



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

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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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Ottawa, 5 March 2020  
*SOPF File: 120-849-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 JENNIFER HOLLY* – Main Brook, Newfoundland and Labrador –  
DOI: 1 April 2019**

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### SUMMARY AND OFFER

This letter responds to a submission from the Canadian Coast Guard (the “CCG”) with respect to the vessel F/V JENNIFER HOLLY. The vessel was involved in an incident on or about 1 April 2019, in or near Main Brook, Newfoundland (the “Incident”).

On 28 October 2019, the Office of the Administrator of the Ship-source Oil Pollution Fund (the “Fund”) received on the Administrator’s behalf a submission from the CCG. The submission advances claims totaling \$76,171.64 for costs and expenses arising from measures taken by the CCG in respect of 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 and ultimate determination.

The claim is allowed, in part. The amount of \$72,939.19 (the “Offer”), plus statutory interest in the amount of \$2,221.89 calculated in accordance with s. 116 of the *MLA*, is offered with respect to this claim. The total amount which will be paid is \$75,161.08.

The reasons for the Offer are set forth below.

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## **THE SUBMISSION RECEIVED**

The submission includes a narrative that describes certain events relating to the Incident.

The submission also includes a summary of the costs and expenses claimed, backup documents related to some of those claimed costs and expenses, documentation from documentation from contractors, and a series of bids by several contractors for remedial work.

To the extent that those documents are relevant to the determination, they are reviewed below.

### **The narrative**

The narrative included in the submission sets out a description of the incident involving the M/V JENNIFER HOLLY.

According to the narrative, on 1 April 2019, MCTS Labrador was contacted about a vessel in distress. That vessel was identified as the F/V JENNIFER HOLLY, a fishing vessel moored to a government wharf in Main Brook, Newfoundland. The vessel had suffered significant damage when the waters around the wharf froze during the winter months.

Rather than attending at the scene, CCG ER made the decision to deploy local resources. They requested that a DFO officer from St. Anthony to attend at the site. They also successfully located and communicated with the owner of the F/V JENNIFER HOLLY.

A DFO officer attended and advised that the road to the site was closed and so persons attending had to travel over the ice. The vessel was observed to be trapped by the ice and in poor condition.

The vessel's owner was verbally instructed by CCG ER, with reference to section 180 of the *Canada Shipping Act, 2001*, to remove the oil pollution from the vessel. The owner advised he would attempt to pump remaining diesel into a plastic drum and remove it from the vessel. He said after that was done, he would attempt to haul the vessel over ice approximately 150' to a launch, where it would be removed from the water.

The owner confirmed he had little money, and no insurance.

The next day, 2 April 2019, the road had been cleared and was reopened, making the site more accessible. Thereafter, consideration was given to using a loader to remove the vessel from the water. However, the loader operator refused because he did not believe the wharf could support the weight of the loader. Moreover, the water was frozen to a depth of 4 feet, and it was believed there was no possible way to extricate the F/V JENNIFER HOLLY until the spring thaw arrived.

At this time, the owner reportedly acknowledged his responsibility to remove the pollution and acknowledged that the F/V JENNIFER HOLLY was likely beyond repair.

On 3 April 2019, the owner advised the CCG that he had removed 45 gallons of fuel from the starboard fuel tank, but that he was unable to access the hydraulic oil tank and engine. He said he would put plastic barrels on his vessel to increase its buoyancy. The same day, a Transport Canada inspector from Corner Brook attended at the site and gathered photographs but did not board the vessel.

The CCG instructed the owner to keep them apprised of developments.

On 8 May 2019, the RCMP contacted the CCG and advised that, two days prior, the owner had attempted to drag the F/V JENNIFER HOLLY over the ice. The effort failed and the vessel had suffered additional damage. As well, the F/V JENNIFER HOLLY had left a slick behind it. The RCMP had advised the owner that he was responsible to clean up or contain the oil pollution – and he had responded that he had no money to do so.

