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VIA REGISTERED MAIL & EMAIL

Senior Director, Incident Management
Canadian Coast Guard
200 Kent Street (6S049)
Ottawa, Ontario K1A 0E6

RE: NORTHERN STAR – Witless Point, Newfoundland and Labrador
Incident Date: 10 February 2018

OFFER OF COMPENSATION

This letter responds to a submission from the Canadian Coast Guard (the “CCG”) with respect to the fishing vessel NORTHERN STAR, which grounded on or about 10 February 2018 at Witless Point, Newfoundland and Labrador (the “Incident”).

On 11 December 2019, the Office of the Administrator of the Ship-source Oil Pollution Fund (the “Fund”) received the CCG’s submission in this matter on behalf of the Administrator. The submission advanced a claim in the amount of \$4,574.63 for costs and expenses related to the Incident. The submission has been reviewed and determinations with respect to its claims have 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 and the ultimate determinations that flow from it.

It has been determined that the CCG’s claim should be allowed, in part. The amount of \$4,254.94 is offered (the “Offer”) with respect to the claim.

The Offer comprises the amount of \$3,941.51 for established costs and expenses, plus the amount of \$313.43 for accrued interest.

THE CLAIM SUBMISSION

The CCG claim submission includes a narrative, which describes events relating to the Incident. Also included in the claim submission is a cost summary, supported by various logs and receipts. Finally, additional documentation, including pollution reports and correspondence, fills out the submission.

To the extent that this documentation is relevant to the assessment of the submission, its contents are described below.

The narrative

According to the narrative, on 10 February 2018 at 02:57, Labrador Marine Communications and Traffic Services reported to the CCG Environmental Response (“ER”) Duty Officer that the 35-foot fishing vessel NORTHERN STAR had grounded at Witless Point. CCG Search and Rescue (“SAR”) had removed two persons from the vessel by helicopter. The vessel had reportedly sustained heavy damage, and it was inaccessible by sea due to shallow water, rocks, and wave action. Radio communications at the time were poor, so information was limited.

The ER Duty Officer requested that SAR keep the CCGS SIR WILFRED GRENFELL and a helicopter on scene until ER could complete an assessment of any pollution threat posed by the NORTHERN STAR. In addition, ER contacted Provincial Airlines (“PAL”), requesting an overflight.

At 05:00, ER spoke with the owner of the NORTHERN STAR, who advised that there were approximately 1,300 litres of diesel and 200 litres of other oils on board the vessel. Roughly 400 litres of diesel were estimated to be in the fuel tanks, with the remaining 900 held in an “ICB tote” on deck. The owner further advised that he was unable to respond to the Incident.

ER next contacted the National Environmental Emergency Centre (“NEEC”), which advised that the NORTHERN STAR had grounded in an ecological reserve.

ER personnel in St. John’s began mobilizing at 07:00, arriving at the nearest road access to the site of the grounding at 08:13, about two kilometres from the NORTHERN STAR. ER personnel set up a staging area and requested use of a helicopter and a 45-gallon drum to assist in shifting recoverable oils from the NORTHERN STAR to the CCGS SIR WILFRED GRENFELL. ER personnel determined that they would not be able to launch a boat.

At 10:54, the ER Superintendent requested that the ER Duty Officer deploy to the scene.

At 12:22, the PAL overflight reported no pollution observed.

By 12:48, ER personnel had removed approximately 800 litres of diesel from the NORTHERN STAR and transferred it to the CCGS SIR WILFRED GRENFELL in a helicopter-assisted slinging operation.

Both the CCGS SIR WILFRED GRENFELL and ER personnel departed the scene for St. John’s by 13:30. ER personnel demobilized in St. John’s at 17:00, after removing oil waste from the CCGS SIR WILFRED GRENFELL, and the Duty Officer completed Incident-related paperwork at 19:00.

