



OFFER LETTER

Ottawa, 26 January 2021
SOPF File: 120-876-C1
CCG File:

BY EMAIL

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

RE: *F/V L'ÉPAULARD* — Blacks Harbour, New Brunswick
Incident date: 2018-11-04

SUMMARY AND OFFER

This letter responds to a submission from the Canadian Coast Guard (the “CCG”) with respect to a 54’ fishing vessel known as *L'Épaulard* (the “Vessel”). The Vessel sank alongside a floating dock in Blacks Harbour, New Brunswick on 4 November 2018 (the “Incident”).

On 3 November 2020, the office of the Administrator of the Ship-source Oil Pollution Fund (the “Fund”) received a submission from the CCG on behalf of the Administrator. The cover letter for the submission indicates the claim is for \$6,798.80. However, the claim summary and claim documentation included within the submission indicate the claim is for \$7,821.73. The larger figure was treated as the amount claimed for the purposes of the determination to be made by the Administrator.

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*, SC 2001, c 6 (the “MLA”).

The amount of **\$7,674.80** (the “Offer”), plus statutory interest to be calculated at the time the Offer is paid and in accordance with section 116 of the MLA, is offered with respect to this claim.

The reasons for the Offer are set forth below, along with a description of the CCG’s submission.

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. It also includes a demand letter sent to the Vessel's owner on 21 August 2019.

To the extent that the narrative and corroborating documents are relevant to the determination, they are reviewed below.

The Narrative

At 09:54 on 4 November 2018, CCG Labrador Marine Communications and Traffic Services "MCTS" notified the CCG Environmental Response Duty Officer ("ERDO") of the sinking of the Vessel. The report included a note of visible pollution in the water and the smell of fuel in the area of the sinking.

At 14:00 that day, two CCG Emergency Response ("ER") personnel arrived at the scene of the sinking to carry out an assessment. As reported, the Vessel had sunk alongside a floating dock. Oil pollution, apparently from the Vessel, was visible in the water. Due to the way the Vessel had sunk, including that it was partially under the floating dock, with lines running to the Vessel blocking access, a decision was made not to deploy a containment boom.

The CCG ER personnel were able to deploy absorbent booms in areas of the harbour where oil had collected, and use sorbent materials to collect recoverable surface oil.

Later the same day, the Vessel owner contacted the CCG. He provided a preliminary plan for the recovery of the Vessel.

On 5 November 2018, three CCG ER personnel attended the scene to reassess the situation. It appeared that the floating Vessel was now overtop of parts of the Vessel. The CCG ER personnel replaced some of the pollution counter-measure materials. The owner advised that he planned to attempt refloating the Vessel at low tide that day.

Later in the day, the Vessel went fully underneath the dock. This resulted in strain on the wharf to which the dock was attached. The owner announced that, given the developing situation, and following a discussion with his insurer, they would be retaining a third-party contractor to remove the Vessel from the water.

On 6 November 2018, CCG ER personnel observed the Vessel being towed when they arrived at the scene. The Vessel was towed and beached on the shoreline across from the wharf. The owner had retained a local company to provide an excavator to help stabilize the Vessel so it could be assessed and repaired. Minimal amounts of sheening could still be observed in the water.

Between 7 and 9 November, the Vessel was examined and several plans were formulated. Government regulatory officials rejected several plans. Eventually the owner and his contractors deconstructed the Vessel on the beach, including the removal of all threats of oil pollution.

Cost Summary

The CCG submission summarizes the costs claimed as follows:

		<u>SCH</u>
MATERIALS AND SUPPLIES	\$ 485.00	<u>1</u>
CONTRACT SERVICES	\$ 621.00	<u>2</u>
TRAVEL	\$ 479.05	<u>3</u>
SALARIES - FULL TIME PERSONNEL	\$ 2,877.87	<u>4</u>
OVERTIME - FULL TIME PERSONNEL	\$ 2,612.97	<u>5</u>
OTHER ALLOWANCES	\$ -	<u>6</u>
SALARIES - CASUAL PERSONNEL	\$ -	<u>7</u>
SHIPS' COSTS (EXCL. FUEL & O/T)	\$ -	<u>8</u>
SHIPS PROPULSION FUEL	\$ -	<u>9</u>
AIRCRAFT	\$ -	<u>10</u>
POLLUTION COUNTER-MEASURES EQUIPMENT (PCME)	\$ -	<u>11</u>
VEHICLES	\$ 621.18	<u>12</u>
ADMINISTRATION	\$ 124.67	<u>13</u>
TOTAL CCG COST OF INCIDENT	\$ 7,821.73	