A team of CCG ER personnel was sent to Main Book. Upon arrival, a light sheen was observed on the water. The F/V JENNIFER HOLLY remained trapped in the water and ice, heavily damaged and partially sunk.

Apparently, at some point, the owner did deploy a boom to contain the slick.

On 11 May 2019, CCG ER personnel advised that a private contractor would be brought in to remove the F/V JENNIFER HOLLY from the water. The owner was advised he would be responsible for monitoring the vessel, and for disposing of it after it was removed from the water. CCG ER then left the site.

After a bidding process, on 21 May 2019 Sea-Force Diving Ltd. was retained to refloat the F/V JENNIFER HOLLY and remove it from the water.

CCG ER personnel and the contractor attended at the site on 24 May 2019, and the vessel was refloated and removed from the water. On 25 May 2019, the pollutants were removed, and the damaged vessel was turned over to the owner.

#### *The costs and expenses summary*

The submission provided by the CCG includes the following summary of expenses incurred:

**COST SUMMARY  
POLLUTION INCIDENT**

<b>INCIDENT:</b>	F/V Jennifer Holly	<b>PROJECT CODE:</b>	2E161
<b>INCIDENT DATE:</b>	April 1, 2019	<b>DATE PREPARED:</b>	
<b>DEPARTMENT:</b>	Canadian Coast Guard	<b>PREPARED BY:</b>	

		<u>SCH</u>
MATERIALS AND SUPPLIES	\$ 145.00	1
CONTRACT SERVICES	\$ 52,563.16	2
TRAVEL	\$ 4,483.05	3
SALARIES - FULL TIME PERSONNEL	\$ 3,795.48	4
OVERTIME - FULL TIME PERSONNEL	\$ 11,835.70	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)	\$ 1,111.12	11
VEHICLES	\$ 1,949.24	12
ADMINISTRATION	\$ 288.89	13
	<hr/>	
TOTAL CCG COST OF INCIDENT	\$ 78,171.64	

*Figure 1 - Screen capture of CCG cost summary*

**DETERMINATIONS AND FINDINGS**

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

The Incident occurred in the territorial sea of Canada. It is therefore potentially the proper basis for a claim to the Administrator.

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.

For the foregoing reasons, 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 narrative presented by the CCG sets out the facts of the Incident in some detail. The version of events presented there is accepted as generally accurate.

The F/V JENNIFER HOLLY was an oil pollution threat

The F/V JENNIFER HOLLY was left alongside a dock over the winter on the northeast coast of Newfoundland. The area is subjected to frequent winter northeast gales. In the spring, this leads to massive ice buildup along the coastline.

In these conditions, it is accepted that the F/V JENNIFER HOLLY posed an oil pollution threat from the time it was first reported to the CCG all the way through until it was removed from the water on 24 May 2019.

It follows that at least some oil pollution response measures would be justified to respond to the Incident.

The CCG made an appropriate decision to rely on local resources for the initial response

When the Incident was first reported to the CCG, there was little that CCG ER could realistically have done to respond at the scene of the Incident. On 1 April, it would be expected that the water in Main Brook, NL would be thoroughly frozen – as proved to be the case. Deploying an ER crew from St. John’s would both tie up resources and generate excessive expense for little tangible benefit.

It is noted that the Canadian Coast Guard Environmental Response Concept of Operations includes, at s. 8.6.2, the idea of deploying secondary or tertiary resources where it is impractical to have a CCG ER presence:

**8.6.2 Secondary and Other Resources**

Due to the unpredictable nature of environmental response incidents, it is impractical to build a system that has a primary capability to respond to all incidents at all levels.

