

**OFFER LETTER**

2019-12-20

Ottawa, Ontario  
SOPF File: 120-816-C  
CCG File: n/a

**VIA REGISTERED MAIL**

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

**RE: *M/V WHITE ORCA* – Ladysmith, B.C. - Incident date: 2017-11-15**

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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 M/V WHITE ORCA. The vessel was involved in incident on or about November 15, 2017, near Ladysmith, B.C.

On September 24, 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 \$52,824.08 (the “Offer”) is offered with respect to this claim.

The Offer comprises the amount of \$49,005.97 for costs and expenses, plus the amount of \$3,818.11 for accrued interest.

The reasons for the Offer are set forth below.

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**THE CLAIM SUBMISSION**

The CCG claim submission includes a narrative that describes certain events relating to the incident involving the M/V WHITE ORCA. The submission also includes a summary of the costs and expenses claimed, backup documents related to some of those claimed costs and expenses, documentation from a contractor, and a marine survey report.

To the extent that those documents are relevant to the Fund’s determination, they are reviewed below.

### The narrative

According to that narrative provided by the CCG, on November 15, 2017, the CCG was alerted that a vessel had sunk in an area known as the “Dog Patch”, near Ladysmith, B.C.

The same morning the CCG attended at the scene of the sinking and observed a sheen on the surface of the water, which was attributed to oil upwelling from the partially sunken vessel. A local marine services firm, Saltair Marine Services (“Saltair Marine”), also attended at the scene and deployed a boom to contain the oil pollution.

The CCG identified the sunken vessel as the M/V WHITE ORCA. The CCG contacted a man who it believed was the owner of the vessel. This person vigorously denied he was an owner of the vessel, and the CCG therefore proceeded to respond to the sinking on the understanding that the owner would not take steps themselves with respect to the vessel.

The CCG determined that the vessel should be raised to halt the release of oil into the water and contracted for Saltair Marine to do so. After confirming that a boom was in place to contain the pollution as it upwelled from the M/V WHITE ORCA, the CCG personnel who had attended at the scene returned to base.

Personnel from the CCG returned to the scene on November 16 and 17, 2017 to replace soiled sorbent materials and to adjust the fence boom surrounding the partially sunken M/V WHITE ORCA. At the same time, Saltair Marine was active on the scene, preparing to raise the M/V WHITE ORCA.

On November 18, 2017, at approximately 13:15, Saltair Marine successfully raised the M/V WHITE ORCA while the CCG observed the operation. The vessel was thereafter removed from the marine environment to dryland.

On December 7, 2017, Building Sea Marine carried out a marine survey of the M/V WHITE ORCA. The wooden hull of the vessel was noted to be in very poor condition, with holes and soft spots throughout.

The CCG made a decision to deconstruct the M/V WHITE ORCA. The narrative indicates that this determination was based on the marine survey, as well as other factors including the dilapidated state of the vessel and the presence of oil pollution onboard.

### The costs and expenses summary

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

		<u>SCH</u>
MATERIALS AND SUPPLIES	-	1
CONTRACT SERVICES	45,613.11	2
TRAVEL	72.00	3
SALARIES - FULL TIME PERSONNEL	2,626.22	4
OVERTIME - FULL TIME PERSONNEL	1,630.79	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)	13,039.71	11
VEHICLES	353.18	12
ADMINISTRATION	69.85	13
	<hr/>	
TOTAL CCG COST OF INCIDENT	<u>\$ 63,404.86</u>	

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 January 9, 2018 report is based on the survey carried out on December 7, 2017 shortly after the M/V WHITE ORCA was refloated.

With respect to the need to deconstruct the vessel, the marine survey report includes the following relevant findings, at page 7 of the report:

The vessel is a terrible mess throughout and all of the interior below-deck spaces are lightly fouled with diesel fuel.

### POLLUTANTS AND HAZARDS

The main engine, marine gear and hydraulic system remain assembled so it is assumed they also remain with their internal lubricating & hydraulic oils mostly in place in the sumps, except where likely part-displaced with seawater. Total volume estimated to be 40 gallons of gear oil and diesel engine oil.

