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Oil Pollution Fund

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pollution par les hydrocarbures causée par les
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CCG File:

BY EMAIL

Senior Director of Incident Management, Response Directorate
Canadian Coast Guard
200 Kent Street (5N177)
Ottawa, Ontario K1A 0E6

RE: S/V ATANOOK — Ganges Marina, British Columbia
Incident date: 2018-10-07

SUMMARY AND OFFER

This letter responds to a submission from the Canadian Coast Guard (the “CCG”) with respect to the sailboat ATANOOK (the “Vessel), a ferrocement ship of 42’ in length, which was involved in an incident on 7 October 2018, at Ganges Harbour, British Columbia (the “Incident”).

On 25 September 2020, the office of the Administrator of the Ship-source Oil Pollution Fund (the “Fund”) received a submission from the CCG on behalf of the Administrator. The submission advanced claims totaling \$19,017.43 for costs and expenses arising from measures taken by the CCG to respond to the Incident.

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 105 and 106 of the *Marine Liability Act*, SC 2001, c 6 (the “MLA”).

The amount of \$4,905.93 (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.

The reasons for the Offer are set forth below, along with a description of the CCG’s submission.

THE SUBMISSION RECEIVED

The submission includes a narrative that describes events relating to the Incident. It also includes a summary of the costs and expenses that the CCG claims and corroborating documents. To the extent that the narrative and corroborating documents are relevant to the determination, they are reviewed below.

The Narrative

On 7 October 2018, the Ganges Harbour harbour master reported to the CCG Regional Operations Centre Alerting Desk that the Vessel was taking on water and sinking at the entrance to Ganges Marina.

The Environmental Response Duty Officer (“DO”) dispatched CCG personnel to assess the pollution risk that the Vessel posed. The team reported that the Vessel had taken on water. Working with personnel from the marine contracting firm Eagle Eye Marine, the team placed pumps onboard to prevent it from capsizing.

The DO ordered that the Vessel be moved to a nearby Eagle Eye Marine facility for further assessment and monitoring.

The owner of the Vessel was identified. When contacted by the CCG, the owner advised that she was unable to attend to the response to the Incident and could not confirm the amount of oil onboard the Vessel.

On 8 October 2018, Eagle Eye Marine reported that 45 gallons of water had entered the bilge of the Vessel during the night and confirmed that its fuel tanks contained either fuel or a mixture of fuel and water. The DO instructed Eagle Eye Marine to continue to monitor the Vessel.

On 9 October 2018, the CCG assessed the Vessel and confirmed the presence of fuel in the fuel tanks and what appeared to be oily matter in the bilge. The parties were unable to determine the source of the continuing ingress of water. This prevented a full survey of the Vessel while it was in the water.

The CCG considered the Vessel an ongoing pollution threat and made arrangements to tow it to Saltair Marine in Ladysmith, BC. On 26 October 2018, Saltair Marine towed the Vessel to its facility in Ladysmith and removed it from the water for storage.

On 7 December 2018, a marine surveyor from Building Sea Marine completed a survey of the Vessel, concluding that, regardless of any repairs, it would remain a pollution risk due to its poor condition. The narrative indicates that based on the results of the survey and the owner’s unwillingness to respond to the Incident, the CCG recommended that the Vessel be deconstructed.

The deconstruction of the Vessel began on 13 December 2018 and was completed on 11 January 2019.

Cost Summary

The CCG submission summarizes the costs claimed as follows:

		<u>SCH</u>
MATERIALS AND SUPPLIES	-	1
CONTRACT SERVICES	18,369.53	2
TRAVEL	18.90	3
SALARIES - FULL TIME PERSONNEL	612.64	4
OVERTIME - FULL TIME PERSONNEL	-	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)	-	11
VEHICLES	-	12
ADMINISTRATION	16.36	13
	<hr/>	
TOTAL CCG COST OF INCIDENT	<u>\$ 19,017.43</u>	

Figure 1 – Screen capture of the CCG cost summary

Contractor Documentation

The CCG submission summarizes claimed contractor costs as follows:

			SCHEDULE #2
INCIDENT:	ATANOOK	PROJECT CODE:	FHVU5
INCIDENT DATE:	October 7, 2018	DATE PREPARED:	September 18, 2019
DEPARTMENT:	CANADIAN COAST GUARD	PREPARED BY:	

CONTRACT SERVICES	AMOUNT	GST	TOTAL	REFERENCE
			-	
SALT AIR MARINE SERVICES	13,788.79	689.44	14,478.23	INV 6464
			-	Paid feb 25/19
EAGLE EYE MARINE SERVICES	2,150.00	107.5	2,257.50	INV 1039
			-	Paid by GAC
BUILDING SEA MARINE	1556	77.8	1,633.80	INV 731
			-	Paid Feb 15/19
			-	

Figure 2 – Screen capture of contractor costs summary

Those contract expenses are supported by invoices provided by Saltair Marine Services Ltd. (“Saltair”), D.B.L. Disposal Services Ltd. (a subcontractor of Saltair), Terrapure (a subcontractor of Saltair), Eagle Eye Marine Services and Building Sea Marine. The support materials also include a photolog, with captions, created by Saltair.