Therefore a network of secondary resources external to the program will be relied upon to supplement and augment the primary capacity. They will improve effectiveness and efficiency by providing a means of conducting timely assessments of reports of pollution without mobilizing primary resources and deploying to assist with CCG led operations that exceed primary capacity. There are two tiers of secondary resources:

- Secondary Environmental Response Units – any Federal Government resource that can be deployed to assist in ER operations including vessels, aircraft, equipment and staff:

- Other Environmental Response Units – any unit, other than primary or secondary, which may participate in environmental activities when required. This includes civilian agencies, volunteers and commercial response organizations.

The manual suggests that instead of having a comprehensive network of responders, CCG ER can call upon Federal or Provincial resources, as well as recourse to civilian agencies, to carry out parts of responses.

Faced with the reality of a frozen incident scene where little could be done, the CCG made a sensible choice to utilize local resources rather than deploy CCG ER personnel. Instead, CCG ER requested that Transport Canada (“TC”) have personnel attend on the scene to make initial confirmations. The soundness of this decision was born out in that the TC personnel reported that the F/V JENNIFER HOLLY was entirely frozen into place in the ice, and the fact the owner agreed to try to remove oil from the vessel via a pump.

While it is considered that the measure of having a local TC agent attend at the Incident was an eminently reasonable measure in response to the Incident, the submission did not make a claim for any cost or expense arising from this measure. As a result, no compensation for this measure can be included in the Offer.

The need for three personnel for the final part of the response has not been justified

After a contractor retained by the CCG removed the F/V JENNIFER HOLLY from the water, the contractor's personnel handed the vessel over to CCG personnel. CCG personnel then immediately turned the vessel over to its owner.

It is accepted that the CCG made a reasonable decision to have personnel on scene both to supervise the removal of the F/V JENNIFER HOLLY from the water and to receive the vessel. However, the need for three CCG personnel to attend for this event is not apparent on its face. By the time of the second deployment, the scene and the Incident were well understood. The CCG had arranged contractor resources to be in place to remove the vessel from the water. CCG personnel were not themselves expected to be in the water.

Given the remoteness of Main Brook relative to the CCG HQ, it is accepted that two personnel were appropriate to ensure safe travel. However, the CCG was attending at the scene in a truck, not a response craft. The submission does not identify any hazard which necessitated three CCG personnel to attend on the scene to receive the vessel, nor is there work identified which would seem to require three personnel. The lack of justification within the submission for three personnel does not permit a conclusion that the costs and expenses with respect to the final attendance at the scene were reasonable.

The CCG claimed costs and expenses with respect to the final attendance at the scene are therefore reduced to account for an over deployment.

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## **CLAIM AND OFFER DETAILS**

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

### **Schedule 1 – Materials and Supplies**

**Claim: \$145.00**

When CCG ER attended at the scene of the sinking of the F/V JENNIFER HOLLY on 10 May 2019, they deployed an 8-inch boom and sorbent pads to contain and clean up the spill resulting from the failed effort to extract the vessel from the ice.

This measure was necessary, and therefore reasonable. The cost and expense associated with this measure is reasonable on its face, including because it complies with standard CCG charge out rates.

This portion of the claim is allowed in its entirety.

### **Schedule 2 – Contract Services**

**Claim: \$52,563.16**

The CCG claims for contract services provided by two contractors: Pardy's Waste Management (Mount Pearl, Newfoundland), who received oily waste recovered during the response (\$258.75); and Sea-Force Diving Ltd. (Mount Pearl, Newfoundland), who deployed divers and equipment to remove the F/V JENNIFER HOLLY from the marine environment (\$52,304.41).

#### *Pardy's Waste Management*

When the CCG attended at the scene of the Incident on 10 and 11 May 2019, they recovered some quantities of oily waste from the marine environment. They put these materials into a drum and delivered the drum to Pardy's Waste Management in Mount Pearl on 13 May 2019.

A worksheet from Pardy's Waste Management was included in the submission to document the work done. The measure of removing oil from the marine environment is a reasonable one, and the cost of disposing of oily waste recovered necessarily arises from that measure and is also reasonable. The cost and expense associated with this measure (\$258.75) is established as a reasonable price.

