



OFFER LETTER

Ottawa, 4 October 2023
SOPF File: 120-956-C1

VIA EMAIL

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**RE: *F/V MARC OLIVIER* — Port aux Basques, Newfoundland and Labrador
Incident date: 2022-05-07**

SUMMARY AND OFFER

[1] This letter responds to a submission from the Canadian Coast Guard (the “CCG”) with respect to the fishing vessel MARC OLIVIER (the “Vessel”), which grounded on or about 7 May 2022, near Port aux Basques, NL (the “Incident”).

[2] On 22 June 2023, 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 submission advanced claims totaling \$14,791.11 for costs and expenses arising from measures taken by the CCG to respond to the Incident.

[3] 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 101 and 103 of the *Marine Liability Act*, SC 2001, c 6 (the “MLA”).

[4] The amount of \$12,544.68 (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.

[5] The reasons for the Offer are set forth below, along with a description of the CCG's submission.

THE SUBMISSION RECEIVED

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

The narrative

[7] According to the narrative, on 7 May 2022, the CCG was notified of a grounded vessel. The CCG identified a concern regarding the location of the vessel. It was 0.5 km from a ferry route, which raised concerns regarding oil pollution potentially disrupting traffic.

[8] The CCG mobilized three personnel to the site. The crew was dispatched from Nova Scotia with a truck and trailer to Newfoundland via the ferry.

[9] When the CCG crew arrived, they confirmed the vessel and observed no oil pollution. The crew discovered no breach to the hull but expressed concern of breach from the rocky shore from weather conditions during the tow-off.


[10] The CCG crew had difficulties communicating with the vessel captain because "he only spoke French". The crew eventually made contact with the owner's fish buyer who informed them that the owner hired a tugboat (the W.N. Twolan) and Baily's Marine Services Ltd.

[11] The plan was to tow the ship off the rock at high tide on 9 May with no lift bags, and a backup plan was developed in case the original plan failed to tow the vessel at high tide on 10 May with lift bags. The owner confirmed there would be pre-tow and post-tow dive surveys of the vessel to confirm there was no damage to the hull.

[12] The tow on 9 May without the lift bags failed, but the 10 May tow with the lift bags succeeded. The post-tow survey was conducted dockside on 11 May. That concluded the CCG operation.

Cost summary

[13] The CCG submission summarizes the claimed costs as follows:



DESCRIPTION	TOTAL	SCHEDULE #
MATERIALS AND SUPPLIES	\$ -	1
CONTRACT SERVICES	\$ -	2
TRAVEL	\$ 2,662.41	3
SALARIES - FULL TIME PERSONNEL	\$ 1,938.64	4
OVERTIME - FULL TIME PERSONNEL	\$ 7,926.62	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)	\$ 555.56	11
VEHICLES	\$ 1,527.32	12
ADMINISTRATION	\$ 180.56	13
TOTAL CCG COST OF INCIDENT	\$ 14,791.11	

Figure 1: Screen capture of the claim cost summary

DETERMINATIONS AND FINDINGS

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

[14] The Incident resulted in oil pollution damage suffered, or the threat of such damage, within the territorial seas or internal waters of Canada, as well as in costs and expenses to carry out measures to mitigate further damage. As a result, claims arising from the Incident are potentially eligible for compensation.

[15] The CCG is an eligible claimant for the purposes of section 103 of the MLA.

[16] The submission arrived prior to the limitation periods set out under subsection 103(2) of the MLA.

[17] 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.

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

Findings on the evidence submitted by the CCG

The facts of the Incident as set out by the CCG are generally accepted

[19] This description of the material events in the CCG narrative is accepted as generally accurate.

The Vessel posed a pollution threat and some of the measures taken are admissible

[20] This was a relatively large fishing vessel possessing approximately 5,000 litres of diesel fuel along with an unspecified amount of lube and hydraulic oils aboard.

[21] Although the vessel did not leak oil or take water as a result of the grounding, it was determined that vessel movement from the tide and wind could lead to breach of the hull. That in turn could have led to a discharge of oil.

[22] It is unclear whether in-person intervention was necessary, rather than a remote monitoring operation. However, given the information available to the CCG at the time, it was not unreasonable to deploy a crew to travel to the site. Thus, this is accepted as a reasonable measure to prevent oil pollution in this incident.

CLAIM AND OFFER DETAILS

[23] The CCG presented its claimed costs and expenses to the Fund across six schedules, each of which is outlined below.

[24] 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 sections below explain why certain portions of the CCG’s claim have been allowed while others have been decreased.

Schedule 3 – Travel

Claimed: \$2,662.41

[25] These costs arise from the three-person CCG crew travelling to and from Port Aux Basques. Both trips involved a ferry to transport a truck and trailer, along with driving the trailer for approximately 12 hours. These costs are documented on Expense Report Statements and supported by hotel receipts for 3 nights. The meal rates match those found on the National Joint Council – Allowances for April 1st, 2022. As this trip was for the initial on-site response to the Incident, the travel costs of the three CCG personnel are accepted as reasonable.

The travel portion of this claim is allowed in its entirety.