The Saltair Marine Services Invoice includes line item expense on its first page and a detailed description of work by day on the second page:

Serviced	Description	Hours	Rate	Amount
	Environmental Containment, Monitoring & Clean up of Vessel 'Atanok'			
	Trade Personal - Per Hour	55	85.00	4,675.00
	SM Stock: Bundle absorbent pads	1	67.00	67.00
	SM Excavator - No Operator	18	114.00	2,052.00
	Haul out vessel from the marine environment		278.23	278.23
	39' Vessel Storage - per day	49	33.42	1,637.58
	Material			
	DBL Disposal - Invoice 160049		5,251.73	5,251.73 ✓
	Terrapure - Invoice E-84394		57.04	57.04
	Schnitzer Steel - Invoice TSNARF		-229.79	-229.79 ✓
	GST 5% On Sales		5.00%	689.44

Date	Description	Employee/Services	Type	Break		Total Hours	Reg	Storage
10/26/2018	Receive vessel from Eagle Eye Towing, tow into SMS dock and secure; assess vessel; install pumps into vessel inner haul; haul vessel out of the marine environment	MH,CP,DRP,MP IP	Trade Personnel	0	15:30	17:00	1.5	6
				0	16:00	17:00	1	1
10/27/2018	to 12/12/2018 - Storage							
12/13/2018	Move ways and remove mast; move sailboat to containment pad; secure on cement blocks and clear ways from vessel; prepare for clean up; change out absorbents as required; locate and pump fuel tanks; start to gain access to fuel tanks and engine for access to clean up	DP, CP MH, SP 1/2 Bale	Trade Personnel Trade Personnel Oil Absorbents SM Excavator	0.5 0	8:00 13:00	16:30 16:30	8 3.5	16 7
12/14/2018	Change out absorbents as required; Fuel tanks, batteries & hydraulic pumps, hydraulic lines are inaccessible in vessel, gain access & remove from vessel; drain, secure hydraulic lines, pumps & remove from the vessel; cut recycle bale material to fit into bins; clean up debris & containment pad.	DP MP, CP 1/2 Bale	Trade Personnel Trade Personnel SM Excavator Oil Absorbents	0.5 0.5 0.5	8:00 8:00 8:00	13:30 16:30 16:30	5 8 8	5 16
	2 - 40 yard bins (21.33 Tons)	DBL-Invoice 160049						1
12/17/2018	Absorbents & oily water disposal	Terrapure- Invoice E84394						
12/20/2018	Load recyclable material into bins	MP,CP	Trade Personnel SM Excavator	0 0	10:00 10:00	12:00 12:00	2 2	4
1/11/2019	Recyclable material	Schnitzer Steel- TSNARF						

55 49

Date/Hours	Type	Rate	Total
55	Trade Personal - per hour	\$ 85.00	\$ 4,675.00
1	SM Stock: Bundle absorbant pads	\$ 67.00	\$ 67.00
18	SM Excavator - No Crew	\$ 114.00	\$ 2,052.00
1	Haul out Vessel	\$ 278.23	\$ 278.23
49	39' Vessel Storage - per day	\$ 33.42	\$ 1,637.58
12/15/2018	DBL Disposal - Invoice 160049		\$ 5,251.73
12/17/2018	Terrapure-absorbents & oily water disposal- Invoice E84394		\$ 57.04
1/11/2019	Schnitzer Steel - Invoice #TSNARF		\$ (229.79)
	Sub-Total		\$ 13,788.79
	GST		\$ 689.44
	Total		\$ 14,478.23

Figures 3 and 4 – Excerpts from the Saltair invoice

The invoice from Terrapure. includes a description of the materials disposed of:

E-14	Litre	420	Oily Water "Miss Terry"	G	0.46	193.20
E-14	Litre	220	Oily Water "Sailboat"/"Condor II"	G	0.46	101.20
E-88	Each	1	Documentation Fee	G	5.00	5.00
			Subtotal:			299.40
			G - GST5%			
			GST			14.97

Figure 5 – Screen capture from Terrapure invoice dated 20 December 2018

The Marine Survey Report

The submission includes a marine survey report from Building Sea Marine, dated 25 January 2019. The marine survey report includes a photobook attachment.

