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## OFFER LETTER

Ottawa, 10 January 2025  
SOPF File: 120-986-C1

### BY EMAIL

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*Via email to [DFO.CCGCostRecovery-  
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**RE: F/V JENKINS PRIDE — Beaver Harbour, New Brunswick**  
**Incident date: 2022-01-20**

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### SUMMARY AND OFFER

- [1] This letter responds to a submission from the Canadian Coast Guard (the “CCG”) with respect to the fishing vessel JENKINS PRIDE (the “Vessel”), which sank on or about 20 January 2022, in Beaver Harbour, New Brunswick (the “Incident”).
- [2] On 16 January 2024, the Ship Fund of Ship and Rail Compensation Canada (the “Fund”) received a submission from the CCG. The submission advanced claims totaling \$36,153.24 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 \$2,005.38 (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.

[7] In this case, important additional information was learned during the investigation and that information is considered alongside the consideration of the narrative.

#### **The narrative and important additional facts**

[8] According to the narrative, on 20 January 2022, the CCG was notified that the Vessel was submerged at the dock in Beaver Harbour, NB.

[9] While investigating and assessing this claim, the Fund learned that the CCG's history of involvement with the Vessel started earlier than described in the narrative.

[10] The incident described in the narrative was at least the third recent sinking of the Vessel. The Vessel itself had already been added to the national inventory of wrecked, abandoned, and hazardous vessels on 1 October 2020 - apparently due to its poor condition.

[11] The first time the Vessel sank to the knowledge of the CCG was on 23 October 2021. That sinking was not associated with any observed discharge of pollutants. Following the sinking, the CCG was notified. Response officers refloated and secured the Vessel to the wharf. It does not appear an assessment or any other measures beyond refloating were taken at that time.

[12] According to the local harbour manager, a second sinking occurred on 9 November 2021. There was a light sheen reported to be associated with this sinking. The Vessel was once again refloated, this time by the Vessel's caretaker. Again, no assessment was conducted. No other measures were taken. The harbour manager says that this incident was reported to the CCG. The CCG has indicated that it does not have records associated with the report.

[13] On 9 December 2021, two officers from the Vessels of Concern program were in Beaver harbour on other business. They observed that the Vessel was in poor condition and surrounded by sorbent booms. While on site they spoke to various parties, including DFO Conservation and Protection Officers and the harbour manager. Those officers determined:

- a. the Vessel was on the slipway, all pollutants confirmed removed, and a friend of the deceased owner was acting as caretaker,
- b. vessel was returned to wharf space and its transmission was removed,
- c. caretaker intends to remove the engine prior to removing vessel from water,
- d. ER has the contact info for the caretaker, and

- e. the vessel had sunk again on 9 November 2021, and that while the CCG's ER program was aware of the incident, the Vessels of Concern program had not been notified.

[14] It appears that at this point the Vessels of Concern program requested that the Vessel be transferred to it. This indicates that it was not believed to continue to pose an oil pollution threat. This request was apparently denied on the basis that CCG's ER team continued to oversee a response to the Vessel.

[15] No documentation about the assessment of the Vessel by CCG's ER team was provided, despite a direct request from the Administrator.

[16] On 20 January 2022, the harbour manager phoned the CCG to advise that the Vessel had sunk again (i.e. for at least the third time). Two CCG Marine Environmental and Hazardous Response ("MEHR") personnel were sent from Saint John at 1000 to the incident site. They arrived at 1045 and conducted an initial assessment. This assessment is said to have confirmed the presence of oil pollution in the vicinity of the fully submerged Vessel. The CCG personnel determined that sorbent pads and containment boom were necessary to send to the incident site. They returned to Saint John to prepare the Pollution Response Vessel ("PRV I"). A third MEHR employee was requested. The three MEHR personnel returned to the incident site with the PRV I, deploying containment boom and sorbent pads around the Vessel. The three personnel returned to Saint John at 1830.

