



Ottawa, 22 October 2020
SOPF File: 120-867-C1
CCG File: n/a

VIA MAIL AND EMAIL

Senior Director of Incident Management, Response Directorate
Canadian Coast Guard
200 Kent Street (5N177)
Ottawa, Ontario K1A 0E6

RE: *F/V THERESA N* – Bamfield, British Columbia
Incident date: 2018-09-08

SUMMARY AND OFFER

This letter responds to a submission from the Canadian Coast Guard (the “CCG”) with respect to the fishing vessel THERESA N (the “Vessel”, which was identified as the TERESA ANNE in the CCG submission), which was involved in an incident on 8 September 2018, near Bamfield, British Columbia (the “Incident”).

On 24 July 2020, the office of the Administrator of the Ship-source Oil Pollution Fund (the “SOPF”) received a submission from the CCG on behalf of the Administrator. The submission advanced claims totaling \$28,637.28 for costs and expenses arising from measures taken by the CCG to respond to the Incident.

On 16 October 2020, the CCG updated their claim to correct the administrative rate applied to certain costs and expenses. The revised total claim amount is \$28,656.55.

The submission has been reviewed and a determination with respect to its claims has been made. This letter advances an offer of compensation to the CCG pursuant to sections 105 and 106 of the *Marine Liability Act* (the “MLA”). Also provided in this letter are a description of the CCG’s submission and an explanation of the findings.

The claim is allowed in its entirety. The amount of \$28,656.55 (the “Offer”), plus statutory interest to be calculated at the time the Offer is paid and in accordance with s. 116 of the MLA, is offered with respect to this claim.

The reasons for the Offer are set forth below.

THE SUBMISSION RECEIVED

The submission includes a narrative that describes events relating to the Incident. It also includes a summary of the costs and expenses that the CCG claims and corroborating documents. To the extent that the narrative and documents are relevant to the determination, they are reviewed below.

The narrative

On 8 September 2018, at 14:00, the CCG was alerted that the Vessel was sinking at the dock in Bamfield, and an oily sheen on the water associated with the Vessel. The Bamfield Lifeboat Station dispatched a crew who placed 3 pumps on board the Vessel to keep it afloat. They note that the Vessel was about 40' long, with an inboard engine and an unknown quantity of oil aboard. They considered the hull of the Vessel to be in poor condition. The CCG was able to determine the name of the owner but could not reach him.

After the Vessel was dewatered, a pump was left aboard to deal with an ongoing ingress of water.

On 9 September 2018, the Bamfield Lifeboat Station reassessed the Vessel. It continued to take on water and was therefore considered at risk of sinking. The owner reached the CCG Environmental Response ("ER") duty officer and advised that he was out of town for medical reasons but that he planned to return in 2-3 days. In the interim, he said he would have a third party immediately attend to it. The owner advised that there was no fuel aboard, but that the engine was intact and contained oil. The owner confirmed someone would check on the Vessel every day.

In fact, no one attended the Vessel on 10 or 11 September 2018. On 11 September 2018 the operator of the marina advised that the ingress of water was accelerating. Two CCG ER personnel were dispatched from Victoria to assess the Vessel. On arrival, they confirmed the Vessel's overall poor condition, including seaweed built up and an absence of caulking between planks above the water line. As well, extensive rotting was noted above the waterline and in the wheelhouse. The planks in the engine room appeared to be saturated with oil, there was oil in the bilge, and the machinery space was in a general level of disrepair.

The owner was contacted again about the state of the Vessel. He said he would beach the craft but would not commit to more. The CCG determined it should take steps to deal with the Vessel, as the owner's proposed response was not considered adequate. In the interim, the marina operator agreed to monitor the Vessel.

