10/2010

<sup>11</sup> See Filter Cost Explanation and M/V Creole Queen Log Book entry, dated 7/11/2008, submitted to the NPFC with the claim by DeSalvo, Blackburn and Kitchens, LLC on 9/17/2009 and Filter Parts List and Cost Explanation, submitted to the NPFC by Oats and Hudson Louisiana for NOP on 11/04/2010

4 cases of filters, Grainger Part # 6B957	\$104.52	\$418.08
2 rolls of filters, Grainger Part # 6U585	\$152.00	\$304.00
2 cases of Odor Eliminator	\$123.50	\$247.00
<b>Total:</b>		<b>\$969.08</b>

**Labor Costs:**

Position	Rate Per Hour	Number of Hours	Total Cost
Chief Engineer	\$36.00	6	\$216.00
Oiler	\$12.00	7	\$84.00
<b>Total:</b>			<b>\$300.00</b>
<b>Total Filtration Repair Costs:</b>			<b>\$1269.08</b>

**G. Payments Made to Sick Employees**

NOP claims that, due to the vapors caused by the oil spill, numerous employees were forced to leave work. NOP paid a total of **\$758.00** to its employees who were unable to work.

**H. Vessel Shifting Expenses**

NOP asserts that, due to the forced relocation, the vessel was required to staff additional crew so it could be prepared to shift once ordered to do so by the USCG. Additionally, as the vessel was made to shift on August 6, 2008 to lift potable water and purge its sewer storage tanks. These shifting expenses amount to approximately **\$1974.00**.<sup>\*12</sup>

NOP breaks down these costs as follows:

*On 7/28/2008, NOP crews worked the following schedule awaiting the Coast Guards approval to shift to the Orange Street Wharf location:*

Position	Hours Worked	Rate per Hour	Total Cost
Captain <u>Al Christian</u>	09:00 to 16:30 hours	2-trips at \$120 per trip	\$240.00
<u>Mate Brian Clesi</u>	09:00 to 16:30 hours	2-trips at \$105 per trip	\$210.00
<b>Deckhands</b>			
<u>David Jones</u>	12:30 to 16:30 hours	\$10.00 per hour	\$40.00
<u>Taran Van Buren</u>	12:30 to 16:30 hours	\$10.00 per hour	\$40.00
<u>Mike Sinette</u>	12:30 to 16:30 hours	\$10.00 per hour	\$30.00
<u>Alfred Lonzo</u>	12:30 to 16:30 hours	\$10.00 per hour	\$40.00
Engineer <u>Blayne Savoie</u>	09:00 to 16:30 hours	2-trips at \$100 per trip	\$200.00
Oiler <u>Andrew Ellis</u>	12:30 to 16:30 hours	\$12.00 per hour	\$48.00
Dockman <u>Richer Clesi</u>	12:30 to 16:30 hours	\$10.00 per hour	\$40.00

<sup>12</sup> See NOP Compensation Report for the time period 7/15/2008 through 7/31/2009 and NOP Compensation Report for the time period 8/01/2008 through 8/15/2008, the Vessel Shifting Support Letter written by Mr. Paul Barr, all submitted to the NPFC by NOP on 3/26/2010

**Total for 7/28/2008: \$888.00**

On 8/06/2008, NOP crews worked the following schedule awaiting the Coast Guards approval to shift back to the Poydras Street Wharf:

<b>Position</b>	<b>Hours Worked</b>	<b>Rate per Hour</b>	<b>Total Cost</b>
Captain <b>Al Christian</b>	10:45 to 16:30 hours	2-trips at \$120 per trip	\$240.00
Mate <b>Brian Clesi</b>	09:30 to 16:30 hours	2-trips at \$105 per trip	\$210.00
<b>Deckhands</b>			
<b>David Jones</b>	09:30 to 16:30 hours	\$10.00 per hour	\$70.00
<b>Taran Van Buren</b>	09:30 to 16:30 hours	\$10.00 per hour	\$70.00
<b>Mike Sinette</b>	09:30 to 16:30 hours	\$10.00 per hour	\$70.00
<b>Alfred Lonzo</b>	09:30 to 16:30 hours	\$10.00 per hour	\$60.00
Engineer <b>Blayne Savoie</b>	09:00 to 16:30 hours	2-trips at \$100 per trip	\$200.00
Oiler <b>Andrew Ellis</b>	08:30 to 16:30 hours	\$12.00 per hour	\$96.00
Dockman <b>Richer Clesi</b>	09:30 to 16:30 hours	\$10.00 per hour	\$70.00
<b>Total for 8/06/2008:</b>			<b>\$1086.00</b>
<b>Total Claimed Shifting Expenses:*</b>			<b>\$1974.00</b>

