

## **OFFER LETTER**

2019-12-06

Ottawa, Ontario  
SOPF File: 120-797-C1  
CCG File: n/a

### **VIA REGISTERED MAIL**

Director, Operational Business  
Canadian Coast Guard  
200 Kent Street (5n177)  
Ottawa, Ontario K1A 0E6

**RE: M/V ANAPAYA – Ladysmith, B.C.**  
**Incident date: 2017-10-21**

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### **SUMMARY AND OFFER**

This letter responds to a claim submitted by the Canadian Coast Guard (the “CCG”) with respect to the vessel ANAPAYA. The vessel was involved in incident on or about October 21, 2017, in the vicinity of Ladysmith, B.C.

On September 10, 2019, the Office of the Administrator of the Ship-source Oil Pollution Fund (the “Fund”) received the CCG’s claim for costs and expenses related to the incident. The Fund has reviewed the claim and reached a determination. This Offer Letter explains the determination and advances an offer of compensation pursuant to sections 105, 106 and 116 of the *Marine Liability Act* (the “MLA”).

The Fund has determined that the CCG’s claim should be allowed, in part. The amount of \$317,467.67 (the “Offer”) is offered with respect to this claim.

The Offer comprises the amount of \$296,024.24 for costs and expenses, plus the amount of \$21,443.43 for accrued interest.

The reasons which explain the Offer are set forth below.

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### **THE CLAIM SUBMISSION**

The CCG claim submission includes a narrative which describes relevant events relating to the incident involving the M/V ANAPAYA. It also includes a summary of the costs and expenses claimed, backup documents related to some of those claimed costs and expenses, documentation from a subcontractor, and a marine survey report. To the extent that those documents are relevant to the Fund’s determination, their contents are described below.

### The narrative

According to that narrative, on October 21, 2017 at 13:10, the CCG was alerted that an unidentified vessel had sunk in an area known as the “Dog Patch”, near Ladysmith, B.C. The CCG reached out to a marine contractor whose facility was proximate to the area of the sinking. That contractor, Saltair Marine Services (“Saltair Marine”), indicated that the vessel in question was a 90-foot wooden hulled vessel known as the M/V ANAPAYA.

Saltair Marine advised that there was oily pollution upwelling from the sunken vessel. The CCG directed Saltair Marine to deploy oil pollution counter-measures, including a 24-inch boom.

The owner of the vessel could not be located, despite the efforts of the CCG.

CCG personnel were dispatched from Victoria, B.C. to inspect the vessel on October 22, 2017. When the CCG crew arrived on the scene, they immediately observed signs of oil pollution, most of which was contained in a boom. CCG personnel deployed additional oil pollution counter-measures.

Based on observations of the scene, and with no information about the quantities of oil pollution onboard the sunken ANAPAYA, the CCG determined that the vessel must be refloated. Saltair Marine was contracted to raise the vessel using a crane and divers.

An underwater survey taken in preparation for lifting the vessel identified significant damage to the hull of the ANAPAYA. Efforts to repair the hull to allow for lifting were carried out.

On November 2, 2017, the ANAPAYA was successfully raised. After a marine survey was done on November 7, 2017, a decision was made to deconstruct the ANAPAYA, based on significant amounts of fuel remaining aboard the vessel itself being fouled with oil pollution. Because of the vessel’s size, it was determined that it should be deconstructed in the water.

The ANAPAYA was deconstructed on December 31, 2017. Up until the destruction was complete, pollution mitigation efforts had to be maintained. As well, measures were required to keep the ANAPYA afloat.