Figure 1 - Screen capture of CCG cost summary

Travel expense documentation

The documentation for meal expenses provided by the CCG includes an anomaly. At the CCG, meal costs are an allowance. Within the submission, the allowances appear correctly in the totals of the Expense Report Statements. However, the statements also isolate a tax, HST. There is no tax component to meal allowances. It is therefore not understood why the Expense Report Statements have such entries. An example is shown below:

Expense Type	Date	Foreign Amount	Tax Amount	Amount
2) Allowance: Meals, Incidentals & Private Accommodation	27/11/2018	T514 - A9A21 - E20 - 120 - 2E131 - 6 - - - A100 -----	NB#H ... 18.22	121.48 <hr/> 139.70
Total reimbursable expenses (CAD)				139.70

Tax Coding Summary

HST	Total Amount
-----	18.22

Figure 2 - Excerpt from Expense Report Statements showing unexplained tax accounting

Daily Field Supervisor's Report Discrepancy

The submission includes a Daily Field Supervisor's Report for each day of the response. The report from 9 November 2018 includes a discrepancy. The number of hours worked, start times and end times for the CCG personnel attending the scene of the Incident differ, but the claim includes a claim for only a single vehicle trip.

Daily Field Supervisor's Report						
Date: November 9 th 2018						
Name of Incident: F/V L'Epaulard						
Operational Area: New Brunswick						
Work Site: Black's Harbour						
Supervisor: Kyle Jarvis						
Employee's Name	Classification	Start	End	Regular Hours	Overtime Hours	Dirty Pay Hours
Kyle Jarvis	GT-05	0600	1200	6	1.5	2
Bennett	GT-04	0900	1530	6.5		
McEvoy						
<p>Description of today's work:</p> <p>0600LT- ER Departs Saint John</p> <p>0700LT- ER arrives on site, upon arrival it is found the vessel is being dismantled on the shoreline. The vessel owner explains that they attempted to repair the vessel but it was splitting at the keel and was unable to be repaired.</p> <p>ER advises TC and NB Environment and Local Government (ELG) of the changes to the incident and that the owner is now dismantling the vessel on the shoreline using excavators and dump trucks.</p> <p>ER will stay on site during the dismantling operation to monitor for pollution.</p> <p>1100LT- NB ELG on site and is speaking with the workers to ensure proper disposal of contaminated debris.</p> <p>1400LT- All threats of pollution have been removed from the vessel, this includes engines, fuel tanks and hydraulic tanks. ER assesses the site and finds no recoverable pollution.</p> <p>1430LT- ER departs for Saint John</p> <p>1530LT- ER returns in Saint John</p>						

Figure 3 - Daily Field Supervisor's Report for 9 November 2018



Fisheries and Oceans - Maritimes Region
Pêches et Océans - Région des Maritimes

VEHICLE TRIP RECORD/
REGISTRE D'UTILISATION DU VÉHICULE

Ford F550
11-201 LAY 797

Department Vehicle No.
No. d'identification du véhicule

Year/Month - Année/Mois
Nov 2018

Odometer Start - Odomètre au départ
55 152

Date	Trip - Voyage Destination	Remarks on Performance (pre - inspection) Observations sur le rendement (avant l'inspection)	Accident ✓ L'accident ✓	Down Time Days Temps d'arrêt jours	Odometer at end of Trip Odomètre à l'arrivée	USA Trip No. of hours Voyage aux E-U nombre d'heures	USA Trip No. of days Voyage aux E-U nombre de jours	Business - No. of km Affaire - nombre km	Personal - No. of km Personnelles - nombre km	Signature of Operator Signature du conducteur
04.11.18	Saint John - Blacks hbr				55 315			163		BN
05.11.18	Saint John - Blacks hbr				55 627			317		BN
06.11.18	Saint John - Blacks hbr				55 784			157		BN
07.11.18	Saint John - Blacks hbr				55 954			174		BN
08.11.18	Saint John - Blacks hbr				56 125			167		BN
09.11.18	Saint John - Blacks hbr				56 296			171		BN

Figure 4 - Vehicle Record Trip report included in the submission

DETERMINATIONS AND FINDINGS

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

The Incident resulted in oil pollution damage, as well as anticipation of oil pollution damage, within the territorial seas or internal waters of Canada. This gave rise to costs and expenses to carry out measures to mitigate oil damage. Claims arising from the Incident are therefore 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) of the MLA.