On 19 September 2018, two CCG personnel travelled to Bamfield along with a marine surveyor to inspect the Vessel. The Vessel was no longer at the marina. It was suggested to the CCG that the Vessel had been moved to Grappler Inlet to be beached. The CCG personnel travelled to Grappler Inlet and found the Vessel there secured alongside a dock. The CCG attempted to inspect the Vessel, but the dock owner was volatile and aggressive

towards the CCG. For that reason, they did not board the Vessel and instead sought out the owner. They did not locate him, and local residents reported they had not seen him.

After CCG personnel departed Bamfield, the CCG received a call advising that the Vessel had sunk at the dock at Grappler Inlet. A sheen of oil was on the water.

On 20 September 2018, the CCG reattended at the scene to refloat the Vessel. The Lifeboat Station placed a boom around the Vessel to contain the oily sheen. An order under s. 180 of the *Canada Shipping Act, 2001* was issued to the owner, care of the local bank counsel.

On 21 September 2018, CCG personnel and contract divers attended at the scene to assess the Vessel and devise a plan to refloat it. It was observed that the Vessel had damaged the dock during the sinking, and that debris from the dock had in turn damaged the starboard side of the Vessel. A sheen was observed on the surface of the water. CCG crews removed several containers of oil from the Vessel.

The contract divers used lift bags to refloat the Vessel, and pumps to dewater it. The Vessel was then taken under tow to Franklin Forest Products for deconstruction. Pumps had to be operated throughout the tow, but the trip was uneventful. The CCG crew were delayed in their return to Victoria by a flat tire.

The Vessel was deconstructed at Franklin Forest Products.

Summary of costs and expenses

The claim submitted by the CCG includes the following summary of expenses incurred in responding to the Incident:

COST SUMMARY
POLLUTION INCIDENT

| | | | |
|----------------|----------------------|----------------|------------|
| INCIDENT: | TERESA ANNE | PROJECT CODE: | FHUE5 |
| INCIDENT DATE: | Sep 9 /18 | DATE PREPARED: | June 11/20 |
| DEPARTMENT: | CANADIAN COAST GUARD | PREPARED BY: | [REDACTED] |

| | | <u>SCH</u> |
|---|--------------|------------|
| MATERIALS AND SUPPLIES | - | 1 |
| CONTRACT SERVICES | 19,780.74 | 2 |
| TRAVEL | 1,819.10 | 3 |
| SALARIES - FULL TIME PERSONNEL | 1,945.35 | 4 |
| OVERTIME - FULL TIME PERSONNEL | 4,457.48 | 5 |
| OTHER ALLOWANCES | - | 6 |
| SALARIES - CASUAL PERSONNEL | - | 7 |
| SHIPS' COSTS (EXCL. FUEL & O/T) | - | 8 |
| SHIPS PROPULSION FUEL | - | 9 |
| AIRCRAFT | - | 10 |
| POLLUTION COUNTER-MEASURES EQUIPMENT (PCME) | 106.42 | 11 |
| VEHICLES | 441.16 | 12 |
| ADMINISTRATION | 87.04 | 13 |
| TOTAL CCG COST OF INCIDENT | \$ 28,637.28 | |

Figure 1 - Screen capture of the CCG cost summary

It was identified that the CCG originally submitted the claim using a lower administrative charge rate than the one negotiated as between the Administrator and the CCG. A request was made to the CCG to confirm that they had intended to claim a lower rate. On 16 October 2020, the CCG made a correction to their submission. The correction included a new Cost Summary:

COST SUMMARY
POLLUTION INCIDENT

| | | | |
|----------------|----------------------|----------------|---|
| INCIDENT: | TERESA ANNE | PROJECT CODE: | FHUE5 |
| INCIDENT DATE: | Sep 9 /18 | DATE PREPARED: | June 11/20 |
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| OVERTIME - FULL TIME PERSONNEL | 4,457.48 | 5 |
| OTHER ALLOWANCES | - | 6 |
| SALARIES - CASUAL PERSONNEL | - | 7 |
| SHIPS' COSTS (EXCL. FUEL & O/T) | - | 8 |
| SHIPS PROPULSION FUEL | - | 9 |
| AIRCRAFT | - | 10 |
| POLLUTION COUNTER-MEASURES EQUIPMENT (PCME) | 106.42 | 11 |
| VEHICLES | 441.16 | 12 |
| ADMINISTRATION | 106.30 | 13 |
| | <hr/> | |
| TOTAL CCG COST OF INCIDENT | <u>\$ 28,656.55</u> | |