### The costs and expenses summary

The claim submission included the following summary of the costs and expenses claimed by the CCG:

POLLUTION INCIDENT			
<b>INCIDENT:</b>	<b>ANAPAYA</b>	<b>PROJECT CODE:</b>	<b>NA</b>
<b>INCIDENT DATE:</b>	<b>Oct 21 2017</b>	<b>DATE PREPARED:</b>	<b>Aug 20/19</b>
<b>DEPARTMENT:</b>	<b>CANADIAN COAST GUARD</b>	<b>PREPARED BY:</b>	<b>H. Wong</b>
			<u>SCH</u>
MATERIALS AND SUPPLIES	-		1
CONTRACT SERVICES	291,249.82		2
TRAVEL	363.01		3
SALARIES - FULL TIME PERSONNEL	3,102.77		4
OVERTIME - FULL TIME PERSONNEL	3,523.46		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)	12,085.69		11
VEHICLES	657.50		12
ADMINISTRATION	91.11		13
	<hr/>		
<b>TOTAL CCG COST OF INCIDENT</b>	<b>\$ 311,073.37</b>		

Figure 1 - Screen capture of CCG cost summary

The marine survey report

The CCG submission includes a survey report prepared by Building Sea Marine. The December 31, 2017 report is based on a survey carried out on November 7, 2017. The survey was conducted shortly after the vessel was refloated.

With respect to the need to deconstruct the vessel, the marine survey report includes the following relevant findings, at page 6 of the report:

The machinery space bilge is moderately fouled with diesel fuel and oil. The fuel tanks are considered to likely be empty of any fuel after being submerged for at least a week. The state of contents within any of the sundry tanks is unknown. There are various sized batteries strewn about the deck and interior spaces.

**SURVEYOR'S COMMENTS and CONCLUSIONS:**

It is reported the vessel recently sank for unknown reasons and has since been recovered after sitting on the bottom for at least a week. The general state of the vessel, as surveyed, is considered to be consistent with that report.

It is considered that the hull was originally well made from good quality materials.

The vessel's hull generally appears to have had very little maintenance or repairs conducted over the past decade, or longer.

The condition of the hull planking, decking and internal structural members of the topside hull, extending throughout the hull is generally considered poor.

The condition of the planking and internal structural members of the underwater hull could not be confidently determined but poor condition is inferred from the amount of soft patching required to keep the vessel afloat and the rate of water ingress visible within the aft hold sump.

It is considered very likely the underwater and topside plank seams require complete recaulking.

Without docking the vessel for underwater inspection to establish the actual condition of the underwater hull and root cause of the water ingress, it is considered the vessel will remain an immediate risk to the environment and navigable waters of BC.

It is considered the hull, deck and deckhouse could be rebuilt to a seaworthy standard but that would take very significant resources and time. The machinery and systems require complete rebuilding &/or replacement.

*Figure 2 - Excerpt from marine survey report, page 6*

The reference to the ANAPAYA's bilge space being "moderately fouled with diesel fuel and oil" at the top of page 6 of the marine survey report is the only reference to oil contamination of the vessel itself in the survey report.

**Contractor documentation**

Saltair Marine provided photographic documentation of their work. The photographs are helpfully annotated with comments.

This documentation included photographs and description of the oiled state of the ANAPAYA after it was raised, in a document labelled “Vessel ‘Anapaya’ 2017 photos”. Included at page seven of the document were the following photographs and descriptions that document oil contamination:





	
<p>11/3/2017 Change out absorbants as required. Oily substance coating interior walls, floor and debris inside of the vessel. Additional clean up required.</p>	<p>11/03/2017 Change out absorbants as required. Oily substance coating interior walls, floor and debris inside of the vessel. Additional clean up required.</p>
	
<p>11/3/2017 Change out absorbants as required. Oily substance coating the inteior of vessel and debris. Propain tank requirceing to be removed. Additional containment and clean up required.</p>	<p>11/3/2017 Change out absorbants as required. Fuel tanks in haul of vessel. Above decks and debris requiring to be removed to safely pump remove fuel tank. Oily sludge and debris under tanks required additional containment and clean up.</p>

Figure 3 - Excerpt from page 7 of the document "Vessel 'Anapaya' 2017 photos"

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## **FINDINGS OF THE ADMINISTRATOR**

### *Eligibility of the claimant*

The Administrator has determined that the CCG is an eligible claimant for the purposes of s. 103 of the MLA. It is further determined that some of the claims submitted by the CCG are eligible for compensation from the Fund.