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 potentially eligible for compensation.

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

Findings on the evidence

The CCG narrative is accurate

The facts set out in the narrative provided by the CCG are generally accepted as an accurate description of the events which took place and the decisions made by the CCG.

The Vessel sank and was discharging oil

The Vessel sank while moored to a floating dock and began discharging oil. The CCG took reasonable measures in response, including deployment of pollution countermeasures.

In this case, the bulk of the measures in response to the sinking were carried out by the owner. The CCG acted within its mandate under s. 180 of the *Canada Shipping Act, SC 2001, c. 26*, monitoring the owner led response to the Incident. Some level of monitoring was reasonable, although the number of personnel assigned to monitoring requires scrutiny.

Until the Vessel was deconstructed and all oil pollution aboard removed, it was reasonable to treat it as an ongoing oil pollution threat.

CLAIM AND OFFER DETAILS

Under Part 7 of the MLA, the measures taken to respond to an oil pollution incident and the resulting costs must be reasonable in order to be compensable by the Fund. To the extent that reasons are not already set out in this letter, the below explains why certain portions of the CCG's claim have been allowed while others have been disallowed.

The CCG presents its claims as being broken down across four categories. The submission is analyzed below using that organization.

Schedule 1 – Materials & Supplies Claimed: \$485.00

The submission claims for six bundles of sorbent boom and four bundles of sorbent pads. Materials of this type and quantity match to the Incident as described in the narrative. By their nature, these materials are useful when taking measures with respect to oil pollution, and they were used appropriately in this case. The amount claim corresponds with that listed in the CCG charge out rate manual, which itself is reasonable.

This portion of the claim is allowed in its entirety.

The Materials & Supplies portion of the claim is allowed in the amount of \$485.00.

Schedule 2 – Contract Services Claimed: \$621.00

The contract services claim arises from disposing of contaminated sorbent pads. The CCG used Regional Petroleum Recycling Ltd. for that purpose. An invoice issued by that firm has been included with the submission and appears to be in order. The amount of the expense is considered reasonable, and the disposal of oil waste after an oil pollution response qualifies as a reasonable measure in response to a ship-source oil pollution incident.

This portion of the claim is allowed in its entirety.

The contract services portion of this claim is allowed in the amount of \$621.00.

Schedule 3 – Travel

Claimed: \$479.05

The travel expense claimed by the CCG are limited to meal costs. The claim submission seeks to recover the expense of providing meals to two of the four CCG personnel involved in the response.

The amount of the cost is in accordance with CCG allowances for meals for personnel traveling on assignment. However, as will be discussed in further detail in the Salaries – Full Time Personnel (Schedule 4) section, it was not necessary or reasonable for the CCG to have two people in attendance on 8 November 2018. This reduction reduces the claimable travel expense by \$19.85.

There is an issue with respect to the listing of taxes within the CCG documentation relating to the travel claim. As the CCG paid an allowance, tax should not be included. Notwithstanding that, the Expense Report Statements include an entry for tax. This anomalous treatment of tax appears not to have been included in the CCG’s claim, and therefore no reduction is required in that respect.

The travel portion of this claim is allowed in the amount of \$459.20.

Schedule 4 – Salaries – Full Time Personnel

Claimed: \$2,877.87

There is a two-cent variation (between \$2,877.87 and \$2,877.89) between the claimed salary total and the total calculated during assessment by the Administrator. This discrepancy is attributed to a rounding error, and in any event, the CCG has claimed a lower amount than it might have.

CCG crewing of the response to the Incident between 4 to 7 November 2018 is accepted as reasonable. On the first day of the incident, 4 November 2018, 3 CCG ER personnel were deployed to investigate a then uncertain scene. The following two days, when the situation was better understood, the number of personnel responding was reduced to 2. While the CCG was only going to be acting in a monitoring role, two personnel were reasonable given the practical and technical challenges faced by the Vessel’s owner. Further, a sheen remained on the water and sorbent materials were being deployed to capture oil pollution.

By the end of the day on 7 November 2018, no recoverable oil pollution was visible. All sorbent boom had been removed. The CCG had accepted the Vessel owner’s plan to deconstruct the Vessel at Limekiln Bay. The plan was initially presented verbally, and then formalized in writing on 8 November 2018.