\*NOP Vessel Shifting Costs actually total \$2,041.00 due to a discrepancy in the actual pay rate of three employees, Mr. **David Jones**, Mr. **Richard Clesi** and Mr. **Fredrick Ellis**. Captain **Al Christian** figured Mr. **Jones** and Mr. **Clesi** in at \$10.00 per hour and **Fredrick Ellis** at \$12.00 per hour when, in actuality, Mr. **Jones**'s and Mr. **Ellis**'s pay rates are \$13.00 per hour and Mr. **Clesi**'s pay rates are \$12.00 per hour. There is an underestimation of \$33.00 for Mr. **Jones** (11 hours at \$3.00 per hour difference), an underestimation of \$12.00 for Mr. **Ellis** (12 hours at \$1.00 per hour difference) and an underestimation of \$22.00 for Mr. **Clesi** (11 hours at \$2.00 per hour). As NOP does not wish to change their claimed amount of \$1974.00 to \$2041.00, the NPFC does not object.

### **I. Additional Signage**

NOP claims that **\$559.15** in additional signage was necessary in order to alert patrons that the M/V Creole Queen was no longer operating from her normal location at the Poydras Street Wharf.<sup>13</sup> NOP breaks down these costs as follows:

<b>Product</b>	<b>Quantity</b>	<b>Price per Unit</b>	<b>Subtotal</b>
Custom Sign	2	\$217.50	\$435.00
Custom Design	1	\$85.00	\$85.00
Subtotal:			\$520.00
Taxes:			\$39.15
<b>Total Additional Signage Costs:</b>			<b>\$559.15</b>

### **J. Relocation of Scheduled Events**

<sup>13</sup> See O.P.A. Graphics Invoice, dated 8/21/2008, submitted to the NPFC with the claim by DeSalvo, Blackburn and Kitchens, LLC for NOP on 9/17/2009



NOP claims that an event scheduled for July 24, 2008, needed to be moved from the original site on the M/V Creole Queen to a space at the New Orleans Board of Trade due to both the condition of the M/V Creole Queen and the Mississippi River. The cost for renting out this space totaled **\$1500.00**.<sup>14</sup>

Furniture, linen set-up and catering were also necessary, costs totaling approximately **\$1362.29**.<sup>15</sup> NOP breaks down these costs as follows:

Item	Quantity	Price per Unit	Total
Folding Chairs	130	\$2.00	\$260.00
60" Round table	18	\$9.50	\$171.00
120" Black Round Linen	30	\$15.00	\$450.00
Labor: Set up tables/chairs	1	\$87.00	\$87.00
Labor: Set up Linens	1	\$90.00	\$90.00
Morning Delivery	1	\$180.00	\$180.00
Pick Up Charge	1	\$35.00	\$35.00
		Subtotal:	\$1273.00
		Taxes:	\$79.29
		<b>Total Event Rental Costs:</b>	<b>\$1352.29</b>
		<b>Total Rental Fees for New Orleans Board of Trade:</b>	<b>\$1500.00</b>

The combined total claimed loss for the relocation of the NCSL Gospel Brunch equals **\$2852.29**. Normal food, beverage and staff labor costs do not need to be addressed here, as they remained the same.