The Administrator has further determined that this incident occurred in the territorial sea of Canada.

### *The sinking incident*

The ANAPAYA sunk near Ladysmith, B.C. on October 21, 2017. The vessel, built in 1918 as a fishing vessel, was wooden hulled and 88-feet in length. The vessel appears not to have been designed or modified for the carriage of oil. The Administrator concludes that the vessel was not a tanker and was neither a sea-going vessel nor seaborne craft.

The area where the ANAPAYA sunk is officially identified as District Lot 651. Locally known as the “Dog Patch”, the area is a notorious dumping ground for old, derelict vessels. The ANAPAYA was such a vessel. The ANAPAYA was identified as a “vessel of concern” by Transport Canada. It sat in the Dog Patch, apparently abandoned, for several years before sinking on or about October 21, 2017.

After the sinking, the ANAPAYA was fully submerged in 25-feet of water. The vessel’s mast was the only portion that remained above water at high tide.

### *The pollution threat posed*

Witnesses at the scene of the sinking observed an oily sheen on the surface of the water. The Fund has determined that the ANAPAYA was the source of the oily pollution into the waters of the Dog Patch.

After the sinking, the CCG was unable to locate the owner of the vessel. No information was available about the quantity onboard the vessel, save for the fact that there was enough oil present to result in a steady upwelling of pollution.

The Dog Patch is an area sensitive to oil pollution. First Nations communities and others harvest clam beds in the general area. It was reasonable for the CCG to have concerns about pollution from the ANAPAYA spreading to cause harm to the environment and to the public.

The pollution upwelling from the sunken ANAPAYA constituted a discharge of a pollutant for the purposes of section 75 and 77 of the MLA. Some level of response was reasonable in the circumstances.

### Initial observations and deployment of counter-measures

Upon receiving reports of pollution, the CCG dispatched personnel to make observations. The Fund considers that observation and monitoring was a reasonable measure based on the reports provided to the CCG. However, the reasonableness of sending a three-person crew by boat requires further analysis.

The CCG personnel who attended at the Dog Patch observed oil upwelling from the ANAPAYA. In response, the CCG (through its contractor, Saltair Marine) deployed 24-inch booms to contain the oil pollution as well as sorbent materials to soak up oil pollution. The Fund considers that such measures were appropriate in the circumstances and carried out in a reasonable fashion.

Based on the materials submitted by the CCG, the Fund concludes that the ANPAYA posed an ongoing pollution threat.

### Raising the vessel

The CCG determined that the ANAPAYA should be raised to stop the discharge of pollutants into the water. Further to that, divers carried out observational dives that revealed significant damage to the hull of the vessel, some of which was presumably sustained during the sinking. The damage to the hull was significant enough to require follow-up dives to patch and repair the hull to allow the ANAPAYA to be raised. Further, the poor condition of the vessel meant that after it was raised, it was necessary to maintain a watch to keep it afloat, including by pumping water from it.

After the ANAPAYA was refloated, a decision was made to tow the ANAPAYA to a facility owned by Saltair Marine and, further, to deconstruct the vessel in the water. The reasonableness of undertaking deconstruction, particularly pursuant to an emergency contract, requires carefully scrutiny.

The materials submitted by the CCG did not include documentation on the decision to deconstruct the ANAPAYA in the water rather than lifting the vessel onto land. An explanation was necessary given that the in water deconstruction:

- took more than 30 days;
- required 22 all day watches to pump the vessel out and keep it afloat; and
- deployed three different barge and crane combinations to keep the vessel afloat.

On October 9, 2019, the Fund sought a further explanation. The CCG advised that the reason the ANAPAYA was left in the water was that Saltair Marine did not have the facilities to land a vessel the size of the ANAPAYA. If Saltair Marine was to carry out the deconstruction, it had to be done in the water.

The Fund has determined that, in this case, the above noted measures taken by the CCG were reasonable and in light of the ongoing pollution threat posed by the ANAPAYA, as well as:

- the size and condition of the vessel, including damage sustained during the sinking;
- the lack of local options for removing a vessel of this size from the water;

- the inability to locate the apparent owner of the vessel;
- the need to keep the ANAPAYA moored to a barge to keep her afloat; and
- the need to keep a watch crew aboard for dewatering.

