

Ottawa, 29 August 2019  
SOPF File: 120-815-C1  
CCG File:

**VIA REGISTERED MAIL**

Director, Operational Business  
Canadian Coast Guard  
200 Kent Street (5N177)  
Ottawa, Ontario K1A 0E6

**RE: *Tymac No. 20* – Tsehum Harbour, BC – DOI: 12 September 2017**

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We have completed our investigation and assessment of the claim for \$36,177.31 (“Claim”) that the Canadian Coast Guard (“CCG”) submitted for costs and expenses incurred in relation to an oil pollution incident involving the fishing vessel *Tymac No. 20* (“Vessel”). We find the Claim to be established, in part, in the amount of **\$26,786.87**. Accordingly, we hereby make an Offer of Compensation (“Offer”) in that amount, plus accrued interest of \$1,899.04, pursuant to sections 105, 106, and 116 of the *Marine Liability Act* (“MLA”). The amount of the Offer plus interest comes to **\$28,685.91**.

The following reasons are provided to explain the disparity between the amount claimed and the amount offered by the Administrator of the Ship-source Oil Pollution Fund (“Administrator”).

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**Applicable Statutory Scheme**

This Claim is subject to the substantive provisions of the *Canada Shipping Act, 2001* (“CSA”) and the *MLA* as they were at the time of the incident. All references to these statutes refer to them as they were before the changes introduced when Bill C-86 came into force.

**Incident and Decision Overview**

On 12 September 2017, CCG responded to a report that the sunken Vessel was upwelling pollutants in Tsehum Harbour. CCG deployed one Environmental Response (“ER”) specialist for an initial assessment. Observing a diesel sheen, the ER specialist confirmed the report and deployed boom.

On 13 September 2017, CCG deployed three more ER personnel to the scene. We find the deployment of the additional ER personnel (and the costs associated with the deployment)

reasonable under the circumstances of the incident. CCG hired Cold Water Divers Inc. to begin the salvage process and transport the Vessel to a haul-out facility. We find the engagement of Cold Water Divers reasonable in the circumstances. While the claim did not include a breakdown of the number of divers, their tasks, and their hours, we were able to infer this information by using provincial standards for commercial diving safety.

On the same day, Vector Yacht Services Ltd. (“Vector”) removed the Vessel from the water and stored it on land for inspection the following week. Although not explicitly stated in the Claim “Narrative,” the included invoices demonstrate that Vector subcontracted Hetherington Industries to pump out the Vessel on this day or the one following. The Claim did not include a detailed breakdown of the number of employees working for Vector, their wages, or their hours.

On 18 September 2017, Building Sea Marine surveyed the vessel. CCG then decided to deconstruct the Vessel, citing the survey results as justification for classifying the Vessel as an oily waste. We find CCG’s decision to deconstruct the Vessel reasonable, as the marine surveyor’s observations state “all of the interior below-deck spaces are lightly fouled with diesel fuel and oil [and the] bilge carries an amount of oily water.” The surveyor’s photos also show oil-saturated wooden planks oozing oil from the bow of the Vessel, in addition to rotting planks.

On 22 September 2017, Vector deconstructed the Vessel.

## **Assessment**

As our reductions are limited to Schedules 2 and 13, we limit our reasons to a discussion of those Schedules.

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

CCG claimed a total of \$33,215.00 for four separately contracted services. Cold Water Divers Inc. raised the sunken Vessel and towed it to a haul-out facility for \$7,492.80. Vector provided multiple services of its own and sub-contracted others for \$22,542.80. Hetherington Industries removed and disposed of soiled absorbent pads for \$1,275.75. Building Sea Marine conducted a survey of the Vessel for \$1,903.65.

#### *Cold Water Divers Inc.*

The use of Cold Water Divers was a reasonable measure to salvage and tow the Vessel. As stated above, we were able to use inference to overcome evidentiary issues regarding the breakdown of the claimed costs. We find the amount of \$7,492.80 used to contract with Cold Water Divers Inc. to be established in full.

#### *Vector Yacht Services Ltd.*

CCG contracted Vector for several services, many of which Vector further sub-contracted. We find many of these services reasonable and established on the evidence. This includes the haul-

out operation, removal of pollutants from the Vessel, disposal of same, Vessel cleanup, and demolition of the Vessel. The claimed labour hours – 65 hours at \$126.00 per hour – were not supported by a cost breakdown. Documentation was not included for the number of workers, their rates, or their specific tasks, and we were unable to determine the requisite information with inferences. We therefore find that CCG did not overcome the evidentiary threshold required to establish this portion of the claim.

CCG paid storage fees for a total of 15 days, 6 of which occurred after the survey was completed on 18 September 2017. The ‘Narrative’ and attached invoices do not include any evidence to support why CCG left the Vessel in storage despite deciding to deconstruct it on 18 September. As such, we find 9 of the 15 days (and their attached costs and expenses) established on the evidence.

We find \$13,158.95 of the \$22,542.80 paid to Vector to be established.

*Hetherington Industries Ltd.*

The removal and disposal of the soiled sorbent pads was a reasonable measure on the evidence. We find the amount of \$1,275.75 used to contract with Hetherington Industries to be established in full.

*Building Sea Marine*

The Building Sea Marine survey was a reasonable measure to assess the state of the Vessel, and the surveyor’s report demonstrated that the Vessel was an oily waste. We find the amount of \$1,903.65 contract with Building Sea marine to be established in full.

**Schedule 13 – Administration**

CCG claimed \$36.36 in administration costs, representing a rate of 3.09% of the amount claimed for travel and salaries, less employee benefits. The Administrator is currently reviewing CCG submissions on this new, higher rate. Until such time as we find the new rate to be reasonable, we will continue to apply the existing rate of 2.53%, which yields the established amount of \$29.77 under this Schedule.

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We look forward to receiving notification of your acceptance so that payment can be made without delay. In considering this Offer, kindly note that you have 60 days upon receipt to notify the undersigned whether you accept it. Alternatively, you have 60 days upon receiving this Offer to appeal its adequacy in the Federal Court. The *MLA* provides that if no notification is received at the end of the 60-day period, you will be deemed to have refused the Offer.

If you accept this Offer, the *MLA* provides that the Administrator benefits from a statutory release and subrogation to the extent of the payment made to you in relation to the subject incident.

Yours sincerely,

Mark A.M. Gauthier, B.A., LL.B  
Deputy Administrator, Ship-source Oil Pollution Fund

Encl.: Appendix (1)

c.c: Superintendent, Environmental Response, Western Region

**Appendix: Summary Assessment Table**

| <b>Schedule</b>                           | <b>Claimed</b> | <b>Established</b> |
|---|----------------|--------------------|
| 2 – Contract Services                     | \$33,215.00    | \$23,831.15        |
| 3 – Travel                                | \$189.21       | \$189.21           |
| 4 – Salaries – Full Time Personnel        | \$1185.08      | \$1185.08          |
| 5 – Overtime – Full Time Personnel        | \$972.54       | \$972.54           |
| 11 – Pollution Counter-measures Equipment | \$444.00       | \$444.00           |
| 12 – Vehicles                             | \$135.12       | \$135.12           |
| 13 – Administration                       | \$36.36        | \$29.77            |
| <b>Total in Principal</b>                 | \$36,177.31    | <b>\$26,786.87</b> |
| <b>Interest</b>                           |                | <b>\$1,899.04</b>  |
| <b>Grand Total</b>                        |                | <b>\$28,685.91</b> |