Thereafter, while it remained reasonable for the CCG to monitor the salvage work carried out by the Vessel owner, the work that was done on 8 and 9 November 2018 could have been done by one person. It was not reasonable to have two CCG ER personnel attend the scene each day, and the salary time claimed for that day is accordingly reduced on 8 November 2018.

There is a discrepancy in the amounts claimed for 9 November 2018. The Daily Field Supervisor's Report shows 6 hours and 6.5 hours claimed for two different personnel. These personnel have different start times (06:00 and 09:00 respectively) and different end times (12:00 and 15:30 respectively), with a differing total number of hours claimed (6 and 6.5 respectively). The report shows a log which indicates a single vehicle trip of 9.5 hours.

It was not possible to reconcile this discrepancy on the evidence originally submitted. A question on the point was posed to the CCG on 30 December 2020. An answer was received on 8 January 2021. The answer confirmed that in fact, two CCG vehicles were used – the log information for one could not be located. The two CCG personnel were sent out at staggered times, with approximately one hour for hand over, but otherwise the CCG intended to have only a single responder at site. As it was to be a long day, and the CCG did not wish to unnecessarily subject employees to overtime, the personnel were deployed in two vehicles, with staggered start times. This explanation provided by the CCG was fulsome and timely. It makes sense in light of the other evidence. The way the CCG proceeded, in light of the explanation, was reasonable and taken with respect to monitoring of oil pollution measures. The hours on 9 November 2018 are therefore accepted without deduction.

For the purposes of the assessment, and in accordance with the previously stated decision to allow the expense for one CCG member's salary on 8 November 2018, 3 hours is removed from the claim arising from work done on 8 November 2018. The 9 November 2018 hours are accepted as submitted. Applying the GT 04 classification and rate of \$38.37 per hours to the three hours deducted, the total reduction is \$116.91.

The salaries portion of the submission is allowed in the amount of \$2,760.96.

Schedule 5 – Overtime – Full Time Personnel Claimed: \$2,612.97

Overtime is claimed for work done between 4 and 7 November. The amounts claimed by the CCG matched the records provided. The use of personnel and the time recorded as overtime is accepted as reasonable measures taken with respect to oil pollution and with respect to the CCG's monitoring role, without deduction.

The overtime portion of the submission is allowed in the amount of \$2,612.97.

Schedule 12 – Vehicles Claimed: \$621.18

The distance from Saint John to Blacks Harbour was calculated by the Administrator's staff to be 71 km. A round trip for each day of the response would result in a minimum claim of 853 km. The claim by the CCG is for 981 km. This is considered to be reasonable, and it is supported by a vehicle log which was included in the submission.

The claimed \$67.56 per day for a vehicle is reasonable and consistent with the CCG ER Equipment Charge Out rates, and sums to \$405.36. No gas receipts were provided with the claim. Kilometers are instead billed at \$0.22 per km. This rate has been previously accepted by the Administrator and is considered reasonable. When the rate is applied to the kilometers documented as driven, the sum is \$215.82.

The vehicle portion of the submission is accepted in the amount of \$621.18.

Schedule 13 – Administration

Claimed: \$124.67

A rate of 3.09% to account for administrative expenses is applied to the Materials and Supplies, Travel and Full-time Personnel claims. The rate and its application to those categories of expense has been previously accepted by the Administrator as reasonable.

The amount of this claim is reduced somewhat to account for the reduction in the travel claim and the salary hours on 8 November 2018, but is otherwise accepted.

The administration portion of the submission is allowed in the amount of \$114.49.

OFFER SUMMARY AND CLOSING

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

Schedule	Claimed	Allowed
1 – Materials & Supplies	\$485.00	\$485.00
2 – Contract Services	\$621.00	\$621.00
3 – Travel	\$479.05	\$459.20
4 – Salaries – CFT personnel	\$2,877.87	\$2,760.96
5 – Overtime – CFT personnel	\$2,612.97	\$2,612.97
12 – Vehicles	\$621.18	\$621.18
13 – Administration	\$124.67	\$114.49
Totals	\$7,821.74	\$7,674.80

Table 3 – Summary of amounts claimed and allowed

Costs and expenses in the amount of **\$7,674.80** 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 on 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 be issued.

Finally, where a claimant accepts an offer of compensation, the Administrator 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