Schedule 4 – Salaries – Full Time Personnel

Claimed: \$1,938.64

[26] These costs are for three CCG Response Specialists at the GT-04 and GT-05 levels, who respectively had rates of \$36.16 per hour, \$38.21 per hour, and \$38.71 per hour, including employment benefit contributions. The CCG claimed salary for all three for 7.5 hours on Monday 9 May, which are accepted.

[27] The CCG claimed 6 hours of salary for all three on Tuesday 10 May when they should have instead claimed 7.5 hours. The documentation provided by the CCG, particularly the “Chronological List of Events” for 10 May, indicates a stop in Deer Lake to replace trailer tires. Based on the documentation, the delay lasted 1.75 hours, which the CCG accounted for by removing 1.5 hours of salary time from each person and placing those hours into overtime. This action by the CCG inflated the claim in favor of overtime hours. There is credible evidence suggesting that the three worked for 15 total hours, so it has been decided to take those hours out of overtime and place them into salary, thus increasing the amount of salary offered to the CCG from \$1,938.64 to \$2,154.15.

The salaries portion of the submission is allowed in an increased amount of \$2,154.15.

Schedule 5 – Overtime – Full Time Personnel

Claimed: \$7,926.62

[28] These costs are for three CCG Response Specialists at the GT-04 and GT-05 levels, who respectively had rates of \$36.16 per hour, \$38.21 per hour, and \$38.71 per hour, excluding employment benefit contributions. The overtime rate on the weekend hours worked is 2.0x the hourly rate and the rate on weekdays is 1.5x the hourly rate.

[29] The amount claimed by the CCG for overtime is approximately 54% of the total claim, which is disproportionately high but makes sense considering the claim began on a weekend.

[30] The CCG claimed 14 hours of overtime for each individual on Saturday 7 May, which is accepted in its entirety. The crew was driving the equipment to the scene and then did a site assessment.

[31] The CCG claimed 14 hours of overtime for each individual on Sunday 7 May, which is reduced to 5 hours per person to reflect a 15-hour workday. This change is because the CCG knew, based on the information available to them from the previous site assessment, that only one worker was necessary to be at the scene, and therefore the amount claimed is not reasonable.

[32] The CCG claimed 7.5 hours of overtime for each individual on Monday 8 May, which is accepted in its entirety. It is reasonable for all three personnel to be on site for the first towing attempt.

[33] The CCG claim for overtime on Tuesday 10 May is recalculated to 6 hours per person to reflect the CCG failing to include the previously mentioned Deer Lake delay in the claim (See para. 27). It is reasonable for all three personnel to be on site for the second towing attempt.

The overtime portion of the submission is allowed in part in the amount of \$5,514.38.

Schedule 11 – Pollution Counter-measures Equipment Claimed: \$555.56

[34] These expenses arise from four days of using the response trailer, at \$138.89 per day. The daily rate matches the rate in the CCG charge-out manual, and both the number of days and purpose for having response equipment are accepted. Therefore, the entire claim is deemed reasonable.

The pollution counter-measures portion of the submission is allowed in its entirety.

Schedule 12 – Vehicles Claimed: \$1,527.32

[35] The claim here is supported by vehicle logs and gas receipts.

[36] The CCG claimed \$67.56 per day for four days for vehicle usage, which matches the CCG charge-out manual and is thus accepted.

[37] The CCG logged 1,932 km for the incident. Google maps indicates a round trip from Mount Pearl to Port Aux Basques would be 1,782 km, which does not account travel to and from the hotel. Therefore, this is accepted.

[38] The CCG included five fuel receipts, four of them occurred during the incident and one afterwards on 12 May. These are accepted because it is reasonable to return the vehicle with a full tank.

The vehicles portion of the submission is allowed in its entirety.

Schedule 13 – Administration Claimed: \$180.56

[39] The CCG submission advances a claim for administration costs at a rate of 3.09%, applied against claimed salaries and travel expenses.

[40] The 3.09% rate is generally accepted as reasonable. When recalculating the administrative costs for the readjustments to the salary claims, the sum of the recommended costs (Schedules 3 and 4) becomes \$4,234.94. Applying the 3.09% administrative rate to this amount equals \$130.86.

The administration portion of the submission is allowed in the amount of \$130.86.

OFFER SUMMARY AND CLOSING

[41] The following table summarizes the claimed and allowed expenses:

Schedule	Claimed	Allowed
3 – Travel	\$2,662.41	\$2,662.41
4 – Salaries – Full Time Personnel	\$1,938.64	\$2,154.15
5 – Overtime – Full Time Personnel	\$7,926.62	\$5,514.38
11 – Pollution Counter-measures Equipment	\$555.56	\$555.56
12 – Vehicles	\$1,527.32	\$1,527.32
13 – Administration	\$180.56	\$130.86
Totals	\$14,791.11	\$12,544.68

Table 1 – Summary of amounts claimed and allowed.

[42] Costs and expenses in the amount of \$12,544.68 are accepted and will be paid together with statutory interest calculated at the date of payment if the Offer is accepted.

[43] 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.

[44] 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.

[45] 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.

[46] 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 its claim, and further it must cooperate with the Fund in its subrogation efforts.

Yours sincerely,

Chiamaka Mogo, MPPGA
Deputy Administrator, Ship-source Oil Pollution Fund