The Fund notes that the CCG used its emergency contracting authority to engage Saltair Marine to carry out these measures. The CCG submission does not explain the rationale behind the decision to use emergency contracting. In the circumstances of this case, the rationale are presumed to be that Saltair Marine have a facility in Ladysmith and experience dealing with contaminated derelict vessels. It is important that the reasoning behind a decision to use emergency contracting be documented as, where it cannot be reasonably be presumed by the Fund, the decision to use emergency contracting may be determined to be unreasonable.

The Fund further notes that the reasonableness of using emergency contracting to award a deconstruction contract to Saltair Marine for a vessel that they cannot land because of the limits of their facilities is not clear-cut. In this case the documentation also notes that only limited trade personnel were deployed with respect to the deconstruction effort, which has the effect of extending the time and expense to complete deconstruction. Given the experience in this case, in the future claims should include documentation of the decision to provide the emergency contract, including whether the CCG was aware that the contractor did not have the capability of landing the vessel and where the contractor has limited trade personnel available for the effort that may expand timelines and costs. This need for documentation of the decision to award an urgent contract could be mitigated by having a standing offer in place as between the CCG and its potential emergency contractors, and submitting that contract along with a submission.

*The survey report, the decision to deconstruct and other supporting documents*

According to the CCG narrative, a Building Sea Marine report concluded that the ANAPAYA “the vessel... contained significant amount of fuel and oil pollution aboard in various tanks and the vessel itself was fouled with oil pollution”. The narrative indicates that based upon this evidence, and other information, the decision to deconstruct the ANAPAYA was reached. This CCG submission is problematic.

Building Sea Marine inspected the ANAPAYA on November 7, 2017 and issued a survey report dated December 22, 2017. The documentation of Saltair Marine’s work indicates that the deconstruction of the ANAPAYA began during the week of November 12, 2017. Deconstruction work began before the survey report was issued. The submission that the decision to deconstruct was based on the survey report is, at least in part, inaccurate.

To the extent that the decision to deconstruct was based on preliminary comments by Building Sea Marine, there is no documentation of those comments. This casts into doubt the facts underlying the stated reasons for deconstructing the ANAPAYA.

Second, the contents of the Building Sea Marine report do not match the facts described by the CCG in the narrative. Whereas:

- the CCG narrative refers to “significant amounts of fuel and oil pollution aboard in various tanks”, the Building Sea Marine report indicates that, “The fuel tanks are



considered to be empty of any fuel after being submerged for at least a week. The state of contents with any of the sundry tanks is unknown.”

- the CCG narrative indicates that the report says that “the vessel itself was fouled with oil pollution”, the Building Sea Marine report only notes that the vessel’s “machinery space bilge is moderately fouled with diesel fuel and oil”.

Further to the mismatch between how the CCG narrative describes the Building Sea Marine survey report and the contents of that report, the “comments and conclusions” section of the survey report suggests that the main problems posed by the ANAPAYA were not pollution related. That section refers to a list of repairs needed before the ANAPAYA could be returned to the water. None of the suggested repairs involve removing or otherwise abating oil contamination. While the conclusions section refers to the vessel as constituting “an immediate risk to the environment and navigable waters”, there is nothing in the section to suggest that the ANAPAYA was an **oil** pollution threat, as opposed to a more general threat to the environment and navigation.

Based on the foregoing, the Fund has determined that the Building Sea Marine report does not support the decision to deconstruct the ANAPAYA as described in the CCG narrative. Moreover, to the extent that the Building Sea Marine report can be relied upon, it supports a conclusion that the deconstruction of the ANAPAYA on an emergency contract basis was not a reasonable measure taken to prevent or abate oil pollution. The Fund concludes that to the extent the decision to deconstruct the ANPAYA relied on the contents of the Building Sea Marine report, that decision was unreasonable, and the narrative provided by the CCG refers to no other basis.