Figure 2 - Excerpt from marine survey report, page 6

Other than a cataloguing of the oil storage tanks aboard, the survey report includes no further mentions of oil pollution. Notably, the section entitled “SURVEYOR’s COMMENTS and CONCLUSIONS” noted many different issues which would have prevented the vessel from being relaunched – but oil pollution risk was not listed.

### Contractor documentation

Saltair Marine provided photographic documentation of their work, along with comments that helpfully annotated the photographs. This was included in a document labelled “Vessel ‘White Orca’ 2017 photos”.

That document included photographs and description of the oiled state of the M/V WHITE ORCA after raising. Included at page five were the following photographs and descriptions that document oil contamination:

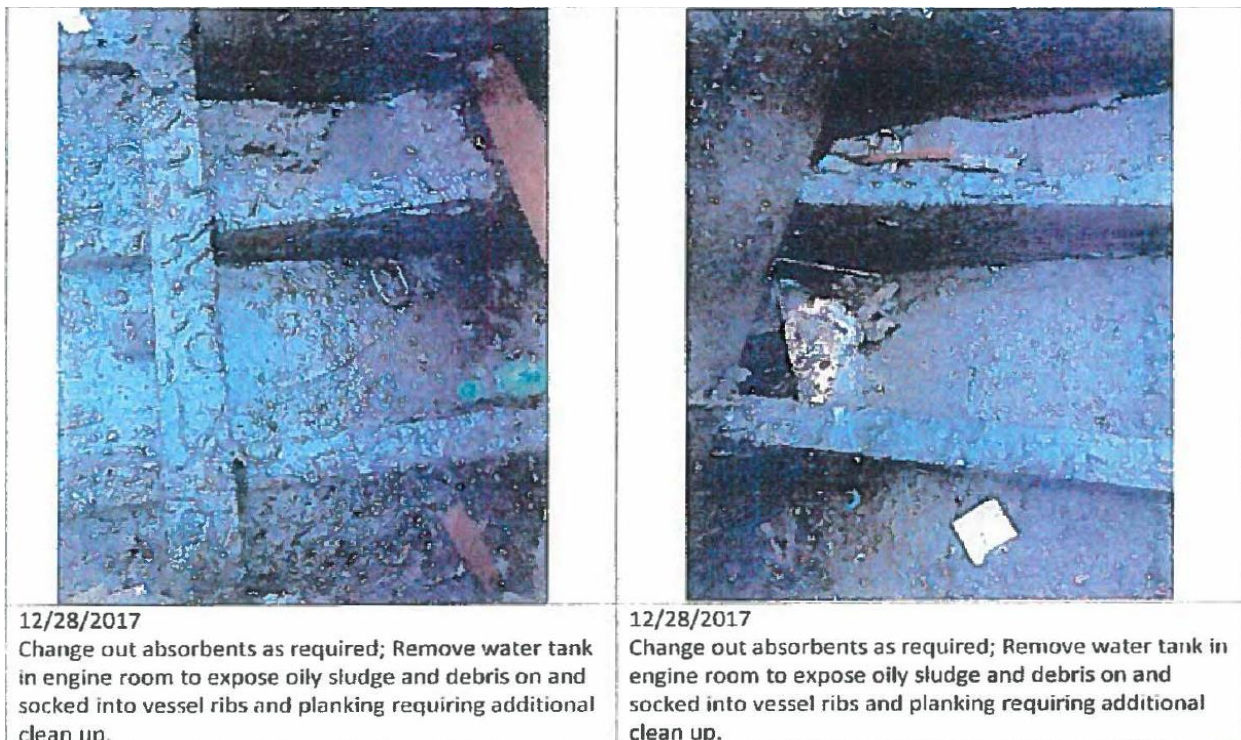


Figure 3 - Excerpt from page 5 of the document "Vessel 'White Orca' 2017 photos"

These, and other photographs, suggest that the M/V WHITE ORCA was thoroughly contaminated by oil pollution.

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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 M/V WHITE ORCA sunk near Ladysmith, B.C. on or about November 15, 2017.

The vessel, built in 1958 as a motor yacht, was wooden hulled and 16m in length. It had been used for many years as a pleasure craft. It appears that the M/V WHITE ORCA had been used as a live aboard vessel for some time prior to its sinking but it does not appear that its structure was modified in any way to accommodate that purpose.

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, at the time it sunk, was neither a sea-going vessel nor seaborne craft.