**K. Pre-Paid Ticket Refunds**

NOP states that, due to the condition of the vessel, the wide-spread pollution, and the unhealthy conditions that existed after the oil release, vessel interests were forced to refund passenger tickets between July 23, 2008 and July 28, 2008. The total claimed loss of profits due to pre-paid ticket refunds amount to **\$ 43,273.50**.<sup>16</sup>

NOP breaks down these costs as follows:

*Total Number of Cancellations for Voyages Due to Oil Spill from 7/23 through 7/28/2008: 739*

Rate per Person	Pax Count	Total Loss
\$16.00	21	\$336.00
\$17.00	42	\$714.00
\$20.00	19	\$380.00
\$25.00	2	\$50.00
\$32.00	19	\$608.00
\$38.00	64	\$2432.00

<sup>14</sup> See Pigeon Caterers Invoice, dated 7/28/2008, submitted to the NPFC with the claim by DeSalvo, Blackburn and Kitchens, LLC for NOP on 9/17/2009

<sup>15</sup> See Event Rental LLC Invoice, dated 7/23/2008, submitted to the NPFC with the claim by DeSalvo, Blackburn and Kitchens, LLC for NOP on 9/17/2009

<sup>16</sup> See NOP Database Reservation List for 6/01/2008 through 8/01/2008 and Explanation of Average Bar Costs, submitted to the NPFC by Oats and Hudson Louisiana for NOP on 11/04/2009

\$42.00	60	\$2520.00
\$46.00	97	\$4462.00
\$50.00	49	\$2450.00
\$51.00	15	\$765.00
\$59.00	121	\$7139.00
\$95.00	80	\$7600.00
Private Party	150	\$8275.00

**Total Pax Count: 739 Total Loss: \$37,731.00**

When adding the claimed loss in bar beverage services sales, **\$5542.50** (739 (number of cancellations) X \$7.50 (average bar) = \$5542.50), the total claimed loss in Pre-Paid Ticket Sales totals approximately **\$43,273.50**.

**L. Lost Revenue**

NOP claims that, in addition to pre-paid and pre-booked ticket sale refunds, they also incurred profit damages due to loss of walk-up ticket sales. They state two reasons for this: First, walk-up ticket sales at the Poydras Street Wharf were curtailed and Second, patrons did not want to travel to the Orange Street Wharf. NOP estimates this loss to be approximately **\$30,523.50**, a cost based on average revenues for this time period from previous years.

NOP breaks down these costs as follows:

<b>Date</b>	<b>Per-Cap Total</b>	<b>Group Total</b>
7/23/2008	0	0
7/24/2008	30	38
7/25/2008	48	236
7/26/2008	82	0
7/27/2008	0	0
7/28/2008	39	252
7/29/2008	53	35
7/30/2008	66	86
8/01/2008	47	118
8/02/2008	66	18
8/03/2008	70	183
8/05/2008	33	101
8/08/2008	66	202
8/09/2008	92	0
<b>Totals:</b>	<b>692</b>	<b>1269</b>

NOP calculates that, based on a five-year average,<sup>17</sup> the percentage of Per Cap Passengers (walk-up and pre-booked sales) amounts to approximately 54% of total sales, and Group Sales (Non Per-Cap) amounts to 46% of total sales. NOP uses the group sale total of 1269 for the spill period, 7/23/2008 through 8/10/2008, to calculate what the total number of sales, Per-Cap and Non Per-Cap, would have been. If 1269 would have been 46% (the Non Per-Cap total for the spill period) of the total, then the estimated total of passengers (Per-Cap and Non Per-Cap), if not

<sup>17</sup> See NOP Sales Statistics Summary from 1/01/2004 through 12/31/2009, submitted to the NPFC by NOP on 2/25/2010

for the oil spill, should have been 2759 ( $1269 \times 100 = 46x$ ;  $126900/46 = 2759$ ). 54% of 2759 equals 1490 ( $2759 \times .54 = 1489.86$ , or 1490). As NOP canceled cruises on 7/24, 7/25, 7/26 and 7/27/2008, and the pre-booked sales were refunded, they are not claiming these dates as part of their Per-Cap profit loss. The total number of pre-booked passengers from 7/23 through 7/27/2008 total 160;  $1490 - 160 = 1330$ , then, represents what the total number of Per-Cap passengers should have been for 7/28 through 8/09/2010. Of these estimated 1330 Per-Cap passengers for 7/28 through 8/10/2008, 532 people were actual paying customers who set off on the M/V Creole Queen for a cruise. The difference, and thus the estimated number of walk-up sales curtailed during the spill time, is 798 passengers ( $1330 - 532 = 798$ ). 798 passengers multiplied by the average fare per person ( $\$55.00^{18}$ ) totals **\$43,890.00**. In addition to this total, NOP also calculates a loss of **\$5985.00** per person in lost beverage sales ( $\$7.50 \times 798$ ).<sup>19</sup> Combining these totals equals **\$49,875.00**.

