



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

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pollution par les hydrocarbures causée par les
navires

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Ottawa, 16 June 2020
SOPF File: 120-854-C1-C
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: *Unknown name (White Sport Fisher)* – Cowichan Bay, British Columbia
Incident date: 2018-01-19

SUMMARY AND OFFER

This letter responds to a submission from the Canadian Coast Guard (the “CCG”) with respect to a vessel with no known name. It is identified for the purposes of this letter as a white sport fisher (the “Vessel”). The Vessel was involved in an incident on 19 January 2018, in Cowichan Bay, British Columbia (the “Incident”).

On 27 December 2019, 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 \$29,705.45 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 \$19,482.51 (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, backup documents related to some of those claimed costs and expenses, and documentation from contractors for work performed.

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

The narrative

On 19 January 2018, the CCG alert desk received a report of a 30' to 40' vessel that had broken free from its moorings and was drifting in Cowichan Bay. Local contractor Eagle Eye Marine ("EEM") was retained to locate, assess, de-water, and tow the vessel to a secure location. When EEM located it, they reported it to be a 40' wooden-hulled vessel with no identifying markings. It was identified as a Sport-Fisher type vessel and had sunken to its fly bridge. EEM observed a rainbow sheen on the water and determined that the Vessel had an engine onboard and fuel in its tanks. The Vessel was towed to shallow water and tied to shore, and sorbent boom was placed around it to contain the spilled oil. The CCG was to reassess the situation the next day.

On 20 January 2018, CCG personnel arrived at the Vessel in a CGE705 boat with sorbent boom and other materials. They deployed 150' of 24" boom and removed 40' of soiled boom that EEM had placed the day before. They observed the continued presence of an oily sheen on the water and a strong smell of diesel in the air. They could not determine how much oil remained onboard the Vessel and considered that it posed a hazard to marine life.

As the CCG had no contact information for the owner, it took charge of removing the Vessel. The CCG retained EEM to raise, de-water, and tow the vessel to a marine facility. EEM was chosen because of its proximity to the Vessel and its availability. EEM indicated to the CCG that it would salvage and tow the Vessel to the Canoe Cove marine facility on the morning of 22 January 2018.

On 21 January 2018, CCG personnel attended at the scene, again onboard a CGE705, to reassess the Vessel and replace the sorbent boom. They observed the continued presence of an oily sheen on the water surrounding the Vessel.

On 22 January 2018, CCG personnel observed the salvage operations and adjusted the boom to allow for the Vessel to be refloated. They observed the continued presence of an oily sheen on the water. EEM refloated and de-watered the Vessel. It was determined that the Vessel contained oil-covered debris and that its timbers were soaked in oil. EEM towed the Vessel to the Vector Yacht Services yard at the Canoe Cove Marina. CCG personnel retrieved the used boom from the water.

On 30 January 2018, Building Sea Marine (“BSM”) conducted a marine survey on the Vessel and prepared a report. This report indicated that BSM considered the Vessel to be an unsalvageable wreck that would pose a risk to the marine environment if allowed back in the water. The CCG determined that, because an owner had not been identified and the Vessel contained oil-soaked wood, it should be deconstructed.

On 2 February 2018, the Vessel was deconstructed by John Plant Excavating in the Vector Yacht Services yard.

Follow-up questions to the CCG

On 25 February 2020, a request for additional information in support of the above claims was sent to the CCG. The information sought related notably to the CCG’s prior knowledge of the Vessel, EEM’s towing of the Vessel, and the deconstruction of the Vessel.

On 2 April 2020, the CCG responded. The CCG indicated that it became aware of the Vessel on 19 January 2018 when it received word of the Incident. It also indicated that EEM used a 733 rigid hull inflatable boat and a crew of three people in responding to the Incident, and that EEM towed the Vessel to shore near the Cowichan Bay Marina. It was also confirmed that EEM removed the Vessel from the water at the marina and towed it to Vector Marine’s yard in Canoe Cove. There, the Vessel was deconstructed by John Plant Excavating.

Summary of costs and expenses

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

**COST SUMMARY
POLLUTION INCIDENT**

INCIDENT:	34' SPORT FISHER	PROJECT CODE:	NA
INCIDENT DATE:	January 19, 2018	DATE PREPARED:	Dec 14/19
DEPARTMENT:	CANADIAN COAST GUARD	PREPARED BY:	

		<u>SCH</u>
MATERIALS AND SUPPLIES	-	1
CONTRACT SERVICES	12,191.60	2
TRAVEL	-	3
SALARIES - FULL TIME PERSONNEL	972.68	4
OVERTIME - FULL TIME PERSONNEL	3,276.73	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)	13,004.33	11
VEHICLES	239.61	12
ADMINISTRATION	20.51	13
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TOTAL CCG COST OF INCIDENT	<u>\$ 29,705.45</u>	

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 damage suffered within the territorial seas 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).