The area where the M/V WHITE ORCA 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. It is not clear how long the M/V WHITE ORCA had been at the dog patch.

### *The pollution threat posed and no owner was available*

Reports from the scene of the sinking indicate an oily sheen on the surface of the near where the M/V WHITE ORCA sank. The Fund has determined that the M/V WHITE ORCA was the source of the oily pollution observed the waters of the Dog Patch on November 15, 2017 and for several subsequent days.

The registered owner of the vessel was an apparently defunct company based in Victoria. After the sinking, the CCG made contact with a person who the CCG believed was the current (unregistered) owner of the vessel. This person vigorously denied being the M/V WHITE ORCA’s owner – but also asked that the CCG allow him to board the vessel after it was raised so that he could retrieve personal belongings, including a bed. After the CCG found what it described as “buckets of drugs” aboard the M/V WHITE ORCA, the purported owner vanished.

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 M/V WHITE ORCA spreading to cause harm to the environment and to the public. It was also reasonable for the CCG to determine that it should take steps to respond to the oil pollution incident rather than make further efforts to locate and compel an owner of the M/V WHITE ORCA to take steps.

The oil emanating from the M/V WHITE ORCA constituted a discharge of a pollutant for the purposes of section 75 and 77 of the *MLA*. In the circumstance, it was reasonable for the CCG to take steps to mitigate and arrest that release.

#### *Initial observations and deployment of counter-measures*

The CCG personnel who attended at the Dog Patch observed oil upwelling from the M/V WHITE ORCA.

Saltair Marine, acting as a contractor for the CCG, deployed 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.

The Fund notes that the CCG and Saltair Marine were both deploying pollution counter-measures in the days following the sinking of the M/V WHITE ORCA. The Fund accepts that the counter-measures deployed were useful, but considers that it was duplicative for both the CCG and Saltair Marine to have vehicles and equipment in place to allow such deployment.

The Fund notes that there is a lack of documentation about the terms of the contract with Saltair Marine, and considers that while it was appropriate for the CCG to use its emergency contracting authority in this case, it would be preferable for the CCG to put into place a standing agreement with such contractors. Doing so would make clear to the CCG, the contractor and the Fund which entity is responsible for which activity, thereby avoiding duplication of effort. Absent such an agreement, setting a clear scope of work would be helpful.

#### *Raising the vessel*

The CCG determined that, to stop the release of oil pollution from the M/V WHITE ORCA, the vessel should be raised. The Fund has determined that the decision to raise the vessel was a reasonable step to address the release of oil pollution into the marine environment.

The CCG used its emergency contracting authority to direct Saltair Marine to raise the vessel.

Saltair Marine carried out a dive survey to prepare for the raising on November 17, 2017. Thereafter, the vessel was raised, towed to shore and removed from the marine environment in an efficient fashion, all on November 18, 2017.

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

The CCG determined that the M/V WHITE ORCA should be deconstructed, a conclusion that the Fund agrees flows from the evidence submitted with the CCG claim. However, the Fund

notes that the narrative provided by the CCG indicates that the decision to deconstruct was based, at least in part, on the marine survey report. This is problematic in several ways.

First, the date of the survey report is January 9, 2018. The deconstruction effort concluded on January 10, 2018, having been underway since December 15, 2017. Clearly, the deconstruction decision was not based on the report. While the decision to deconstruct may have been based on verbal comments made by the Marine Surveyor to the CCG, nothing in the CCG documents submitted to the Fund describes the contents of those comments, or even the fact they were provided.

Further, the survey report says little about oil pollution. The report describes, at page 6, that “The vessel is a terrible mess throughout and all of the interior below-deck spaces are lightly fouled with diesel fuel.” This statement is ambiguous in that it is not clear whether the “terrible mess throughout” is because of oil pollution or because of trash and debris. While the survey report also notes that oil and oil-water mixtures remain present in the vessel’s tanks and equipment, there is no indication that those items would be difficult to remove. Further, the report’s conclusion section lists steps that should be taken before the vessel is relaunched – and pollution abatement or removal are not described there. In the result, the Fund considers that at its highest, the survey report is a neutral factor with respect to the decision to deconstruct the vessel. The Fund rejects the submission that the survey report supports the decision to deconstruct.