Cost summary

The claim submission includes the following summary of costs and expenses claimed by the CCG:

POLLUTION INCIDENT			
INCIDENT:	FV Northern Star	PROJECT CODE:	
INCIDENT DATE:	February 10, 2018	DATE PREPARED:	October 18, 2019
DEPARTMENT:	Canadian Coast Guard	PREPARED BY:	██████████
			<u>SCH</u>
MATERIALS AND SUPPLIES	\$ -		1
CONTRACT SERVICES	\$ -		2
TRAVEL	\$ -		3
SALARIES - FULL TIME PERSONNEL	\$ -		4
OVERTIME - FULL TIME PERSONNEL	\$ 3,957.42		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)	\$ 138.89		11
VEHICLES	\$ 476.32		12
ADMINISTRATION	\$ -		13
			<hr/>
TOTAL CCG COST OF INCIDENT	\$ 4,574.83		

Figure 1: Screen capture of CCG cost summary

Personnel and equipment logs

The CCG submitted various personnel logs in support of its claim for overtime. These logs show the hours worked by five ER personnel. Claimed overtime is summarized as follows:

Group & Level	1.5 x	2.0 x	Overtime Hours	Rate	COST
GT 05	7.50	9.5	30.25	\$ 36.98	\$ 1,118.65
GT 05	7.50	4.50	20.25	\$ 38.09	\$ 771.32
GT 05	7.50	4.00	19.25	\$ 38.09	\$ 733.23
GT 04	7.50	4.00	19.25	\$ 36.35	\$ 699.74
GT 04	7.50	4.00	19.25	\$ 32.96	\$ 634.48

Figure 2: Screen capture of claimed overtime summary

The “Personnel & Equipment Daily Log” gives a brief general overview of the ER operation, providing some additional information on vehicle usage:

PART A: INCIDENT DESCRIPTION						
INCIDENT: FV NORTHERN STAR			LOCATION: WITLESS BAY, NL			
DATE: FEB 10 2018		DAY: 1 OF 1		FIELD COMMANDER: J. [REDACTED]		
PART B: PERSONNEL DESCRIPTION						
EMPLOYEE NAME	MISSION #	HOURS WORKED		STAND-BY		COMMENTS
		START	FINISH	064	065	
[REDACTED]		0530	1700			
		0530	1700			
		0500	1700			
		0530	1700			
	Duty Officer	0300	2000			
		0400	1400			
PART C: VEHICLES: DESCRIPTION AND USAGE (PER DAY - OPERATIONAL MODE)						
VEHICLE TYPE	MISSION #	PLATE #	MILEAGE	COMMENTS		
FORD F-350		GFJ 271	Start: 21,171 End: 21,298	115km- CCG ER depot → Bay Bulls → Witless Bay → Return to depot		
FORD F-450		GFJ 618	Start: 98,801 End: 98,982	148 km- CCG ER depot → YYT → Return to depot → SSB → Return to depot		
DODGE 3500		GFJ 814	Start: 76,281 End: 76,340	80 km- CCG ER depot → Bay Bulls → Witless Bay → Return to depot → SSB → Return to depot		
PART D: EQUIPMENT: DESCRIPTION AND USAGE (PER DAY - OPERATIONAL MODE)						
EQUIPMENT TYPE	MISSION #	QUANTITY	COMMENTS			
RESPONSE TRAILER		1	GFJ 271			
PRV II		1	GFJ 970			
1000L TOTE		1				
PORTABLE SECURE VHF RADIO		2	(BMG 002946)(BMG 002952)			
PART E: CONSUMABLES: DESCRIPTION AND USAGE (PER DAY - OPERATIONAL MODE)						
MATERIALS & SUPPLIES	MISSION #	QUANTITY	FIELD PURCHASES	INITIAL		
FUEL FOR F350		84.80L	\$116.00	BH		
FUEL FOR F450		20.89L	\$28.62	JP		
FUEL FOR DODGE 3500		95.65L	\$131.02	MF		

Figure 3: Screen capture, excerpt from the "Personnel & Equipment Daily Log"

Vehicle usage is supported by vehicle-specific logs and fuel receipts. The CCG also submitted a summary breakdown of its claim with respect to vehicles:

VEHICLES						
UNIT #	MILEAGE (Kms)	RATE	TIME (days)	RATE	COST	REFERENCE
Ford F350	115	\$ 0.22	1	\$ 67.56	\$ 67.56	12-1
Fuel					\$ 116.00	12-2
Ford F450	148	\$ 0.22	1	\$ 67.56	\$ 67.56	12-3, 12-4
Fuel					\$ 28.62	12-5
Dodge 3500	80	\$ 0.22	1	\$ 67.56	\$ 67.56	12-6
Fuel					\$ 131.02	12-7

Figure 4: Screen capture, excerpt from summary of claimed vehicle costs

Marine pollution report

The claim submission includes what appears to be the original SAR report of the Incident sent to ER at 02:50 on 10 February 2018. One of the entries, attributed to a report by one of the small vessels on scene, reads "THE VESSEL HARD ON THE ROCKS [...] UNABLE TO PROCEED IN DUE TO HEAVY SWELL AND SHOALS." A later entry

indicates that the two persons on board the NORTHERN STAR were removed by helicopter.