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.

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.

Certain inconsistencies were identified during the assessment of the CCG claim. These inconsistencies resulted in a series of questions to the CCG on 25 February 2020, to which the CCG responded on 2 April 2020. One inconsistency arose from the Regional Operations Center report suggesting that the CCG knew of the Vessel prior to the Incident; however, in the CCG’s responses, they confirm that they first became aware of the Vessel when the Incident was reported on 19 January.

It is likely that the time gaps between the Incident, the invoices, and the submission of the CCG claim adversely impacted the quality of the documentation submitted.

Additionally, while evidence indicates that the Vessel was abandoned and derelict, the CCG claim provides no information on the extent of the search for the owner.

The White Fisher initially posed a risk of discharging oil

On 19 January 2018, the Vessel had broken free of its moorings and was drifting in Cowichan Bay. An oily sheen was observed on the water around the vessel, and EEM determined that the vessel contained an engine and fuel. Although the amount of oil onboard was not specified, the BSM report estimates that its two tanks could hold 125 gallons each. There was also a strong smell of diesel fuel in the air. The CCG considered that the Vessel posed a hazard to marine life in the area, particularly considering that Cowichan Bay has extensive marine services infrastructure and relies heavily on recreational boating and eco-tourism.

Based on these circumstances, it was reasonable for the CCG to conclude that the Vessel posed a threat of discharging oil into the marine environment and to take some measures to mitigate that threat.

Inspection of the vessel

A survey was carried out by Building Sea Marine on 30 January 2018. The invoice indicates that the purpose of the survey was to assess the condition and salvage value of

the Vessel. The survey does not focus on the presence of oil onboard the Vessel or whether the hull or Vessel as a whole constituted an oily waste.

The fact that the survey did not involve confirming the quantity of oil pollutants onboard the Vessel supports a determination that the survey was not a measure taken with respect to a threatened discharge of oil from the Vessel. It is determined that the survey report was procured by the CCG for other purposes. Based on the photos included in the submission, the condition of the Vessel was self-evident. It would have been reasonable for the CCG to produce a short narrative supported with photos rather than incurring the costs of a marine survey.

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 mentioned whether both factors have been established.

Schedule Two – Contract Services

Claim: \$12,191.60

The CCG claims for contract services provided by EEM to respond to the Incident. EEM first refloated the vessel, dewatered it, and moved it to shore before towing it to Vector Yachts Services for deconstruction.

The initial CCG submission included an invoice from EEM that, during the assessment, was determined to be problematic. According to the submission, the CCG paid \$9,282 to Willis Marine Supply; however, EEM completed the work and sent the invoice. Additionally, the invoice was paid on 13 December 2019, nearly two years after the vessel was deconstructed. The amount appears to be for a flat rate contract, but there is little documentation as to what was done to evaluate whether the amount that the CCG paid was reasonable.

The detail in the invoice is limited, and there is a one-day difference in chronology between the invoice and the CCG narrative in the claim. There are no details about what resources EEM used to tow, raise, and remove the vessel from the water. These inconsistencies are likely due to the large time gap between the occurrence, the EEM invoice, and the CCG claim to the SOPF. Nonetheless, this measure and the listed cost are established as a reasonable response to an oil pollution incident.

The CCG also produced an invoice from Building Sea Marine for the marine survey conducted on the Vessel on 30 January 2018. Based on the photos included in the CCG submission, the condition of the Vessel is self-evident. As there was not a compelling

reason to incur costs for a marine survey, this measure and the listed cost are not established as a reasonable response to an oil pollution incident. As well, the Building Sea Marine survey estimates the volume of oil present, rather than measuring it. The decision not to measure the quantity of oil present onboard the Vessel suggests the survey was carried out for purposes other than quantifying the potential oil pollution threat.

The CCG also submitted an invoice from John Plant Excavating for the deconstruction of the Vessel. As the Vessel was demolished along with three others, tipping fees are equally divided between the four vessels. Given the rotten condition of the Vessel and its status as an oil pollution threat, deconstruction was an appropriate measure. This cost is established as a reasonable response to an oil pollution incident.

The final invoice is from Hetherington Industries for disposal of oily waste. The invoice is for the disposal of five drums of sorbent material as a result of the Incident. This measure was appropriate in the circumstances. This cost is established as a reasonable response to an oil pollution incident.

The contractor claims in the CCG submission and the portion of costs that are established as reasonable are summarized in the table below:

Table 1 – Description of contractor costs and claim amounts

Invoice	Description	Claimed	Established
Eagle Eye Marine	Location, assessment, and towing of the Vessel. Deployment of sorbent boom.	\$840	\$840
	Salvage and transport of the Vessel to Vector Yachts	\$8,000	\$8,000
Total with GST		\$9,282	\$9,282

Building Sea Marine	Survey and report fee	\$1,020.00	\$0
	Expenses: vehicle and photos	\$101.50	\$0
Total with GST		\$1,177.05	\$0

John Plant Excavating Total with GST	Demolition and tipping fees	\$892.55	\$892.55
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Hetherington Industries Total with GST	Disposal of oiled sorbents and waste paint	\$840	\$840
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Total contractor expenses		\$12,191.60	\$11,014.55
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The contractor portion of the submission is allowed, in part, in the amount of \$11,014.55.

Schedule 4 – Salaries: Full Time Personnel

Claim: \$972.68

Three CCG ER officers attended at Cowichan Bay from January 20-22, 2018. The salary claim arises from Monday the 22nd for three Response Specialists (\$43.23 per hour for 7.5 hours each). The Response Specialists were on site to monitor the towing of the Vessel and recover oil spilled during the operation. The claim is established in the CCG narrative and in the Personnel & Equipment Daily Logs, and the costs are reasonable.

The salary portion of the submission is allowed in the amount of \$972.68.

Schedule 5 – Overtime: Full Time Personnel

Claim: \$3,276.73

The overtime costs are for a Senior Response Officer and the three Response Specialists. As most of the work was done over the weekend of January 20-21, the overtime costs are relatively high. However, the work is documented in the Personnel & Equipment Daily Logs and the Extra Duty Pay forms. Given the circumstances, the overtime costs are reasonable.

The overtime portion of the submission is allowed in the amount of \$3,276.73.

Schedule 11– Pollution Counter Measures Equipment

Claim: \$13,004.33

The vast majority of these costs come from the \$12,628.50 that the CCG paid for use of the CGE705 boat, charged at the PRV 3 rate for three days. Based on the length of this

boat, this rate of \$4,209.50 per day is correct. As the CGE705 is a 27-foot LOA vessel, it falls within the 25-39 feet range that defines a PRV 3.

However, the estimated replacement cost of this boat is not \$757,710.79. That cost is attributed to certain vessels designed in 2011 as part of the federal government's economic stimulus program. The PRV 3s built under this program are 47-feet long and have 14.74 GRT and twin diesel inboard/outboard engines. The CGE705 has twin engines but is only 27-feet long and has 1.73 GRT. Thus, while it may be properly categorized in the costing manual in terms of length, this does not warrant the \$4,209.50 daily charge-out rate.

The use of the CGE705 is accepted as a reasonable measure, but the charge-out rate of \$4,209.50 per day is unreasonable. It would have been reasonable to charge out a CGE709 at the PRV 2 rate of \$1,194.23 per day for three days, totaling \$3,582.69.

The costs of the remaining equipment (Honda 2" gas pump, 24" containment boom, and sorbents) totaling \$375.83 are reasonable.

The Pollution Counter Measures Equipment portion of the submission is allowed, in part, in the amount of \$3958.43.

Schedule 12 – Vehicles

Claim: \$239.61

The CCG used a Ford F350 truck to transport personnel from Victoria to the Institute of Ocean Sciences at Patricia Bay, where the CGE705 dock is located. This measure was reasonable for the purposes of monitoring the Vessel. The expense, based on the CCG daily rate of \$65.57 for three days plus 22 cents per kilometer for 195 kilometers, is reasonable.

The vehicle portion of the submission is allowed in the amount of \$239.61.

Schedule 13 – Administration

Claim: \$20.51

The administration rate was calculated at 3.09%. This amount applies to a portion of the CCG salaries paid and amounts to less than 1% of the claim amount. These costs are reasonable.

The administrative costs portion of the submission is allowed in the amount of \$20.51.

OFFER SUMMARY AND CLOSING

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

Description	Claim	Offer
Contract Services	\$12,191.60	\$11,014.55
Salaries	\$972.68	\$972.68
Overtime	\$3,276.73	\$3,276.73
Pollution Counter Measures Equipment	\$13,004.33	\$3,958.43
Vehicles	\$239.61	\$239.61
Administration	\$20.51	\$20.51
Total	\$29,705.45	\$19,482.51

Table 2 - Summary of claims made and allowed

Costs and expenses in the amount of \$19,482.51 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