This is not conclusive of the issue of the reasonableness of the decision to deconstruct the vessel. The narrative provided by the CCG indicates that the decision to deconstruct the M/V WHITE ORCA was based on other factors, including the condition of the vessel. 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 Saltair Marine are informative and helpful on this, and other, issues.

The document labelled “Vessel ‘White Orca’ 2017 photos” was prepared by Saltair Marine as part of its contracted work on the project. This document is replete with photographs and descriptions of the oiled state of the M/V WHITE ORCA. The Fund has determined that the Saltair Marine document establishes that the M/V WHITE ORCA remained polluted by oil even after it had been removed from the marine environment. In the circumstances, the decision to deconstruct the vessel was therefore reasonable.

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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 allowed or disallowed.

*Schedule Two – Contract Services*

*Claim: \$45,613.11*

The CCG retained two contractors with respect to the M/V WHITE ORCA incident: Saltair Marine (\$44,613.11) and Building Sea Marine (\$1,243.20).

Saltair Marine was retained first to contain and abate the oil pollution release from the vessel. Thereafter its retention was expanded to include raising the M/V WHITE ORCA and removing it from the water. The retention was then expanded again to include deconstruction of the vessel.

The Fund notes that while working on other incidents, Saltair Marine has produced a document referred to as an “Action Plan” which describes the work they were to undertake on an emergency basis. No such “Action Plan” was included in the CCG submission for this claim. This raises the risk of a duplication in effort as between the contractor and the CCG.

Further to that risk, the Fund has prepared a consolidated table, based on the Saltair Marine logs as well as the CCG logs, noting the allocation of effort with respect to the M/V WHITE ORCA. That table is set out below:

*Table 1 - Effort Allocation*

Date	CCG People	Hours	Saltair People	Saltair Hours	Comment
Nov 15	3	17.75	5	10	Saltair: boomed vessel placed absorbents. CCG: assessed scene; placed sorbent pads; observed/reported pollution. A PRV I, was utilized by CCG.
16	2	16.5			CCG: reassessed White Orca; placed sorbent pads; sheen inside boom; sheen unrecoverable outside the boom, a PRV III was utilized. Saltair hired for Salvage operation
17	2	16.5	3	11	Saltair: placed sorbents; Dive Survey; Plugged Vents. CCG: pollution observed and reported; sorbent pads replaced; a PRV III was utilized.
18	2	24.5	6	38.5	Saltair: salvage operation; raised v/l, tow, remove from water. CCG: Assess and monitor White Orca salvage Operation; replace sorbent pads; obtained photos. A PRV III was utilized. End of CCG involvement on scene.
20			2	5	Saltair: attended sorbents, demobilization of gear.
Dec 07			2	1	Vessel Survey. Saltair: moved v/l to Containment Pad, attended sorbents.
8			2	6	Saltair :Blocked v/l, attended sorbents.
11			3	18.5	Saltair: Significant pollution from vessel.
12			3	4.0	Saltair: Hull stressed and separating, pollution.
14					CCG: approves deconstruction of the vessel.
15			3	17.0	Saltair: Commenced deconstruction.



Date	CCG People	Hours	Saltair People	Saltair Hours	Comment
18			4	22.0	Saltair: Removal of Oil/debris, attended sorbents.
20			2	6.0	Saltair: Removal Oil/debris, attended sorbents.
21			5	29.5	Saltair: Major Pieces of vessel removed.
22			8	43	Saltair: Vessel Deconstruction.
28			5	25	Saltair: Oil wood waste and sorbents.
Jan 02			5	42.5	Saltair: Sort debris/waste and pressure wash pad.
03			2	3.5	Saltair: Steel recycling and sorbents.
10			2	3.5	Saltair: Barrels of waste oil – cleanup.

It appears that there was some overlap as between the activities of the CCG and Saltair Marine with respect to the response to the M/V WHITE ORCA issue. This duplication will be addressed in dealing with the CCG charges, rather than in this section.

The measures taken by Saltair to contain the oil pollution and remove its source were appropriate to the threat posed. The Fund has determined that the Saltair Marine's deployment of equipment, personnel and resources was, with one exception, a reasonable and proportionate response to this oil pollution incident.