FINDINGS AND DETERMINATIONS

The CCG submission is eligible as a claim under section 103 of the MLA

The Incident occurred in the territorial sea of Canada, and therefore could form the basis of a proper claim.

The CCG is an eligible claimant for the purposes of section 103 of the MLA, and its claim was submitted within the limitation periods set out under subsection 103(2). Further, some of the claimed costs and expenses attach to 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.

Most of the facts presented by the CCG are accepted

Apart from a single exception noted below, the facts as set out in the narrative and in the accompanying documentation provided by the CCG are accepted. However, there are a small number of evidentiary gaps with regard to the response. To the degree that these evidentiary gaps are relevant to the assessment, they are addressed below.

The NORTHERN STAR posed an oil pollution threat during the Incident

The NORTHERN STAR posed an oil pollution threat after its grounding. It was reasonable for ER to assume that oils were on board the vessel when it first received the early morning report of the grounding on 10 February 2018. The 05:00 discussion between ER and the owner roughly quantified onboard pollutants and established that the owner was unable to respond. The NEEC report informed the CCG that the area of the grounding was particularly sensitive from an environmental standpoint. Furthermore, it was reasonable for the CCG to conclude that the NORTHERN STAR would inevitably break up on the rocks and discharge oil if not given immediate attention.

The initial ER deployment was reasonable

Based on the “Personnel and Equipment Daily Log” as well as various other logs and fuel receipts, it is concluded that two vehicles, a Ford F-350 and a Dodge 3500, were initially dispatched to the scene. One of these trucks towed a response trailer, and the other towed a Pollution Response Vessel, Class II (“PRV II”). Four ER personnel were deployed at this stage.

The above measures were reasonable in proportion to the pollution threat and all the circumstances known to the CCG at the time. While the original SAR report indicated that a sea approach to the grounded NORTHERN STAR was not viable, ER personnel nonetheless opted to bring with them a PRV II. As noted in the narrative, however, communications with SAR during the early stages of the Incident were poor, and SAR observations were made in the dark, under poor conditions. In short, it is accepted that ER

personnel could not have decisively ruled out using the PRV II in their response before they departed St. John's. In any case, the CCG has not claimed for use of the PRV II.

Evidentiary problems and unsupported response escalation

According to the narrative, road access ended two kilometres away from the site of the grounding. In the absence of evidence, it is not clear how ER personnel reached the NORTHERN STAR from their staging ground, or how many of them attended the stricken vessel. Also missing from the evidence provided by the CCG are specific details on the recovery operation itself, including any assessment of accessible pollutants that remained on board the vessel after its grounding. Finally, it is not clear which pollutants were removed from the vessel — that is to say whether they came from fuel tanks, the “ICB tote” on deck, or some combination of the two. It is clear only that approximately 800 litres of diesel were removed from the wreck of the NORTHERN STAR and slung to the nearby CCGS SIR WILFRED GRENFELL in a 45-gallon drum, presumably over multiple trips.

Despite an absence of specific detail on the fuel slinging operation, it is accepted that four ER personnel were reasonably required in support of it. The CCG submission does not establish that it was reasonable to escalate the response by deploying the ER Duty Officer, however, who appears, based on the narrative and the initials in the “Personnel & Equipment Daily Log”, to have departed St. John's sometime after 10:54 in a Ford F-450. If anything, based on the claim documentation, a partial demobilization at this stage would have been appropriate given the PRV II could not be used. As a result, it has been determined that none of the costs associated with deploying the ER Duty Officer to the scene of the Incident are compensable.