[17] On 21 January 2022, two CCG personnel left Saint John at 1000 for the incident site to conduct a follow-up assessment. No sheening was observed outside the containment boom. The sorbents appeared to be working. The CCG personnel returned to Saint John at 1230.

[18] On 22 January 2022, CCG personnel sent a Statement of Work to multiple companies requesting a quote to remove the Vessel. Subsea Global was selected at the end of the bidding process for a contract worth \$20,700 total.

[19] On 25 January 2022, two MEHR personnel attended the incident site at 0700 to observe Subsea Global's operations. Subsea Global sent a team of three divers at 0830 to deploy lift bags to refloat the Vessel. CCG personnel removed the containment boom by 0945. Subsea Global successfully refloated the Vessel at 1144 and secured it at the boat slip for the evening.

[20] On 26 January 2022, two MEHR personnel attended the incident site at 0800 to observe Subsea Global's operations once again. After arriving at 0900, Subsea Global removed the Vessel and placed it in storage at Beaver Harbour at 1600. No further pollution was observed.

[21] The CCG hired a contractor to deconstruct and dispose of the Vessel. This was done on 6 May 2022 while two CCG personnel observed. That concluded the CCG operation.

### Cost summary

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

| Schedule                                  | Cost claimed (\$) |
|-------------------------------------------|-------------------|
| 1. Material and supplies                  | Nil               |
| 2. Contract services                      | 30,846.26         |
| 3. Travel                                 | 437.80            |
| 4. Salaries – Full time personnel         | 2,895.16          |
| 5. Overtime – Full time personnel         | 1,039.12          |
| 6. Other allowances                       | Nil               |
| 7. Salaries – Casual personnel            | Nil               |
| 8. Ship costs (excluding fuel & overtime) | Nil               |
| 9. Ship propulsion fuel                   | Nil               |
| 10. Aircraft                              | Nil               |
| 11. Pollution countermeasures equipment   | 242.56            |
| 12. Vehicles                              | 561.54            |
| 13. Administration                        | 130.80            |
| <b>Total claim</b>                        | <b>36,153.24</b>  |

*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

[23] 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.

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

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

[26] 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.

[27] 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*

[28] This description of the events in the CCG narrative is accepted as accurately describing those events. However, as noted above, the narrative does not include all relevant information.

[29] The CCG's earlier interactions with the Vessel are relevant to establishing the reasonableness of the measures the CCG took. As well, the narrative does not grapple with the earlier events and the information the CCG had in its possession. This limits the extent to which statements about pollution which are asserted in the narrative can be relied upon.

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

[30] As noted, inquiries by the Administrator during the assessment process established that oil had substantially been removed from the Vessel prior to the incident. This knowledge was in the possession of the CCG prior to the subject incident but does not appear to have been factored into decision making in response to the incident.

[31] As well, the evidence for a supposed discharge during the subject (i.e. third) sinking is limited.

[32] Subsea Global noted that there was a sheen on the water when divers arrived, but they were unsure if it came from the Vessel. They did not observe the Vessel itself discharging any pollution.

[33] The contractor that deconstructed the Vessel noted that there was no oil pollution that needed to be removed prior to deconstruction. This is consistent with the information that the CCG had prior to the incident that oil had already been removed from the Vessel.

[34] The harbour manager advised the Fund that no oil pollution was visible after the subject (third) sinking.

[35] In the narrative, the CCG submits that during the assessment on 20 January 2022, it was determined that "the vessel had discharged oil into the marine environment and required containment boom to be placed around the vessel". It is accepted that there was a discharge from the vessel at this point.

[36] Indeed, it is not surprising that there would have been some discharge. Despite the lack of or limited discharges in the earlier sinkings, the Vessel's engine had apparently been partially removed. It is plausible that engine oils would be prone to be discharged as a result during the third sinking.

