



Office of the Administrator of the Ship-source
Oil Pollution Fund

Bureau de l'administrateur de la Caisse
d'indemnisation des dommages dus à la
pollution par les hydrocarbures causée par les
navires

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VIA MAIL AND EMAIL

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

RE: N/P LE SEPT-ILIEN – Gros-Morne, Québec
Incident date: 2018-06-22

SUMMARY AND OFFER

This letter responds to a submission from the Canadian Coast Guard (the “CCG”) with respect to a lobster fishing boat identified as the N/P LE SEPT-ILIEN (the “Vessel”). The Vessel was involved in an incident on 22 June 2018, near Gros-Morne, Québec (the “Incident”).

On 22 June 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 advances claims totaling \$3,087.54 for costs and expenses arising from measures taken by the CCG to respond to the Incident.

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, 106 and 116 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 part. The amount of \$1,996.69 (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. The submission also includes a summary of the costs and expenses claimed and backup documents related to some of those costs and expenses. To the extent that those documents are relevant to the determination, they are reviewed below.

The narrative

On 22 June 2018, at 03:36, the CCG received word that a lobster fishing vessel had run aground on a rocky shore near Gros-Morne, Québec, on the Gaspé Peninsula. Its precise location was reportedly an environmentally sensitive area populated by seabirds. Additionally, the CCG submission notes poor weather conditions in the area at the time of the Incident.

The CCG initially responded to this incident as a lifesaving operation. Five members of the crew had to abandon the Vessel using a life raft. The CCG submission indicates that a CCG watercraft arrived at the scene shortly after the Vessel was successfully evacuated, but the time of the arrival is not provided. The registered owner of the Vessel is a man from Gaspé, Québec.

The Vessel was believed to contain up to 2,500 liters of diesel fuel, which would pose a threat to the marine environment. The submission does not indicate that a discharge of oil actually took place at any point.

The CCG spoke with the owner of the Vessel, who confirmed that the Vessel's engine remained operable but was threatened by the ingress of water. By 8:20, the owner confirmed that a representative of his insurer would take charge of the response to the Incident. The CCG and Transport Canada required the insurance representative to prepare a plan for the response with the goal of minimizing the risk of marine pollution. The owner noted that the risk of oil pollution was low, as the Vessel's fuel tanks were well insulated. A salvage operation was scheduled for 10:30 to correspond with high tide.

At 11:31, the owner's insurer confirmed that the Vessel was lying on its starboard side and was almost entirely flooded with water. It had drifted 500 meters east of its original position due to strong winds and large waves. Rough seas hindered the recovery operation. At 16:37, the owner's insurer advised that the Vessel was not accessible even at low tide; therefore, a tracking balloon could not be placed onboard.

On 23 June 2018, weather conditions remained poor, and the Vessel was considered an ongoing oil pollution risk. It was determined that the Vessel would be hauled to shore at approximately 11:00. At 10:16, the CCG asked the insurance representative to request that the Vessel's fuel tank vents be sealed. The representative declined. At 14:35, the owner was contacted to provide the Vessel's insurance details. The Vessel's insurer is identified

in the CCG submission as Nicomer–MP2B Assurances, located at 144 Boulevard Perron Est in Sainte-Anne-des Monts, Québec; however, it appears that this is an insurance broker, rather than an insurer. While the broker maintains a branch at the above address in Sainte-Anne-des-Monts, it is based in Laval, Québec.

At 15:40, a bluish coloured spill of approximately 40 x 700 meters was reported. The estimated discharge was 3 to 35 liters of oil. At 16:02, operations were halted as the Vessel approached the shore, approximately 100 meters from the wall of Boulevard Perron Est. A check of the Vessel's fuel tanks uncovered a total capacity of 2,500 liters, with approximately 800 liters onboard.

On 24 June 2018, the response to the Incident continued. Responders were unable to pull the Vessel closer to shore, as the mooring points failed. At 12:03, the representative of the owner's insurer indicated that he wanted to haul the Vessel out of the water, dismantle it on shore, and remove it by vehicle. Dewatering was postponed because of ongoing poor weather; responders planned to restart at 16:00 with a vacuum truck. At 15:03, the responders returned to the scene and restarted efforts to haul the Vessel ashore. At 19:55, it was determined that the operation had failed. A new response, which called for the use of divers, was created, with plans to start on 26 June 2018. No action was taken on 25 June.