On the particular facts of this case, the foregoing conclusion is not the end of the deconstruction analysis. The Fund has examined the submission from the CCG in its entirety. The submission includes additional, relevant documents not mentioned in the narrative. The photographs and notations provided by the contractor hired to raise and deconstruct the ANAPAYA, Saltair Marine, are informative and worth consideration with respect to the deconstruction issue.

The document labelled “Vessel ‘Anapaya’ 2017 photos” was prepared by Saltair Marine as part of its contracted work on the project. Pages 6 through 11 of this document display photographs, along with captions, which are replete with depictions of the oily state of the ANAPAYA on November 2, 2017 (i.e., after she was raised). There is documentation of an oily substance throughout the vessel, as well as buckets of oily materials found inside the ANAPAYA’s living spaces. The Fund has determined that the Saltair Marine document establishes that the ANAPAYA was extensively polluted. In the circumstances, the decision to deconstruct the ANAPAYA was therefore reasonable.

On a closing note, in light of the discrepancies between the Saltair Marine documentation and the Building Sea Marine report, the Fund has determined that the Building Sea Marine report should not be treated as reliably documenting the state of the ANAPAYA for oil pollution purposes. The Fund would disallow the expense of securing the Building Sea Marine report had the CCG sought to recover that expense. It appears, based on what was submitted, that the CCG has not sought to recover for that expense in any event.

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## CLAIM AND OFFER DETAILS

The CCG submission broke its claim down into several categories. This section of the offer letter reviews each of those categories of claim in detail, and provides reasons as to why certain portions of the claim have been disallowed.

*Schedule Two – Contract Services*

*Claim: \$291,249.82*

The CCG retained a single contractor, Saltair Marine, to respond to the initial pollution incident, raise the ANAPAYA and then deconstruct the vessel.

Saltair Marine prepared a scope of work, entitled an “Action Plan”, which was submitted to the CCG and apparently approved. The Action Plan suggested the following efforts:

- Establish a containment boom around the site;
- Customize salvage/lifting equipment, make patching strips and brackets, splice (2) piles;
- Commercial divers patch Starboard side of submerged vessel;
- Mobilize spud barge (Saltair Rigger), install pile dolphin and blocks, install lifting strap, stabilize vessel, patch Port side of vessel, install brackets and buoyancy barrels;
- Mobilize barges/cranes, salvage pumps, oil absorbents, rental equipment, place lifting straps. Lift the vessel till awash, then , pump out hull, assess vessel, patch further leaks, secure the vessel for tow;
- Maintain pumps and salvage equipment on the ANAPAYA and tow to the Saltair Marine facility in Ladysmith Harbour; and
- Assess the vessel.

The materials submitted by the CCG make scant reference to the Action Plan, but it appears it was followed. The Fund has determined that the Action Plan was appropriate in the circumstances.

In furtherance of its work in raising, and subsequently deconstructing, the ANAPAYA, Saltair Marine retained the services of several subcontracts. The CCG submission included copies of those invoices, which have been carefully reviewed by the Fund. The breakdown of expenses submitted to the CCG by Saltair Marine is set out below:

*Table 1 - Contractor and subcontractor breakdown*

<b>Contractor</b>	<b>Work</b>	<b>Cost</b>	<b>Markup</b>	<b>Markup \$</b>	<b>Claimed</b>
Saltair Primary Contractor	Environmental Containment, Monitoring and clean up of vessel Anapaya				\$226,385.57
Northwest Wire Rope	Wire rope and shackles were provided. The equipment was	\$1078.60	10%	\$107.86	\$1,186.46