[37] That said, the quantity of oil which might plausibly be discharged as a result of the partial removal of the engine was limited. While the narrative does not explicitly indicate that this was recognized by the CCG officers when making decisions about what measures would be taken, the evidence indicates they recognized the threat was limited.

[38] In particular, the boom which the CCG had placed around the vessel to contain oil was removed before the raising operation was carried out on 25 January 2022. There is no indication that other preventative measures were put into place during raising – a time when it is generally most likely that further discharges might occur. This suggests that the CCG response officers recognized that the oil pollution threat posed by the Vessel at that point was limited. That recognition would accord with the other evidence, found during the Fund’s investigation but not addressed in the narrative. Moreover, the decision not to replace a boom or take other measures was reasonable in the circumstances.

[39] In light of the evidence, including the removal of the boom, it is determined that the CCG has not established an ongoing pollution threat which justified the measures taken after the removal of the boom. Costs for expenses incurred after the removal of the boom are not accepted as having been reasonably incurred in response to an oil pollution threat.

### **CLAIM AND OFFER DETAILS**

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

[41] 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 2 – Contract Services**

**Claimed: \$30,846.26**

[42] These costs arise from the invoices for services provided by Subsea Global in the amount of \$20,700.00, T&R Blanchard (“T&R”) in the amount of \$5,750.00, Acadie Nouvelle in the amount of \$1,912.26, and BNI - ROP (“BNI”) in the amount of \$2,484.00.

[43] The Subsea Global invoice is for the refloating and removing of the Vessel to the harbour storage compound. The contract was carried out from 25-26 January 2022, and additional documentation and photographs in support of the work carried out was provided alongside the statement of work. As it has been found that the oil pollution threat posed by the Vessel was minimal by the time this Subsea Global operation began, this invoice is rejected.

[44] The T&R invoice is for the deconstruction of the Vessel. The contractor stated at the time that no fuel needed to be removed in the deconstruction process. The only fuel onboard was in the bilge, and oil mats were used to contain it. The claim lacked any credible evidence supporting

the necessity of deconstructing the Vessel for the purpose of mitigating oil pollution. This invoice is rejected.

[45] The Acadie Nouvelle invoice is for publishing a notice in the newspaper in French seeking any person with a lien or other interest in the Vessel. For the same reasons as stated for the other invoices, the lack of credible evidence that the Vessel posed a pollution threat renders this cost to not be connected to mitigating oil pollution as well. This invoice is rejected.

[46] Similarly, the BNI invoice is for publishing a notice in the newspaper in English seeking any person with a lien or other interest in the Vessel. For the same reasons as stated above, this invoice is rejected.

[47] In summary, the contract services invoices are all rejected because the claim lacked credible evidence to support the notion that these measures were taken for the purpose of mitigating oil pollution.

**The contract services portion of the submission is rejected in its entirety.**

#### Schedule 3 – Travel

Claimed: \$437.80

[48] The submitted costs are for the CCG personnel that travelled from Saint John to Beaver Harbour between 20 January 2022 and 6 May 2022. The claim includes a spreadsheet with a breakdown and summary for each employee and date for which meal allowances are claimed. There were no receipts submitted as part of the claim.

[49] The costs associated with lunch allowances for the three CCG employees who attended the incident site on 20 January are accepted. This amounts to \$64.80. These costs were associated with attending the incident site and conducting an initial assessment, which was a reasonable measure. However, the CCG knew about the Vessel for some time and had attended it before, so the employees should have been better equipped for the first trip. For this reason, the costs associated with dinner allowances for 20 January are rejected. That said, the dinner costs for the third employee who did not attend the incident site on the initial trip is replaced with the lunch allowance rate, which is accepted.

[50] The remainder of the costs submitted under this schedule are rejected. The CCG personnel departed for Beaver Harbour at 1000 and returned at 1230 to conduct an assessment that took 30 minutes. It was unnecessary for this work to occur during lunch hours, so the costs incurred were unreasonable. The meal costs on 25 January were unreasonable because of the lack of an oil pollution threat, which meant it was unnecessary to spend extra time monitoring the Vessel after operations were completed into lunchtime hours. The costs claimed for 26 January are also unreasonable for the same reasons.