This portion of the claim is allowed in its entirety.

#### *Sea-Force Diving Ltd.*

The CCG determined that the F/V JENNIFER HOLLY needed to be removed from the marine environment as it constituted an oil pollution threat or was actually discharging oil. The measure of using a dive team to refloat the vessel and remove it from the water was determined to be the preferable option. It has been determined that this was a reasonable measure to take in the circumstances.

The CCG held a tender process to select a contractor. Copies of the bids were included with the claim documentation. The CCG determined that the bid from Sea-Force Diving Ltd. for \$43,573.50 plus equipment should be selected. One lower bid was received, in the amount of \$22,000. The CCG rejected this lower bid on the basis that the tender process required bids to deal with pollution removal and the lower bid did not include that detail. This was an appropriate decision as was the decision to select the next lowest bid, namely the one submitted by Sea-Force.

A review of the contract documentation, the supporting claim evidence, invoice 4615 from Sea-Force (dated 06 July 2019) was carried out to assess the reasonableness of the cost and expenses incurred by Sea-Force. The bills from Sea-Force comply with the terms of the contract – with the exception of the mileage charged at 0.85/km and accommodation/meals expenses. Both the bid from Sea-Force and the contract which was eventually issued indicated that travel costs and accommodation/meal expenses were included in Sea-Force's contract.

This billing discrepancy is, in the circumstance, reasonable. Upon careful examination, the CCG actually saved money as a result of a change in how billing for the project was carried out. Sea-Force's invoice totals to less than what is called for in the bid and contract. Under the bid and the contract, Sea-Force was to carry out the floating and removal for \$43,573.50 (including HST, not including heavy machinery, absorbent boom and pads or disposal of waste products). Sea-Force's invoice totals \$52,304.41, which includes \$9,840.47 (including HST) for the rental of heavy equipment, \$1,117.57 (including HST) for absorbent boom and pads, and \$1,611.38 (including HST) for disposal of fuels and wastes. These are all permissible extras under the bid and contract. Reducing the invoice by the extras shows that Sea-Force billed the CCG less than it was entitled to for its services under the contract, namely, \$31,004.08 rather than \$43,573.50.

The billing discrepancy, namely Sea-Force charging for items that were to be included in its fees, results from Sea-Force completing the project in fewer operational days than was anticipated and then apparently deciding to bill the CCG less. Three days of operational time were assumed in establishing the contract price, but as it turned out all work was completed in two operational days. Sea-Force, rather than billing for the contract price, recalculated and billed the CCG for two operational days, but then added in travel and accommodation expenses. These expenses were supposed to be built into the price of the contract – but that contract was also supposed to be for three operational days.

Taken as a whole, this accounting change results in savings of \$12,569.42 for the CCG. It is considered that Sea-Force could have sought to charge for the full contract price, but instead chose to reduce the charge for operational days while also deciding not to waive expenses that were to be waived had the full number of operational days been used. The net result is to reduce the amount the CCG would pay, and this is therefore accepted as reasonable.

This portion of the claim is allowed in its entirety.



**Schedule 3 - Travel**

**Claim: \$4,483.05**

The CCG sent three personnel to respond to the Incident, in two separate trips. The first trip lasted between 8-12 May 2019, the second between 23 to 26 May 2019. Notably, the CCG made the reasonable decision not to deploy personnel upon the first report of the incident, and so no claim is made for travel at that time.

During the period of 8-12 May 2019, the CCG had been advised by the owner of the F/V JENNIFER HOLLY that he could not properly respond to the situation. The owner had attempted to extricate the vessel by pulling it across the ice using shore-based equipment. During the process the vessel suffered heavy damage to its superstructure as the wire rope used to pull it instead damaged it, leading to the release of some oil into the marine environment.

It has been determined that the full deployment by the CCG at this stage was a reasonable measure. The costs and expenses submitted in association with that deployment are also reasonable.