Contractor	Work	Cost	Markup	Markup \$	Claimed
Invoice Oct 30, 2017	described as not reusable				
SunDown Diving Invoice Nov 3, 2017	Dives on 6 days; including a dive survey of the vessel	\$14,625.00	10%	\$1,462.50	\$16,087.50
Robinson Rentals Invoice Nov 06, 2017	Yarding and Snatch Blocks; required to rig the lift	\$1,348.20 with PST	10%	\$126.00	\$1,474.20
Robinson Rentals Invoice Nov 08, 2017	Trash Pumps and hoses; required to dewater and stabilize vessel after lift	\$415.75 with PST	10%	\$38.89	\$454.64
Bumper to Bumper Invoice November 17, 2017	3 pieces, cut off wheels	\$29.55 with PST	10%	\$2.62	\$32.17
DBL Disposal Invoice Nov 30, 2017	Const/Demo Waste, major disposal Nov 28/29. Completed 30 November	\$4,740.30	10%	\$474.03	\$5,214.33
Hetherington Invoice Dec 07, 2017	3 drums waste absorbent; 3 drums oily water December 7, 2017	\$770.00	10%	\$77.00	\$847.00
Hetherington Invoice Dec 12, 2017	1 drum waste paint cans December 11, 2017	\$447.00	10%	\$44.70	\$491.70
DBL disposal December 31, 2017	Construction/demolition waste from Anapaya. Dumping fees. Invoice only. (106.40 Tonnes) This work was completed on December 7, waste delivery at end of month.	\$23,463.33	10%	\$2,346.33	\$25,809.63
Excavating Invoice Jan 01, 2018	Linkbelt, demolition of boat Invoice dated January 1, 2018	\$1,030.00	10%	\$103.00	\$1,133.00
Schnitzer Steel Can Ltd	<b>Steel Credit</b>				<b>(\$3,031.92)</b>
GST	Invoice January 15,				\$13,804.21

Contractor	Work	Cost	Markup	Markup \$	Claimed
	2018				
<b>Total Claimed by Saltair</b>	<b>Invoice January 15, 2018</b>				<b>\$289,888.49</b>

The submission from the CCG included the invoices from Saltair Marine and its subcontractors, as documented above. The Fund has reviewed the documents relating to Saltair Marine's subcontractors. It has been determined that the invoices appear to relate to measures taken to respond to an oil pollution incident and that they are otherwise reasonable. The portion of the claim arising out of these costs and expenses has been determined to be appropriate. It is allowed in its entirety.

The CCG submission also provided detailed logs of the work carried out by Saltair Marine. Separate logs were also produced to show the work by the CCG. These logs have been consolidated into a table by the Fund, and the consolidated table is set forth below (dates shown in red denote weekends or holidays):

*Table 2 - Consolidated labour logs for the ANAPAYA response*

Date	CCG R	CCG OT	Saltair R	Saltair OT	Comments
<b>Oct 21</b>		10.5		14	CCG two officers to Ladysmith; travel by personal vehicles
<b>Oct 22</b>		21	4		CCG three officers to Ladysmith; travel by CCG vehicle
<b>Oct 24</b>	21		21.5		CCG three officers to monitor dive survey; travel by CCG vehicle
<b>Oct 25</b>			32	0.5	
<b>Oct 26</b>	03		28.25	3	Divers patching starboard side of vessel
<b>Oct 27</b>		21	35	1	Saltair, Mobilize to site, load buoyancy barrels, mobilize crane onto Saltair Rigger
<b>Oct 28</b>		30	15	31	CCG three officers assist cleanup, attend boom; PVR II used by CCG to travel from Sidney to Ladysmith Mobilize to site, set up lifting brace
<b>Oct 29</b>			12.25	25.25	Scale 70 tonne lift crane pull into place
<b>Oct 30</b>			48	1.5	Build lifting brace, lift vessel off Jill post, patch starboard
<b>Oct 31</b>	14.25		45.5	.5	CCG three officers, monitor salvage progress; PVR II used by CCG to travel from Sidney to Ladysmith Patch port side of vessel
<b>Nov</b>	13		40	2.0	CCG two officers, monitor salvage ops; PVR II