Figure 2 - Corrected Cost Summary

DETERMINATIONS AND FINDINGS

The CCG submission presents potentially eligible claims under section 103 of the MLA

The Incident resulted in damage suffered, or the threat of damage, within the territorial seas or internal waters of Canada, as well as in costs and expenses to carry out measures to

avoid or minimize further damage. As a result, claims arising from the Incident are potentially eligible for compensation.

The CCG is an eligible claimant for the purposes of section 103 of the MLA. The submission arrived prior to the limitation periods set out under subsection 103(2).

The claimed costs and expenses arise from what appear to be reasonable measures taken to “prevent, repair, remedy or minimize” oil pollution damage from a ship, as contemplated under Part 6, Division 2 of the MLA, and are therefore potentially eligible for compensation.

Accordingly, the submission presents claims that are potentially eligible for compensation under s. 103 of the MLA.

The facts presented by the CCG are generally accepted

The CCG included with the submission a narrative which sets out the facts of the Incident in some detail. This description of the material events is accepted as generally accurate.

The Administrator’s investigation casts doubt on the identification of the Vessel as set out in the CCG documentation. A search of publicly available Transport Canada and records was carried out. No registration information related to a vessel named “TERESA ANNE”. A review of Transport Canada’s records led to the registration information for a vessel named the “THERESA N”. In the English language, these two names are phonetically similar. More importantly, the biographical details of that registration match those of the Vessel: length of 11.73 m compared to 40 feet described by the CCG, match for hull type and material, the registered owner matches the name identified in CCG documents and it was Registered in Port Alberni which would be a sensible location for the owner of the Vessel to have registered.

The Administrator therefore concludes that the Vessel was in fact the THERESA N identified in Transport Canada records with official number 329176.

It is accepted that the Incident as described by the CCG involved both an oil discharge with the threat of environmental damage, as well as the threat of future discharges. It was reasonable to take measures in response, and the measures taken by the CCG are accepted as generally reasonable.

The CCG has not submitted a claim for the efforts of the CCG Lifeboat Station at Bamfield.

The bulk of the expense in this case was for contractors who raised and subsequently deconstructed the Vessel, principally during the period 19 to 22 September 2018. The contractual costs incurred are generally reasonable for the services rendered, and it is accepted in this case that the services rendered constitute measures reasonably taken with respect to oil pollution or the threat thereof.

The CCG submission did not include some important contractor information such as a Statement of Work, an agreement with the contractors on rates, or a description of the effort allocation and the rationale behind that. While in this case the invoices coupled with other

evidence are sufficient to establish the reasonableness of the expenses, such an omission could in other cases reduce the likelihood of a claim being accepted. The absence of presumably available evidence to establish a claim can result in an adverse inference being drawn where the claimed expense is not otherwise adequately supported.

During the assessment process, a request was made to the CCG for further substantiation for the deconstruction of the Vessel. The narrative suggested that the Vessel's hull was saturated with hydrocarbons, with the consequence that the deconstruction of the Vessel might be considered a measure taken with respect to oil pollution. However, the initial submission included inadequate evidence to establish those facts. The CCG responded to the request, providing two photographs.

It should be acknowledged that there was little or no fuel aboard the Vessel at the material times. However, the presence of oil within the Vessel's engine, coupled with the photographs provided by the CCG showing impregnation of oil within the Vessel's wooden planks, are sufficient to establish that the Vessel itself posed an oil pollution risk. Therefore, deconstruction could be a measure reasonably taken in response to the risk of oil pollution.