At 7:50 on 26 June, the CCG attempted to contact the insurance representative but was unable to establish contact. As of 08:30, the representative had not contacted the CCG. As the Vessel was approaching spawning habitats of local seabirds, the CCG determined that it would begin implementing the response plan. Work started at 14:29 when the divers arrived; they were hindered by the poor weather. Work stopped again at 16:00 and resumed at 18:00. Due to the weather, the divers were unable to secure the Vessel. On 27 June, the CCG again tried unsuccessfully to contact the representative of the owner's insurer to discuss the response. It was later discovered that the representative had been hospitalized in Rimouski, Québec.

On 28 June, the representative contacted the CCG to advise that work to remove the Vessel would take place that day. Two divers and a tug succeeded in moving the Vessel, and at 14:00 the Vessel reached the top of the bank and was secured to a concrete wall. A boom and sorbent materials were deployed, and a plan was made to pump oil from the Vessel the next day.

On the morning of 29 June, it was observed that there had been minimal leakage from the boom as a result of tidal action. At 10:29, a vacuum contractor began to replace the boom and pump pollutants into a truck. Two welders were on site to open the fuel and hydraulic tanks. By 19:00, the tanks had been emptied and perimeter fencing had been installed. A plan to dismantle the Vessel starting on 3 July 2018 was made; however, dismantling work did not begin until 12 July. By 21 July 2018, dismantling was complete.

The CCG seeks to recover \$3,087.54 in costs and expenses incurred in responding to the Incident. Of this total, \$1,584.25 is claimed for salary expenses, \$1,411.72 is claimed for

overtime expenses, and \$91.57 is claimed for administrative fees. A summary of these costs, included in the CCG submission, is reproduced below:

COST SUMMARY
POLLUTION INCIDENT

INCIDENT: N/P Le Sept-Ilieu	PROJECT CODE: FYBF1
INCIDENT DATE: 2018-06-22	DATE PREPARED: 2020-06-17
DEPARTMENT: CANADIAN COAST GUARD	PREPARED BY: [REDACTED]

		<u>SCH</u>
MATERIALS AND SUPPLIES	-	1
CONTRACT SERVICES		2
TRAVEL	-	3
SALARIES - FULL TIME PERSONNEL	1,584.25	4
OVERTIME - FULL TIME PERSONNEL	1,411.72	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)		11
VEHICLES		12
ADMINISTRATION	91.57	13
TOTAL CCG COST OF INCIDENT	\$ 3,087.54	

Figure 1 - Screen capture of the CCG cost summary

DETERMINATIONS AND FINDINGS

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

The Incident resulted in costs and expenses to carry out measures to avoid or minimize oil pollution damage in Canadian waters. 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).

Some of 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 eligible for compensation.

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

It was reasonable to take some measures

The submission from the CCG does not indicate that a discharge of oil pollution took place as a result of the Incident. Nevertheless, given the sunken state of the Vessel, it is presumed some discharge took place. Moreover, in the prevalent weather conditions and with the crew having abandoned the Vessel, it is considered that it was reasonable for at least some measures to be taken in order to prevent oil pollution. The CCG decision to carry out only remote monitoring, given the presence of an apparently responsible owner taking measures by itself, was sensible.

CLAIM AND OFFER DETAILS

The CCG submission breaks down the claim for costs and expenses into several categories. This section 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 mentioned whether both factors have been established.