During the period of 23-26 May 2019, the CCG had retained Sea-Force to carry out the refloating and removal from the water of the F/V JENNIER HOLLY. The role of CCG personnel attending at the scene is not explicitly stated in the submission but is presumed to have been monitoring the operations of the contractor. During this period, the contractor apparently reported that the refloating could not proceed as planned and heavy equipment would be needed. CCG personnel approved that change. This demonstrates the need for some CCG personnel to attend. However, the need for three CCG personnel to attend during this period has not been established. The attendance of two personnel is accepted, for the reasons previously stated.

This portion of the claim is allowed, in part, in the amount of \$3,711.95.

**Schedule 4 - Salaries - Full Time Personnel**

**Claim: \$3,795.48**

The submission seeks to recover for CCG personnel time for three crewmembers for the period of 8-12 May 2019 and three crewmembers for 23-26 May 2019.

For the reasons previously stated, the claim for two personnel, not three, is allowed for the period of 23-26 May 2019.

This portion of the claim is allowed, in part, in the amount of \$3,219.93.

**Schedule 5 - Overtime – Full Time Personnel**

**Claim: \$11,835.70**

The submission seeks to recover for CCG personnel overtime in the amount of three crewmembers for the period of 8-12 May 2019 and three crew members for 23-26 May 2019.

For the reasons previously stated, the claim for two personnel, not three, is allowed for the period of 23-26 May 2019.

This portion of the claim is allowed, in part, in the amount of \$10,021.40.

**Schedule 6 Pollution Counter-Measures Equipment**

**Claim: \$1,111.12**

CCG personnel deployed to the scene of the Incident with a response trailer and associated equipment, at a daily rate of \$138.89. The total number of days deployed was eight, and the CCG seeks to recover \$1,111.12.

The daily rate sought is in conformance with standard CCG charge-out rates. It is considered that deploying the trailer was a reasonable measure, and that the cost and expense associated with the measure is reasonable.

This portion of the claim is allowed in its entirety.

**Schedule 12 Vehicle**

**Claim: \$1,949.24**

The CCG used vehicles during both the 9-12 May 2019 and 23-26 May 2019 periods. The vehicles were used to travel to and from Main Brook. This was necessary in order to carry out the measures which have previously been determined to be reasonable. The submission included vehicle logs and fuel receipts.

The cost and expense sought was based on a vehicle rate of \$67.00 per day plus mileage/gas. The total amount sought is \$1,949.24. The costs and expenses claimed have been properly established and are reasonable.

This portion of the claim is allowed in its entirety.

**Schedule 13 Administration**

**Claim: \$288.89**

The submission included a claim for administrative expenses using a rate of 3.09%. The rate currently agreed to as between the Fund and the CCG is 2.53%. The Administrator has made an offer with respect to the CCG request to amend that rate, but at present that offer remains outstanding.

The CCG claim has been adjusted to take into account the reduction in other claimed amounts and the 2.53% rate.

This part of the claim is allowed, in part, in the amount of \$217.39.

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**OFFER SUMMARY AND CLOSING**

The following table is provided to summarize the claimed and allowed expenses with respect to the CCG claim for the F/V JENNIFER HOLLY response.

<b>Description</b>	<b>Claim</b>	<b>Offer</b>
Material and Supplies	\$145.00	\$145.00
Contract Services	\$52,563.16	\$52,563.16
Travel	\$4,483.05	\$3,711.95
Salaries	\$3,795.48	\$3,219.93
Overtime	\$11,835.70	\$10,021.40

PCME	\$1,111.12	\$1,111.12
Vehicles	\$1,949.24	\$1,949.24
Administration	\$288.89	\$217.39
<b>Total</b>	<b>\$76,171.64</b>	<b>\$72,939.19</b>

Figure 2 - Summary of claims made and allowed

The amount of the Offer is \$75,161.08.

The Offer comprises the amount of \$72,939.19 for costs and expenses, plus the amount of \$2,221.89 for accrued interest.

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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