The exception noted is to the storage charges for the M/V WHITE ORCA. Saltair Marine charged for storage of the vessel for 39 days at \$22.14 per day. The 39 day period does not correspond to any length of time apparent on the CCG submission. The vessel was at Saltair Marine's facility between November 18, 2017 and January 10, 2018, a period of 53 days. Clearly, that figure was not used, but how 39 was selected instead could not be ascertained by the Fund.

The deconstruction of the vessel started on December 15, 2017. The vessel was at Saltair Marine's facility for a period of 27 days up to that point. On the evidence submitted, which does not include either a standing agreement or a scope of work, it has not been established that it is appropriate to pay for both deconstruction and storage of a vessel at the same time. No time beyond 27 days should be allowed.

Further on the issue of the appropriate storage time, the Fund has determined that the marine survey itself was not necessary in order to reach a determination to deconstruct the vessel. The vessel was in obviously poor condition, with oily debris strewn throughout. In these circumstances, delaying a deconstruction decision to allow a survey deserves scrutiny. Here, the Fund has found that the survey is at best a neutral factor on whether the deconstruction was done as an oil pollution measure or for other purposes, which leads to the conclusion that delaying the decision to deconstruct, which caused additional storage charges, was not a reasonable measure taken with respect to an oil pollution threat.

Given the two issues identified above, as well as the fact that the apparent owner of the vessel refusing to acknowledge ownership or take any steps, the Fund has determined that a reasonable

period of storage would up to ten days. The Fund has disallowed the storage expense in excess of \$221.40.

The Saltair Marine invoice also covers the work done by several subcontractors:

- Sundown Diving (\$3,250 for an underwater survey before raising);
- Robinson Rentals (\$261.30 for equipment for disposal of oil);
- DBL Disposal (\$1,180 plus \$4230.30 for disposal of vessel debris);
- Ladysmith Home Hardware (\$17.64 for blades);
- Schnitz Steel Canada (credit of \$4195.20 for materials salvaged during disposal); and
- Heatherington (\$957 for the disposal of oily waste).

These subcontractors submitted their invoice or invoices to Saltair Marine, and were then included on the invoice sent by Saltair Marine to the CCG with a 10% markup. The Fund has reviewed the invoices submitted by the subcontractors. The Fund notes that there is a discrepancy between the amount of oil disposed of by Heatherington and the amount estimated to be present onboard the M/V ORCA in the marine survey report. More oil was disposed of than was thought to be aboard the vessel. The Fund has, however, determined that this discrepancy may not have been a factor in the cost incurred. The subcontractor expenses are therefore allowed in their entirety.

This portion of the claim is allowed, in part, in the amount of **\$43,695.75**. That figure is comprised of \$41,615 in contractor expense and \$2,080.75 in sales taxes.

Building Sea Marine

Claim \$1,243.20

The Building Sea Marine invoice was submitted in the amount of \$1,243.20 on January 18, 2018. The Fund accepts that this invoice was paid on January 29, 2018.

The stated purpose of the marine survey was to evaluate the current condition of the vessel, whether could the vessel be efficiently repaired and safely put back into the water, whether the vessel a reasonable candidate for reconstruction and the amount of residual value if the vessel was not deconstructed. Evaluating whether the vessel posed an oil pollution thread was not expressly a part of the survey, although the Fund notes that that determination might implicitly be part of determining what work would be needed to put the vessel safely back in the water.

The marine survey report itself was not provided to the CCG until deconstruction was almost complete. The submission includes no indication of whether the conclusions of the report were provided prior to that date.

In the circumstances, the Fund concludes both that the marine survey was not necessary to reach a determination to deconstruct the vessel and that the purpose of the marine survey was for purposes other than determining whether the vessel posed an oil pollution thread.

This portion of the claim is disallowed in its entirety.

Schedule Three – Travel

Claim \$72.00

The CCG sent personnel to Ladysmith to respond to the incident, and claims for a travel expense in the amount of \$72.00 as a result.

The claims documentation includes certified travel claim documents which support this expense. The amounts claims are consistent with the Treasury Board Travel Directive.

The Fund has determined that the travel carried out by the CCG personnel, for the purpose of assessing and monitoring the M/V WHITE ORCA incident, was an appropriate response to an oil pollution incident.

This portion of the claim is allowed in its entirety.

Schedule Four – Salaries for Full Time Personnel

Claim \$2,626.22

The coast guard has claimed for the salary paid to four personnel for this incident.