Schedule 4 – Salaries: Full Time Personnel

Claim: \$1,584.25

These costs arise from the work of seven CCG personnel who worked intermittently between 22 and 30 June 2018. The Schedule 4 salary and Schedule 5 overtime costs are well documented in the CCG submission. The hours attributed to each of the seven personnel are detailed in this table:

Person, Function, Level	Salary, O.T.	Friday June 22	Saturday June 23	Sunday June 24	Monday June 25	Tuesday June 26	Wednesday June 27	Thursday June 28	Friday June 29	Saturday June 30	Total
CCG1	Salary	1	0	0	0	0.5	0	0	0	0	1.5
IC-GT7	O.T.	0	2	2	0	0	0	0	0	0	4
CCG 2	Salary	7.5	0	0	0	3	2	2.5	1.5	0	16.5
2/IC-GT5	O.T.	3.5	6	5	0	0	0	0	0	0	14.5
CCG 3	Salary	2.5	0	0	0	0	0	0	0	0	2.5
Log-GT5	O.T.	0	0.25	0	0	0	0	0	0	0	.25
CCG 4	Salary	5	0	0	0	3	1	0	0	0	9
Liason-GT5	O.T.	0	1	1	0	0	0	0	0	0	2
CCG 5	Salary	7.5	0	0	0	0	0	0	0	0	7.5
Plan-GT5	O.T.	0	0	0	0	0	0	0	0	0	0
CCG 6	Salary	0	0	0	0	2	0	0	0	0	2
Plan-GT4	O.T.	0	0	0	0	0	0	0	0	0	0
CCG 7	Salary	0	0	0	0	0	0	0	0	0	0
SRO-GT5	O.T.	0	0	0	0	0	0	0	0	0.5	.5
Total Hours		27	9.25	8	0	8.5	3	2.5	1.5	0.5	60.5

Table 1 – Breakdown of claimed Schedule 4 salary costs and Schedule 5 overtime costs

The level of effort of a relatively large number of CCG personnel follows the typical pattern of high initial involvement followed by gradual reductions as the response to an incident advances. No salary costs are claimed for 25 June 2018, as no work was conducted on that day.

Considering the recurrent poor weather conditions and the particular environmental concerns presented by the Incident, it was reasonable for the CCG to incur costs and expenses to monitor the response to the Incident.

The salary costs attributed to the Incident Commander (ER Superintendent at the GT-07 level, CCG 1) and the deputy Incident Commander (Senior Response Officer at the GT-05 level, CCG 2) are for remotely monitoring the polluter-led response to the Incident. The cost and expense associated with the monitoring taken by these personnel is considered reasonable.

The accepted salary hours on 22 June represent the CCG's efforts to gather information on the Vessel, the shipowner, and weather conditions (1 hour by a GT-07, 2.5 hours by a GT-05); obtain and discuss the salvage plan with relevant government departments like Transport Canada gather and disseminate spill model information; work with Transport Canada to establish an exclusion zone; and, later, stop the response to the Incident due to poor weather conditions (7.5 hour by a GT-05).

The accepted hours on 23 June represent the CCG's efforts to draw up a new salvage plan and communicate with stakeholders and the shipowner and assess the pollution threat that the Vessel posed (2 hours by a GT-07, 6 hours by a GT-05).

The accepted hours on 24 June represent the CCG's efforts to oversee the salvage operation and communicate with stakeholders and report to the CCG Superintendent at the end of the day (2 hour by a GT-07, 5 hours by a GT-05).

On 25 June no work was carried out.

The accepted hours on 26 June represent the CCG's efforts to communicate with the underwriter's representative, who was hospitalized at the time, and coordinate ongoing salvage operations with divers (0.5 hours by a GT-07, 4 hours by a GT-05).

The accepted hours on 27 June represent the CCG's efforts to communicate with the underwriter's representative and update stakeholders (2 hours by a GT-05). It was unnecessary for the CCG to incur costs to analyze weather data for the diving operations, as the divers would have done so as part of their duties.

The accepted hours on 28 June represent the CCG's efforts to communicate with the underwriter's representative and continue monitoring the response to the Incident (2.5 hours by a GT-05).

The accepted hours on 29 June represent the CCG's efforts to continue monitoring the response to the Incident (1.5 hours by a GT-05).

A further half hour is deemed reasonable for the Senior Response Officer at the GT-05 level working in the duty officer position (CCG 7). This officer ensured that the oil pollution risk had been eliminated, allowing the CCG to close its response. This was done on 30 June. This claim for time is considered reasonable and is accepted.

Other personnel time claimed by the CCG has not been established. The response to the Incident was primarily polluter-led and the Vessel was a relatively small 41-foot fishing vessel with non-persistent diesel fuel. No work was conducted on 25 June 2018, a provincial holiday which suggests at least at that point the CCG no longer considered the matter urgent. In light of these factors, some of the time claimed by the CCG for monitoring the response is determined to be likely inadmissible.

Further to that, the hours for other CCG personnel CCG 2, CCG 3, CCG 4, CCG 5 and CCG 6 have not been established by the evidence as reasonable in the circumstances. The CCG took no measures with respect to the Vessel; the containment, recovery and salvage efforts were all led by the owner or its representatives. While it has been accepted above that it was reasonable for the CCG to monitor those measures remotely, and that some supervision and administrative support was necessary to facilitate that monitoring, the evidence does not establish the reasonableness of the remaining CCG effort. Specifically, the reasonableness of the Logistics, Liaison & Planning functions, in a remote monitoring situation, have not been established on the evidence presented. As a result, the time for the personnel identified as CCG 2, CCG 3, CCG 4, CCG 5 and CCG 6 is disallowed.

The salary and overtime costs that are established as reasonable are listed in the following table:

Person, Function, Level	Salary O.T.	Friday June 22	Saturday June 23	Sunday June 24	Monday June 25	Tuesday June 26	Wednesday June 27	Thursday June 28	Friday June 29	Saturday June 30	Total
CCG 1	Salary	1	0	0	0	0.5	0	0	0	0	1.5
IC-GT7	O.T.	0	2	2	0	0	0	0	0	0	4
CCG 2	Salary	7.5	0	0	0	3	2	2.5	1.5	0	16.5
2/IC-GT5	O.T.	3.5	6	5	0	0	0	0	0	0	14.5
CCG 3	Salary	0	0	0	0	0	0	0	0	0	0
Log-GT5	O.T.	0	0	0	0	0	0	0	0	0	0
CCG 4	Salary	0	0	0	0	0	0	0	0	0	0
Liaison-GT5	O.T.	0	0	0	0	0	0	0	0	0	0
CCG 5	Salary	0	0	0	0	0	0	0	0	0	0
Plan-GT5	O.T.	0	0	0	0	0	0	0	0	0	0
CCG 6	Salary	0	0	0	0	0	0	0	0	0	0
Plan-GT4	O.T.	0	0	0	0	0	0	0	0	0	0

CCG 7	Salary	0	0	0	0	0	0	0	0	0	0
SRO-GT5	O.T.	0	0	0	0	0	0	0	0	0.5	0.5
Total Hours		11	6.5	5	0	4	2	2.5	1.5	0.5	37

Table 2 – Breakdown of accepted Schedule 4 salary costs and Schedule 5 overtime costs

The salary portion of the submission is allowed in part in the amount of \$704.11.

Schedule 5 – Overtime: Full Time Personnel **Claim: \$1,411.72**

The claim for overtime costs is higher than would normally be expected as a result of the bulk of the initial response to the Incident taking place over a weekend. Overtime costs are allowed and disallowed as described in the section on Schedule 4, and for the same reasons.

The overtime portion of the submission is allowed in part in the amount of \$1,270.82.

Schedule 13 - Administration **Claim: \$91.57**

The administrative fees were calculated at the rate of 3.09%. These fees align with the CCG Emergency Response Cost Recovery Manual and apply to the accepted salary costs.

The claim submission seeks to recover the administrative rate on overtime. This is not permitted under the agreement between the CCG and the Administrator concerning administrative costs, and those items are disallowed.

The administrative portion of the submission is allowed in part in the amount of \$21.76.

OFFER SUMMARY AND CLOSING

The following table summarizes the claimed and allowed expenses with respect to this claim:

Description	Claim	Offer
Salaries	\$1,584.25	\$704.11
Overtime	\$1,411.72	\$1,270.82
Administration	\$91.57	\$21.76
Total	\$3,087.54	\$1,996.69

Table 3 - Summary of claims made and allowed

Costs and expenses in the amount of \$1996.69 are allowed 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