NOP estimates that food and labor costs average roughly \$22.00 per person, or 40%,<sup>20</sup> Saved food/labor costs total approximately **\$17,556.00** ( $798 \times \$22.00 = \$17,556.00$ ). Additionally, bar beverage service costs average roughly \$2.25 per person, or 30%. Saved bar beverage service costs total approximately **\$1795.50** ( $798 \times \$2.25 = \$1795.50$ ). When subtracting these saved expenses from the total amount of profit from lost Per-Cap passengers, the total amounts to an approximate loss of **\$30,523.50**.

#### **M. Analysis:**

New Orleans Paddlewheels, Inc. submitted a claim with which they were able to demonstrate that the M/V Creole Queen was indeed negatively impacted and operations were both canceled and limited by the DM 932 oil spill. After researching and reviewing the claim, the NPFC has determined that some, but not all, of NOP's claimed lost profits are valid and compensable. The determination of compensable and denied costs is as follows:

##### *Compensable Costs:*

1. All additional fuel and lube costs, totaling **\$17,643.81**, are determined valid and compensable.
2. All extraneous transportation costs, totaling **\$9,500.00**, are determined valid and compensable.
3. All additional staffing costs, totaling **\$2778.80**, are considered valid and compensable.
4. All filtration repair costs, totaling **\$1269.08**, are considered valid and compensable.
5. All vessel shifting expenses, totaling **\$1974.00**, are considered valid and compensable.
6. All additional signage costs, totaling **\$559.15**, are considered valid and compensable.
7. All costs incurred by the relocation of the scheduled NCSL Gospel Brunch, totaling **\$2852.29**, are considered valid and compensable.
8. All claimed lost revenue for curtailed walk-up passenger sales, totaling **\$30,523.50**, are considered valid and compensable.

##### *Partially Compensable Costs:*

NOP claims that, due to pre-paid ticket refunds, they are entitled to the full price of the ticket, plus the average cost of \$7.50 per passenger for bar beverage service. However, for each

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<sup>18</sup> See NOP Database Reservation List for 6/01/2008 through 8/01/2008, submitted to the NPFC by Oats and Hudson Louisiana for NOP on 11/04/2009

<sup>19</sup> See NOP Explanation of Average Bar Costs, submitted to the NPFC by Oats and Hudson Louisiana for NOP on 11/04/2009

<sup>20</sup> See Pigeon Caterers Invoices dated 5/30/2008, 7/9/2008 and 8/14/2008, submitted by NOP on 2/25/2010

passenger that canceled, NOP realized a both saved expense of \$22.00 per person in food and labor costs and a saved expense of \$2.25 per person in bar beverage service costs. When multiplying these costs by the total number of canceled passengers, the saved food and labor costs total \$16,258.00 (739 X \$22.00 = \$16,258.00), and the saved bar beverage service costs total \$1662.75 (739 X \$2.25 = \$1662.75). Total saved expenses equal \$17,920.75 (\$16,258.00 + \$1662.75 = \$17,920.75). Subtracting this from the original claim of \$43,273.50 begets a new total of \$25,352.75 (43,273.50 - \$17,920.75 = \$25,352.75). Thus, the total amount of profits lost due to pre-paid ticket refunds as determined by the NPFC to be valid and compensable equal **\$25,352.75**.

*Denied costs:*

At this time, per OPA regulations, claims into the NPFC do not cover personal injury. Therefore, the **\$758.00** in payments to sick employees has been denied.

**N. Determination:**

The NPFC hereby determines that the OSLTF will pay **\$92,453.38** as full compensation for the lost profits incurred by the Claimant as a result of the increased expenses incurred during the DM 932 oil spill and submitted to the NPFC under claim # N08057-057. All increased expenses claimed are for charges paid for by the Claimant without mitigating or offsetting increases in revenues for the voyage in question. The lost profits determined are for damages as that term is defined in OPA and, are compensable damages, payable by the OSLTF as presented by the Claimant.

**VI. DETERMINED AMOUNT: \$92,453.38**

Claim Supervisor: **Tom Morrison**

Date of Supervisor's review:

Supervisor Action:

Supervisor Comments: