



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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*CCG File: n/a*

## VIA MAIL AND EMAIL

Office Manager, Fisheries & Harbour Operations  
Haisla Harbour Authority  
Haisla Nation Council  
PO Box 110, Kitamaat Village, BC  
V0T 2B0

**RE: *F/V ZODIAC LIGHT* - Incident date: 14 February 2018**

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### **SUMMARY AND OFFER**

This letter responds to a submission from the Haisla Harbour Authority, which was presented on behalf of the Haisla Nation Council (the "HNC"). The office of the Administrator of the Ship-source Oil Pollution Fund received the submission on 12 February 2020 on behalf of the Administrator. The submission was treated as a claim to the Administrator under section 103 of the *Marine Liability Act*, S.C. 2001, c.6, as amended (the "MLA").

The submission sets out claims for various costs and expenses incurred by the HNC in taking measures in response to an incident involving the vessel F/V ZODIAC LIGHT. The F/V ZODIAC LIGHT sank while moored in the harbour at Kitamaat Village, BC, on 14 February 2018 (the "Incident"). The total amount claimed by the submission is \$14,028.00.

The submission has been assessed and a determination has been reached with respect to its claims. This letter advances an offer of compensation to the HNC pursuant to sections 105, 106 and 116 of the MLA. Also provided in this letter are a description of the HNC's submission and an explanation of the findings and ultimate determination.

The claim is allowed in its entirety. The amount of the offer of compensation is \$14,028.00 (the "Offer"). In accordance with s. 116 of the *MLA*, statutory interest is calculated in the amount of \$1,167.61, and is added to the Offer. The total amount payable is \$15,195.61.

The reasons for the Offer are set forth below.

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## **THE SUBMISSION RECEIVED**

The submission includes a narrative that describes the Incident and the subsequent response.

The submission also includes a spreadsheet noting hours worked by employees of the HNC, as well as annotated photographs of the Incident, an estimate for replacement equipment and receipts for equipment.

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

### **The narrative**

The narrative included in the submission sets out a description of the Incident.

According to the narrative, on the morning of 14 February 2018, the HNC wharfinger became aware that the F/V ZODIAC LIGHT had sunk while moored at the Kitamaat Village harbour.

The HNC supplemented the submission with verbal advice that prior to the sinking of the F/V ZODIAC LIGHT, the HNC had issued a snowfall warning. The HNC has, in the past, seen heavy snowfall events result in vessel sinkings. In this case, after learning of a forecast heavy snow, the HNC issued a warning to keep vessels cleared.

The HNC understand that the owner of the F/V ZODIAC LIGHT was out of town, and that measures may not have been appropriately taken with respect to that vessel. It is the understanding of the HNC that the F/V ZODIAC LIGHT sank as a result of snow accumulation.

After the sinking, the harbour's emergency response plan was activated and the Canadian Coast Guard (the "CCG") was alerted. The HNC utilized equipment from a spill response container and mobilized a response crew of five persons to respond to the Incident.

When the CCG Environmental Response crew and their contractors arrived on the scene, HNC personnel worked alongside them to contain the spill and stabilize the F/V ZODIAC LIGHT so that the vessel could be lifted and removed.

The lift and removal took place on 16 February 2018. HNC personnel cleaned the harbour's docks, completing their work on 17 February 2018.

In carrying out their work, some HNC personnel were equipped with floater gear for safety. This equipment was damaged by exposure to the diesel fuel discharged by the F/V ZODIAC LIGHT. As well, the HNC response deployed a 300' rope that had to be replaced after being used during the HNC response.

The photographs

The HNC submission included a number of annotated photographs which were helpful in understanding the Incident and the HNC response to it.

The costs and expenses summary

The HNC submission includes the following summary of costs and expenses incurred by HNC during the response to the Incident:

<b>Zodiac Light - Haisla Fisheries Staff Hours &amp; Material Replacement</b>					
<b>Staff Hours</b>	14-Feb-18	15-Feb-18	16-Feb-18	17-Feb-18	
TA	9.5	12	10.5	0	
LB	7	12	10.5	9.5	
CG	7	12	10.5	0	
ES	9	12	10.5	9.5	
Administration	2	2	2	2	
<b>Total Hours</b>	34.5	50	44	21	149.5 \$ 4,485.00
<b>Materials &amp; Supplies</b>					
3 x Survival Suits damaged w/diesel	3 jackets and bib style floater pants	\$899.54 each			\$ 2,698.62
2" double braid nylon rope 300'					\$ 6,344.38
Boat Hours	2 X \$250 for jet				\$ 500.00
<b>Total</b>					\$ 14,028.00

Figure 6 - The HNC cost and expense chart

The HNC cost and expense chart indicates that the HNC claim is comprised of 149.5 HNC personnel hours, at \$30 per hour, as well as the replacement of 3 survival suits and 30' of 2" double braided nylon rope.

The HNC submission includes claims totaling to \$14,028.00.

**DETERMINATIONS AND FINDINGS**

The HNC 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, the claims submitted are potentially eligible for compensation.

The HNC is considered 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). Therefore, the investigation and assessment proceeded in accordance with s. 103 the MLA.

The facts presented by the HNC are accepted

The narrative and photographs presented by the HNC set out the facts of the Incident.

The version of events presented therein is accepted as generally accurate.

The F/V ZODIAC LIGHT was an oil pollution threat

The F/V ZODIAC LIGHT was left alongside a dock over the winter months and apparently sank as a result of snow accumulation.

The submission from the HNC is brief, but adequate when coupled with the information obtained by the Administrator during its investigation of a CCG's claim arising out of the Incident. The total evidence available is sufficient to allow the appropriate determinations to be made.

The F/V ZODIAC LIGHT had been used in the relatively recent past. It could reasonably be presumed that at least moderate quantities of hydrocarbon-based fuel and lubes remained aboard. It was reasonable to assume that the vessel posed a risk of discharging oil into the marine environment.

Further, it is accepted that a discharge of oil into the marine environment took place as a result of the sinking. On this point, documentation provided by the CCG includes quantities of oil removed from the water, while the HNC documentation notes damage to equipment used during the response as a result of contact with diesel fuel, as well as efforts to clean HNC docks subsequent to the sinking.

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

In this case, the HNC's efforts initially focused on containing oil leaking from the F/V ZODIAC LIGHT and in assisting the raising operation. Both of these measures are reasonable in the circumstances of the Incident. Subsequently, some time was spent cleaning HNC docks affected by oil pollution. Costs and expenses arising out of taking those measures can therefore be eligible for compensation.

In summary, 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. The reasonableness of the costs and expenses themselves must also be considered in accordance with s. 77(2) of the MLA.

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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 portions of the claim have been allowed or disallowed.

**Personnel time** **Claim: \$4,485.00**

The HNC submission included a detailed breakdown of the hours worked by HNC personnel (see Figure 6 - The HNC cost and expense chart).

The HNC hours were compared with the hours worked by CCG personnel, and the results were placed into the chart below:

<b>Date</b>	<b>CCG Hours of work</b>	<b>Council members work Hours</b>	<b>Total CCG Hours of Effort</b>	<b>Total Council Hours of Effort</b>	<b>Comment</b>
14 Feb	10	9.5	20 hours 2 responders	34.5 hours 5 responders	Placed Boom/Pads utilizing their vessel. Stabilized fishing V/l, using 2-inch white double braid nylon rope and wharf stanchions.
15 Feb	13	12	26 hours 2 responders	50 hours 5 responders	Skimming/Pads/cleaning and recovery of pollutants.
16 Feb	12	10.5	24 hours 2 responders	44 hours 5 responders	Boom/Pads/waste recovery/ vessel lift
17 Feb	10.5	9.5	21 hours 2 responders	21 hours 5 responders	Waste recovery/pads/cleaning
18 Feb	6.5		13 hours 2 responders		Vessel departed Kitamaat under tow to Prince Rupert

The number of hours of work claimed by the HNC (149.5) is reasonable, as is the \$30 per hour rate claimed for those hours.

This portion of the claim is allowed in its entirety.

**Equipment** **Claim: \$9,043.00**

The HNC submission claims for the cost of replacing three survival suits. The submission indicates that suits used during the emergency response were damaged by diesel fuel. The suits are described as “3 jackets and bib style floater pants”. The claim indicates they cost \$899.54 each. The submission also includes three invoices from “Sea-Sport Outboard

Marina Ltd.” addressed to the Haisla National Council, which by the date appear to be the original sales invoice for these items.

It was reasonable to use this equipment during a wintertime ship-source oil pollution incident. While the risk of such equipment being damaged by oil is well known, and that well known damage occurred in this case, that does not detract from the reasonableness of using personal safety equipment while working in potentially dangerous conditions to respond to an oil discharge event. The claimed cost of the equipment is reasonable in all of the circumstances, including the relative remoteness of HNC’s harbour and facilities.

The HNC submission also claims for the cost of a 2” 300’ doubled braided nylon rope. The rope was used during the response to the Incident to stabilize the vessel. The steps taken by the HNC early in the response helped keep the vessel upright and should be commended. The rope was used while the HNC took these sensible measures in response to the Incident, measures which likely ultimately reduced the cost of raising the vessel. The HNC submission includes an estimate for a replacement rope. The replacement rope is 600’, and the HNC submissions seeks half of that cost.

The use of a rope was reasonable in the circumstances. The cost of replacing the rope is reasonable, as is the decision to purchase a longer rope (the HNC does not seek compensation for the incremental cost of the longer rope). While the evidence relating to the replacement of the rope is not ideal, taken with the other available evidence including that submitted by the CCG, there is sufficient evidence to reach a determination that the claimed expense was incurred and that the claim is eligible for compensation under s. 103 of the MLA. The claim for the expense of replacing the rope is allowed.

This portion of the claim is allowed in its entirety.

**Vehicle use**

**Claim: \$500**

The HNC used a jet boat for two hours while responding to the Incident. The boat was used while placing boom around the F/V ZODIAC LIGHT after it sunk. The use of a boat by the HNC to place an oil containment boom is reasonable. The expense claimed for is also reasonable.

This portion of the claim is allowed in its entirety.

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**OFFER SUMMARY AND CLOSING**

The following table is provided to summarize the claimed and allowed expenses with respect to the HNC claim for the Incident:

<b>Description</b>	<b>Claim</b>	<b>Offer</b>
Personnel time	\$4,485.00	\$4,485.00
Contract Services	\$9,043.00	\$9,043.00
Travel	\$500.00	\$500.00
<b>Total</b>	<b>\$14,028.00</b>	<b>\$14,028.00</b>

*Figure 7 - Summary of claims made and allowed*

The amount of the offer of compensation is \$14,028.00 (the "Offer"). Statutory interest is calculated in the amount of \$1,167.61 and is added to the Offer. The total amount payable is \$15,195.61.

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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