Date	CCG R	CCG OT	Saltair R	Saltair OT	Comments
01					retrieved from IOS by CCG; travel from Sidney to Ladysmith.
Nov 02	22.5	16.5	48	7.5	plus am/pm watch/ CCG three officers, monitor lift of vessel. Vessel raised, due to ongoing water ingress, it was necessary at regular intervals for Saltair to pump out the vessel and maintain a constant vessel watch. PVR III retrieved from IOS by CCG, travel from Sidney to Ladysmith by boat
Nov 03			24	0.5	Plus 2 am/pm watch by Saltair
Nov 04					Plus 2 am/pm watch by Saltair
Nov 05					Plus 2 am/pm watch by Saltair
Nov 06			5.5		Plus 2 am/pm watch by Saltair
Nov 07	15	13	10		Plus 2 am/pm watch/ CCG two officers observed vessel survey. PVR III retrieved from IOS by CCG, travel from Sidney to Ladysmith by boat.
Nov 08					Plus 2 am/pm watch by Saltair
Nov09			13		Plus 2 am/pm watch by Saltair
Nov 10			16		Plus 2 am/pm watch by Saltair
Nov 11					Plus 2 am/pm watch by Saltair
Nov 12					Plus 2 am/pm watch by Saltair
Nov 13					Plus 2 am/pm watch by Saltair
Nov 14			20		Plus 2 am/pm watch by Saltair
Nov 15			30		Plus 2 am/pm watch by Saltair; alongside deconstruction
Nov 16			16		Plus 2 am/pm watch by Saltair
Nov17			12		Plus 2 am/pm watch by Saltair
Nov 18					Plus 2 am/pm watch by Saltair
Nov 19					Plus 2 am/pm watch by Saltair
Nov 20			23		Plus 2 am/pm watch by Saltair

<b>Date</b>	<b>CCG R</b>	<b>CCG OT</b>	<b>Saltair R</b>	<b>Saltair OT</b>	<b>Comments</b>
<b>Nov 21</b>			18		Plus 2 am/pm watch by Saltair
<b>Nov 22</b>			18		Plus 2 am/pm watch by Saltair
<b>Nov 23</b>			17		Plus 2 am/pm watch by Saltair
<b>Nov 24</b>			32		Plus 2 am/pm watch by Saltair
<b>Nov 25</b>			5		Plus 1 am/pm watch by Saltair
<b>Nov 27</b>			24		Significant parts of vessel and fuel tanks removed from the barge
<b>Nov 28</b>			19		Vessel deconstruction
<b>Nov 29</b>			40		Vessel deconstruction
<b>Nov 30</b>			37.5		Vessel deconstruction
<b>Dec 01</b>			23.5		De mob crane, prepare Containment Pad
<b>Dec 04</b>			41		Final clean up on Pad
<b>Dec 05</b>			32.5		Demobilization, clean containment boom
<b>Dec 06</b>			28.5		Separate disposal waste into bins and barrels
<b>Dec 07</b>			27		Load absorbents and oily water barrels
<b>Dec 08</b>			1		Metal disposal
<b>Dec 11</b>					All work completed

The Fund has determined that Saltair Marine’s work was a series of measures taken in response to an oil pollution incident. The amounts of labour and equipment documented in the submission are reasonable. The Fund accepts the part of the claim arising from the Saltair Marine invoice in its entirety.

The report prepared by Building Sea Marine resulted in an invoice which the CCG included in its submission. The CCG did not include that invoice in its claim summary. The Fund understands that the CCG did not intend to pursue a claim for that item, and agrees that excluding the invoice from consideration is appropriate given other determinations made by the Fund.

Schedule Three – Travel

\$363.01

The CCG sought to recover the expense of feeding personnel sent to Ladysmith in response to the sinking of the ANAPAYA.

The Fund has reviewed the activity logs for the CCG personnel (see Table 2 - Consolidated labour logs for the ANAPAYA response). CCG personnel attended on eight separate days to monitor the ANAPAYA, to place oil containment equipment, and to monitor the work of the contractor Saltair Marine. This travel arises from activities that are otherwise a reasonable response to an oil pollution incident.

This portion of the claim is allowed in its entirety.