CLAIM AND OFFER DETAILS

The CCG submission breaks down the claim for costs and expenses into several categories. This section of the offer letter reviews each of those categories in detail and provides reasons as to why portions of the claim have been allowed or disallowed.

According to s. 51, 71, and 77 of the MLA, both the measures taken to respond to an oil pollution incident and the resulting costs must be reasonable in order to trigger the liability of the SOPF. In each portion of the CCG claim below, it will be discussed how those factors have been established.

Schedule Two – Contract Services

Claim: \$19,780.74

The contact services in this case were divided between two companies:

- Cold Water Divers, located in North Saanich, were engaged to provide a four-person dive team on 21 and 22 September 2018 for the raising of the Vessel; and
- Timber Rose Ventures Ltd., of Port Alberni, who provided supporting in towing the Vessel to Franklin Forest Property in Port Alberni, as well as the demolition of the Vessel.

The invoice from Cold Water Divers is broken into five parts:

- Part One: Activation and travel to Bamfield. The cost charged is \$3300.00. This is considered reasonable.
- Part Two: Raising of the Vessel; installation of salvage pumps; manning salvage pumps; tow of vessel to Port Alberni. The cost charged is \$3150.00. This is

considered reasonable. The other divers (two) loaded the salvage trailer and proceed by road to Port Alberni. The cost charged is \$2100.00. This is considered reasonable.

- Part Three: Dive team departs Port Alberni and returns to North Saanich. The cost charged is \$900.00. This is considered reasonable.
- Part Four: Decontamination and cleanup of Dive/Salvage equipment. The cost charged is \$1925.00. This is considered reasonable.
- Part Five: Meals and Accommodation charges for the four divers for two days. Total cost charged \$963.80. This is considered reasonable.

This invoice is accepted in its entirety.

The invoice from Timber Rose Ventures covers two tasks. The towing assist to Franklin Forest Property in Port Alberni is billed in the amount of \$1,500. This is reasonable. The second item is for the demolition and disposal of the Vessel. For the reasons previously set out in this decision, this is accepted as a reasonable measure. The amount billed for this item is also accepted.

This invoice is accepted in its entirety.

The contract services portion of this claim is allowed in its entirety in the amount of \$19,780.74.

Schedule Three – Travel

Claim: \$1,819.10

Travel expenses were claimed for three CCG ER response officers to attend the Incident between 20 and 22 September 2018. The claim is evidenced by Expert Report Statements for each officer, including approval from CCG management. Hotel receipts were included in the documentation.

Meals and incidental claims are in line with Treasury Board guidance.

All claimed expenses are established with evidence and were in support of CCG activities which were reasonably taken in response to oil pollution.

The travel portion of the submission is allowed in its entirety in the amount of \$1,819.10.

Schedule 4 – Salaries: Full Time Personnel

Claim: \$1,945.35

The CCG responded to a request made on 16 September 2020 for details on the salaries claimed by three full time CCG ER officers for the incident. The claim covered the period of 20 to 21 September 2018.

The document provided included Personnel and Equipment daily log sheets for 19 to 22 September 2018, and included the hours worked by each employee. Based on this information, the salary claim is accepted as having been incurred to facilitate the taking of measures in response to the Incident.

The salary portion of the submission is allowed in its entirety in the amount of \$1,945.35.

Schedule 5 – Overtime: Full Time Personnel

Claim: \$4,457.48

Overtime was claimed for three CCG ER personnel. The bulk of the overtime was incurred to return equipment to the CCG base at Victoria on a Saturday, which was reasonable in the circumstances.

The supplementary information provided by the CCG with respect to the salaries portion of the claim also substantiates the overtime claim. It is accepted this cost was incurred to facilitate measures taken in response to oil pollution damage.

The overtime portion of the submission is allowed in its entirety in the amount of \$4,457.48

Schedule 11 – Pollution Counter Measures

Claim: \$106.42

The claim submission indicated that a pollution response vessel 1 (PRV 1) was used for two days, 21 and 22 September 2018. The CCG seeks a cost of \$53.21 for this vessel. The claim includes the daily log for the equipment. The work description indicates that this boat was used. This is considered reasonable as a measure taken with respect to oil pollution damage.