**The travel portion of this claim is accepted in part in the amount of \$64.80.**

Schedule 4 – Salaries – Full Time Personnel

Claimed: \$2,895.16

[51] These costs are for the regular hours worked by 4 CCG employees, including 27% EBP. The claim is supported by the Personnel & Equipment Daily Logs.

[52] The hourly rates claimed for each employee are reasonable. Where rounding differences occur in the calculations, the costs stated in the submission are used.

[53] The salary costs associated with the hours worked on 20 January are accepted in the amount of \$763.02. Five hours per employee are accepted to reflect the amount of time it would have taken for one round trip between Saint John and Beaver Harbour instead of the two round trips that occurred. This is the case for the reasons discussed in paragraph 34 above.

[54] The salary costs associated with the two and a half hours worked by two CCG employees on 21 January are accepted in full. The employees attended the incident site for 30 minutes to assess the containment boom, which was a reasonable measure.

[55] The salary costs associated with the seven and a half hours worked by two CCG employees on 25 January are reduced to three hours each. The employees started work at 0700 and the boom was removed at 0945. The monitoring afterwards is not accepted as a reasonable measure with respect to an oil pollution threat. Salary costs on this day are accepted in part in the amount of \$285.25.

[56] The salary costs associated with the seven and a half hours worked by two CCG employees on 26 January are rejected. The measures taken on this day were not connected to oil pollution mitigation. The costs incurred by two CCG employees for five hours on 6 May are similarly rejected.

**The salaries portion of the submission is accepted in part in the amount of \$1,291.84.**

Schedule 5 – Overtime – Full Time Personnel

Claimed: \$1,039.12

[57] These costs are for the overtime hours worked by four CCG employees, including 27% EBP. The claim is supported by the Personnel & Equipment Daily Logs.

[58] The annual and hourly rates claimed for each employee are reasonable. Where rounding differences occur in the calculations, the costs stated in the submission are used.

[59] Overtime costs incurred on 20 January are rejected for the reasons stated in paragraphs 34 and 38. The 3.75 overtime hours were incurred during the second trip to Beaver Harbour, which was unreasonable because the CCG had knowledge of the Vessel and thus should have been appropriately equipped for the first trip.

[60] Overtime costs incurred on 21 January are rejected. The claim states that the 4.5 overtime hours worked by the two CCG employees on this day were for the completion of contracting documents for the refloating and removal of the Vessel. These measures are considered wreck removal, so these costs are unreasonable.

[61] Overtime costs incurred on 25 January are accepted in part in the amount of \$112.31. The 1.5 hours incurred by the two CCG employees for the travel to and from Beaver Harbour and the removal of oil booms are accepted as reasonable. Once this was completed at 0945, the costs incurred for monitoring were no longer reasonable since the Vessel was no longer a pollution threat.

**The overtime portion of the submission is accepted in part in the amount of \$112.31.**

Schedule 11 – Pollution Counter-Measures Equipment (PCME) Claimed: \$242.56

[62] According to the claim, these costs are for the use of the PRV I, 100 feet of 18-inch containment boom, and four sorbent pads. The PRV Logs, the Personnel & Equipment Daily Logs, and the Equipment Site Log indicated the equipment used and the costs.

[63] The costs associated with the four sorbent pads and 100 feet of containment boom are reasonable and accepted. The claim indicates that the pads and boom were placed on 20 January and removed on 25 January. This amounts to the combined amount of \$175.00.

[64] The claim indicates that the PRV I was used on 20 January to assist with placing the boom and sorbent pads. The rate applied to the PRV I is not in line with the CCG Charge Out Manual. The daily rate for a PRV is \$53.21 instead of \$67.56, which is the daily rate for vehicles. Since the PRV I was only used for 2.5 hours, the costs associated with it are reduced to \$26.61.