Schedule Four – Salaries for Full Time Personnel

\$3,102.77

The CCG claimed for salaries for four different personnel to attend to the response to the sinking of the ANAPAYA. The CCG employees attended to monitor the ANAPAYA, to place oil containment equipment, and to monitor the work of the contractor Saltair Marine. This effort constitutes a reasonable measure taken with respect to an oil pollution incident.

This portion of the claim is allowed in its entirety.

Schedule Five – Overtime for Full Time Personnel

\$3,523.46

Overtime was incurred for parts of seven separate days while CCG personnel attended to the response to the sinking of the ANAPAYA. This effort supported a reasonable measure taken with respect to an oil pollution incident.

This portion of the claim is allowed in its entirety.

Schedule 11 - Pollution Counter-Measures Equipment (PCME)

\$12,085.69

The CCG retained Saltair Marine to be the primary responder for this incident. Saltair Marine's responsibilities included deploying and retrieving both fence boom and sorbent materials to contain and capture the oil pollution upwelling from the ANAPAYA.

When CCG personnel attended at Ladysmith, they travelled by road vehicle to ISO and then took a pollution response craft from ISO to Ladysmith, and then back. The CCG materials did not include any indication as to why a CCG vessel was required to respond to the incident in addition to the vessels put in place by Saltair Marine. The Saltair Marine Action Plan, which the Fund has determined was reasonable, did not call for such vessels.

While the Fund accepts that some monitoring of Saltair Marine's work was reasonable, the CCG submission includes no justification as to why a response craft was used to transport CCG personnel instead of road travel. The Fund has determined that the CCG has not established that the use of a CCG response craft was a measure reasonably taken in response to an oil pollution incident. The claim for the use of a craft is disallowed in its entirety.

The CCG also maintains a claim for \$85.00 worth of bales of sorbent pads. This claim is allowed in its entirety. To the extent that the CCG believes it was necessary that the CCG have placed these sorbent materials, the Fund has determined it would have been more appropriate to use the vessels that Saltair Marine already had in position. The use of a response craft instead caused an unreasonable duplication in equipment costs.

This portion of the claim is allowed, in part, in the amount of \$85.00.

*Schedule 12 – Vehicles* \$657.50

The CCG used three separate vehicles on seven separate days to transport personnel. The activities carried out by those personnel have already been determined to be related to measures taken with respect to an oil pollution incident. The amounts sought for the use of these vehicles has been determined to be reasonable.

This portion of the claim is allowed, in full.

*Scheduled 13 – Administration* \$91.11

The Fund and the CCG have previously agreed to increase payments on CCG claims to account for administrative overhead and claim preparation expenses. The rate previously agreed upon is 2.53%.

The CCG has instead claimed for admin fees using a rate of 3.09%. There are discussions underway to modifying the admin rate, but no agreement has been reached. Using the established rate, the admin charge is \$74.60.

This portion of the claim is allowed, in part, in the amount of \$74.60.

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### **OFFER SUMMARY AND CLOSING**

The following table is provided to summarize the claimed and allowed expenses with respect to the CCG claim for the ANAPAYA incident.

<b>SCHEDULE</b>	<b>CLAIM</b>	<b>OFFER</b>	<b>COMMENT</b>
Contract Services Saltair Marine	\$291,249.82	\$288,217.90	Difference is credit of steel
Marine Survey	\$0.00	\$0.00	The survey costs were not claimed by Coast Guard
Travel	\$363.01	\$363.01	
Salaries CCG	\$3,102.77	\$3,102.77	
Overtime CCG	\$3,523.46	\$3,523.46	
Pollution Counter Measures Equipment	\$12,085.69	\$85.00	Disallowed use of PRV to travel to and



SCHEDULE	CLAIM	OFFER	COMMENT
			from site
Vehicles	\$657.50	\$657.50	
Administration	\$91.11	\$74.60	Allowed 2.53 %
<b>Total</b>	<b>\$311,073.37</b>	<b>\$296,024.24</b>	

The amount of the Offer is \$317,467.67.

The Offer comprises the amount of \$296,024.24 for costs and expenses, plus the amount of \$21,443.43 for accrued interest.

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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 efforts to pursue subrogation.

Yours sincerely,

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