The pollution counter measures portion of the submission is allowed in its entirety in the amount of \$106.42

Schedule 12 – Vehicles

Claim: \$441.16

The CCG claims for the use of two vehicles for the response to the Incident: a Ford F350 (16-824), which was driven 307 from Bamfield to Victoria on 19 September 2018; and a Ford F350 (12-833) which was driven 506 km between 20 to 22 September 2018.

The CCG claim for a rate of \$65.57 for these vehicles, plus mileage.

It is considered that the use of the vehicles was reasonable to enable the CCG measures taken with respect to the Incident. The expenses sought are reasonable, and in line with CCG costing guidelines.

The vehicles portion of the submission is allowed in its entirety in the amount of \$441.16

Schedule 13 - Administration

Claim: \$106.30

The CCG advances a claim for administrative costs. Initially, the CCG sought an administrative rate of 2.53%, calculated by multiplying that rate against salary and travel costs.

The CCG and the Administrator have, historically, negotiated a maximum administrative rate which can be claimed. Just prior to the submission of the subject claim, a new maximum rate of 3.09% had been agreed upon.

After reviewing the submission, the Administrator requested confirmation that the CCG intended to claim a lower than allowed rate. On 16 October 2020 the CCG submitted a corrected claim, based on an administrative rate of 3.09% applied against salary and travel costs.

This higher amount is in conformance with the agreement on the administrative rate. The amount itself is reasonable, coming in at much less than 1% of overall costs.

The administrative costs portion of the submission is allowed in its entirety in the amount of \$106.30.

OFFER SUMMARY AND CLOSING

The following table summarizes the claimed and allowed expenses with respect to the CCG claim regarding the Vessel:

| Item | Claim | Offer |
|----------------------------------|--------------------|--------------------|
| Contract Services | \$19,780.74 | \$19,780.74 |
| Travel | \$1,819.10 | \$1,819.10 |
| Salaries FTEs | \$1,945.35 | \$1,945.35 |
| Overtime FTEs | \$4,457.48 | \$4,457.58 |
| Pollution Counter Measures Equip | \$106.42 | \$106.42 |
| Vehicles | \$441.16 | \$441.16 |
| Administration | \$106.30 | \$106.30 |
| Total | \$28,656.55 | \$28,656.55 |

Table 1 - Summary of claims made and allowed

Costs and expenses in the amount of \$28,656.55 are accepted and will be paid together with statutory interest calculated at the date of payment if the Offer is accepted.

In considering this Offer, please observe the following options and time limits that arise from section 106 of the MLA.

You have 60 days upon receipt of this Offer to notify the undersigned whether you accept it. You may tender your acceptance by any means of communication by 16:30 Eastern Time on the final day allowed. If you accept this Offer, payment will be directed to you without delay.

Alternatively, you have 60 days upon receipt of this Offer to appeal its adequacy to the Federal Court. If you wish to appeal the adequacy of the Offer, pursuant to Rules 335(c), 337, and 338 of the *Federal Courts Rules*, SOR/98-106 you may do so by filing a Notice of Appeal in Form 337. You must serve it upon the Administrator, who shall be the named Respondent. Pursuant to Rules 317 and 350 of the *Federal Courts Rules*, you may request a copy of the Certified Tribunal Record.

The MLA provides that if no notification is received by the end of the 60-day period, you will be deemed to have refused the Offer. No further offer will issue.

Finally, where a claimant accepts an offer of compensation from the Fund, the Fund becomes subrogated to the claimant's rights with respect to the subject matter of the claim. The claimant must thereafter cease any effort to recover for its claim, and further it must cooperate with the Fund in its subrogation efforts.

Yours sincerely,

Mark A.M. Gauthier, B.A., LL.B
Deputy Administrator, Ship-source Oil Pollution Fund