**The pollution counter-measures equipment portion of the submission is accepted in part in the amount of \$201.61.**

Schedule 12 – Vehicles Claimed: \$561.64

[65] These costs are for the use of vehicles for trips between Saint John and Beaver Harbour from 20 January to 6 May. The costs are based on a rate of \$0.22 per kilometre, plus a daily rate of \$67.56. No gas receipts are provided. The rates used to calculate the vehicle costs are reasonable. A Vehicle Log is provided, but the year is labelled incorrectly.

[66] According to Google Maps, this is a round trip of approximately 133km. The distances recorded in the Vehicle Log all exceed that distance, so 150km is considered reasonable for the purposes of these trips, accounting for stops and detours that may have occurred.

[67] The vehicle costs incurred on 20 January are reduced to \$100.56 for the reasons explained in paragraphs 34, 38, and 44. The second trip on that day was not reasonable, so only the costs

associated with the first trip are accepted. In addition, 150km of this trip is considered reasonable, and excess distance is not accepted.

[68] The vehicle costs incurred on 21 and 25 January are reduced to \$100.56 for the same reason as 20 January, as the necessity for the trips is accepted but adjusted to reflect the reasonable distance of 150km.

[69] The vehicle costs incurred on 26 January and 6 May are rejected. The Vessel no longer posed a pollution threat, so the measures taken on those days were wreck removal. Because of this, these costs are not compensable.

**The vehicles portion of the submission is accepted in part in the amount of \$301.68.**

Schedule 13 – Administration

Claimed: \$130.80

[70] The CCG submission advances a claim for administration costs at a rate of 3.09%, applied against claimed materials, salaries, travel, other allowances, casual salaries, ship operating & maintenance costs, and aircraft operating & maintenance costs.

[71] The 3.09% rate is generally accepted as reasonable. In this case, only the salary costs and travel costs qualify for administrative consideration. When calculating the administrative costs for these claims, the sum of the recommended costs (Schedule 3 = \$64.80, Schedule 4 [less EBP] = \$1,017.97) becomes \$1,081.98. Applying the 3.09% administrative rate to this amount equals \$33.43.

**The administration portion of the submission is accepted in part in the amount of \$33.43.**

**OFFER SUMMARY AND CLOSING**

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

| Schedule                                       | Claim \$  | Offer \$ |
|------------------------------------------------|-----------|----------|
| 1 – Materials and supplies                     | Nil       | Nil      |
| 2 -- Contract services                         | 30,846.26 | Nil      |
| 3 -- Travel                                    | 437.80    | 64.80    |
| 4 -- Salaries – FT personnel                   | 2,895.16  | 1,291.84 |
| 5 -- Overtime – FT personnel                   | 1,039.12  | 112.31   |
| 6 -- Other allowances                          | Nil       | Nil      |
| 7 -- Salaries casual personnel                 | Nil       | Nil      |
| 8 -- Ships costs (excluding fuel and overtime) | Nil       | Nil      |
| 9 -- Ships propulsion fuel                     | Nil       | Nil      |

| Schedule                                   | Claim \$         | Offer \$        |
|--------------------------------------------|------------------|-----------------|
| 10 -- Aircraft                             | Nil              | Nil             |
| 11 -- Pollution counter-measures equipment | 242.56           | 201.61          |
| 12 -- Vehicles                             | 561.54           | 301.68          |
| 13 -- Administration                       | 130.80           | 33.43           |
| <b>TOTAL</b>                               | <b>36,153.24</b> | <b>2,005.38</b> |

*Table 1 – Summary of amounts claimed and allowed.*

[73] Costs and expenses in the amount of \$2,005.38 are accepted and will be paid together with statutory interest calculated at the date of payment if the Offer is accepted.

[74] 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.

[75] 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 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.

[76] 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.

[77] Finally, when 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