Finally, the narrative indicates that the ER Duty Officer completed his paperwork with regard to the Incident at 19:00. This contradicts the various personnel logs, which provide no detail on specific tasking, but indicate that he worked 17 overtime hours on 10 February 2018, until 20:00. As the narrative offers some degree of description of the work performed at specific times, that version of events is accepted as accurate.

BREAKDOWN OF THE OFFER OF COMPENSATION

The CCG presented its claimed costs and expenses across three schedules. Each of these schedules is outlined below, along with relevant determinations not already set forth in this letter.

Schedule 5: Overtime — Full Time Personnel \$3,957.42

The CCG claim for overtime is described in some detail above and illustrated in Figures 2 and 3. For the reasons set out above, the full overtime costs associated with ER personnel represent costs reasonably incurred to respond to a demonstrated oil pollution threat. This portion of the claim, totalling \$2,838.77 is allowed in full.

The CCG claimed \$1,118.65 for 17 hours of overtime worked by the ER Duty Officer, between 03:00 and 20:00. For the reasons set out above, the evidence does not establish that his deployment to the site of the grounding was reasonably necessary in support of the response. Further, it is determined that his tasking with regard to the incident was completed at 19:00. As such, this portion of the claim is accepted only to the extent of the hours worked by the ER Duty Officer until 13:30, when his colleagues departed the scene of the Incident, plus an additional two hours to account for paperwork, which appears to have been completed between 17:00 and 19:00. The result is an established total of 12.5 hours overtime: 7.5 hours at 1.5 times his ordinary rate of \$36.98 (\$416.03) and 5.0 hours at double time (\$369.80). This yields a total of \$785.83.

This portion of the claim is allowed, in part, in the amount of \$3,624.60.

Schedule 11: Pollution Counter-measures Equipment *\$138.89*

The amount claimed under this schedule represents the day-use of a Response Trailer, which was towed to the ER staging ground, two kilometres from the grounded NORTHERN STAR. While the CCG has not presented specific details on the use of the Response Trailer or its contents, its deployment to the scene was nonetheless reasonable. Without the Response Trailer, ER personnel may have risked finding themselves without essential tools for use in their response.

This portion of the claim is established in full.

Schedule 12: Vehicles *\$478.32*

This portion of the CCG's claim is illustrated in Figures 3 and 4. It represents the use of three CCG vehicles, at a day rate of \$67.56 each, plus total fuel costs of \$275.64. According to CCG logs, the three vehicles used in the response drove a total of 343 kilometres, which yields an average claimed per kilometre rate of approximately \$0.80. Instead of adhering to its usual \$0.22 per kilometre rate, which it cites in its summary of claimed vehicle costs (Figure 4), the CCG appears to have simply claimed the cost of filling each of the vehicles used with fuel.

Without an explanation from the CCG, only the cost associated with kilometres actually driven in the course of the response can be accepted. Further, the previously accepted \$0.22 per kilometre rate, which more closely aligns with actual fuel usage, is all that can be deemed reasonable.

For the reasons already outlined, the claimed costs associated with the Ford F-450 driven by the ER Duty Officer, which total \$96.18, are rejected. In addition, the fuel cost for the other two CCG vehicles, which drove a combined total of 195 kilometres, has been recalculated using the \$0.22 per kilometre rate. This yields a total of \$42.90, which has been added to the \$67.56 day rate for each of these two vehicles to yield the total amount established under this schedule.

This portion of the claim is allowed, in part, in the amount of \$178.02.

OFFER OF COMPENSATION SUMMARY

The following table is provided to summarize the amounts claimed and offered.

Schedule	Claimed	Offered
5 – Overtime – Full Time Personnel	\$3,957.42	\$3,624.60
11 – Pollution Counter-measures Equipment	\$138.89	\$138.89
12 – Vehicles	\$478.32	\$178.02
Total	\$4,574.63	\$3,941.51
Interest		\$313.43
Grand Total of Offer		\$4,254.94

Table: Summary of amounts claimed and offered

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 of the Ship-source Oil Pollution Fund, 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, 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 must cooperate with the Fund in its efforts to pursue subrogation.

Yours sincerely,

Anne Legars, LL.M., CAE
Administrator, Ship-source Oil Pollution Fund

Cc: Regional Director, Incident Management, Atlantic Region
Manager, Operational Service Delivery