The amount sought for salary was at the GT-04 rate in force at the time of the incident.

The logs included with the claim submission support the amount of time spent by CCG personnel on the incident response. The Fund has determined that the time spent is both reasonable and proportional with the subject oil pollution incident.

This portion of the claim is allowed in its entirety.

Schedule Five – Overtime for Full Time Personnel

Claim \$1,630.79

The CCG claimed for overtime for four separate personnel to respond to the M/V WHITE ORCA incident.

Given the distance from Victoria (where the personnel are stationed) to Ladysmith, some overtime is expected to arise to allow for both travel and meaningful response activities. As well, there is documentation showing that overtime was actually incurred. The documentation included with the submission includes logs which support the amount of overtime claimed, as well as Extra Pay Reports and associated authorization forms.

For the days on which overtime was claimed, the vessel was observed to be upwelling pollution and so the presence of CCG personnel to observe the situation was a reasonable response to an oil pollution incident.

This portion of the claim is allowed in its entirety.

Schedule 11 - Pollution Counter-Measures Equipment (PCME)

Claim \$13,039.71

Saltair Marine was retained to respond to this incident and deployed pollution counter-measures in the water from November 15, 2017 (the first day of the incident) through to the vessel's

removal from the water. Saltair Marine's expenses with respect to pollution counter-measure efforts have been allowed in their entirety.

The submission includes no standing agreement between Saltair Marine and the CCG, and no scope of work for Saltair Marine's work on this project. The Fund has assumed that the steps taken by Saltair Marine were appropriate and consistent with their instructions from the CCG given that the CCG paid Saltair Marine's bill.

However, this means that bulk of the pollution counter-measures taken by the CCG were substantially duplicative of the efforts of Saltair Marine. Duplication of expenses is not reasonable.

On the first day of its response, the CCG used a PRV I vessel. The Fund considers that that was appropriate given that the CCG was observing and monitoring the vessel. The Fund also notes that the CCG claims for five bales of sorbent pads and two bales of sorbent boom. The Fund considers that had the CCG not deployed those items, Saltair Marine would have deployed them and charged a similar amount. Therefore those items are also considered appropriate and reasonable.

For the three days the CCG attended after the first day, they used a PRV III vessel. This is a larger craft with considerably more capabilities than a PRV I vessel. However, as the CCG was only attending in an observational and monitoring role, those capabilities were not required. A PRV I vessel should have been used and the use of a more capable, and more expensive, vessel was not reasonable in the circumstances. The CCG submission includes no explanation for why the more expensive craft was used.

The Fund has determined that the cost of the sorbent materials and the cost of using a PRV I vessel for four days should be allowed.

This portion of the claim is allowed, in part, in the amount of \$570.84.

*Schedule 12 – Vehicles*

*Claim \$353.16*

The CCG claimed for the use of a CCG vehicle for four days. The daily rate claimed was \$67.56 plus 22 cents per km.

The submission included daily logs. The distances match with the amount claimed, as well as with the distance which would have been travelled to attend at Ladysmith.

This portion of the claim is allowed in its entirety.

*Scheduled 13 – Administration*

*\$69.85*

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 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 \$57.19

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 M/V WHITE ORCA incident.

*Table 2 - Summary of expenses claimed and allowed*

<b>SCHEDULE</b>	<b>CLAIM</b>	<b>OFFER</b>	<b>COMMENT</b>
<b>Contract Services</b>			
<b>Saltair</b>	\$44,369.91	\$43,695.75	Storage reduction
<b>Building Sea Marine</b>	1,243.20	00.00	Vessel Survey
<b>Travel</b>	72.00	72.00	
<b>Salaries</b>	2,626.22	2,626.22	
<b>Overtime</b>	1,630.79	1,630.79	
<b>PCME</b>	13,039.71	570.84	PRV III disallowed
<b>Vehicles</b>	353.18	353.18	
<b>Administration</b>	69.85	57.19	2.59% admin
<b>Total</b>	<b>\$63,404.86</b>	<b>\$49,005.97</b>	

The amount of the Offer is \$52,824.08.

The Offer comprises the amount of \$49,005.97 for costs and expenses, plus the amount of \$3,818.11 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 subrogation efforts.

Yours sincerely,

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