The marine survey report describes its purpose as follows:

The purpose of the surveys was to sight the vessel externally & internally, as much as was physically possible and permitted by the state of the vessel, in order to determine the following:

- The current condition of the vessel;
- If the vessel could be considered seaworthy &/or efficiently repaired;
- If the vessel is a reasonable candidate for salvage and reconstruction; and,
- What is the residual value (if any) if the vessel was de-constructed.

Figure 6 – Excerpt from marine survey report

The marine survey report describes the Vessel as a ferrocement sailing craft in poor condition, which has possibly not been in use for a considerable period of time. It includes minimal mention of oil pollution, and where oil pollution is mentioned, it is described in theoretical terms. For example, the report notes: “The main engine and marine gear might remain in place and if so, would be part or fully assembled so it is assumed they also remain with some of their internal lubricating & hydraulic oils in place in the sumps as well as coolant, estimated at 15 gallons each.”

Similarly, the report notes the possible presence of oily waste in the bilge area – but does not conclude that that is in fact what was present:

The bilge is full of a nasty looking glop that could be oil and fuel.

The fuel tanks are buried deep in the bilge immediately forward the machinery space and likely with some residual fuel.

Figure 7 – Excerpt from the marine survey report

Personnel & Equipment Daily Log

The submission includes a number of logs from the CCG which support the claimed CCG expenses. These logs are not described in detail herein, as they were considered to substantially support the narrative.

One item included in the logs which is worthy of note is within the log section of the Personnel & Equipment Daily Log from 9 October 2018. That note is as follows:

NOTES:

ER Personnel departed Victoria CG Base to Ganges Harbour to assess incident. Fuel was found in the fuel tanks, a mixture of fuel/oil and oil soaked planking in the bilge area. Due to the ingress of water survey would have to be delayed until the vessel was removed from the marine environment. Departed Ganges Harbour and returned to CG base at 1300.

Figure 8 – Notes from the Personnel & Equipment Daily Log of 9 October 2018

DETERMINATIONS AND FINDINGS

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

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

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

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

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.

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

Findings on the evidence

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

The facts set out in the narrative are generally accepted, with one important exception.

The CCG narrative refers to the existence of “oil-soaked planking in the bilge”. The CCG points to as evidence that the Vessel itself constituted a threat of aquatic oil pollution. More analysis is required on this item, and that analysis is set out further below.

The Vessel was sinking and it was reasonable to take some measure to prevent a discharge

It is accepted that the Incident as described by the CCG involved the threat of oil pollution damage. The Vessel was near sinking when the CCG arrived on the scene. While the Vessel was a sailboat, it was equipped with a hydrocarbon powered engine as a secondary means

of propulsion. It was reasonable for the CCG to take measures to keep the Vessel afloat and land it, so as to prevent a potential release of unknown amounts of hydrocarbons.

That work was primarily carried out by the contractor Eagle Eye Marine Services (“Eagle Eye”). All of the claimed expenses from Eagle Eye have therefore been allowed.

The need for deconstruction of the Vessel has not been established

It cannot be assumed that the Vessel itself, rather than hydrocarbons it might have carried, posed a threat of oil pollution. While it is possible for a ship to become so saturated in oil that its structure poses an oil pollution risk, making such a finding requires evidence.

On this point, the narrative offers that there was “oil-soaked planking in the bilge”. The narrative is accurately describing the note from the Personnel & Equipment Daily Log of 9 October 2018. The note itself is rather conclusory, but it is assumed that it was based on observations made by CCG personnel. However, the submission included no further evidence that the Vessel itself posed an oil pollution threat.

The marine surveyor had difficulty making a precise observation due to the general level of filth aboard. He was therefore cautious about his findings. The marine survey report noted that the bilge was filthy. The report noted the possible presence of oil in the “glop” found in the Vessel’s bilge but did not describe any level of oil saturation of whatever timbers were present.

It is accepted that there likely was oil present in the “glop” in the bilge. The Vessel had been inundated with water, which presumably infiltrated the fuel tanks. The displaced fuel would then have contaminated surfaces of the Vessel as the water rose. After the Vessel was removed from the water, some of this material would have descended into the bilge, along with other dirt and filth, and could explain the observation of “glop”.

That said, the presence of oily “glop” is not accepted as establishing that the timbers of the Vessel itself were saturated with oil so as to pose an oil pollution hazard. Nor does the other evidence make such a finding possible. The Vessel was a sailing craft equipped with engines and fuel tanks of modest size. As well, it had been in apparent disuse for some time prior to the incident. As well, the Vessel was of ferrocement construction, a material which does not generally absorb oil. The narrative and logs note the presence of planking, presumably wood used for a bulkhead or support purposes. All told, this means that there had been a limited amount of fuel aboard the Vessel, and a limited amount of material which could have possibly become saturated in hydrocarbons. It therefore does not necessarily follow that those materials posed a threat to the marine environment, even if they were to come into contact with water.

Other facts from the submission support the conclusion that the materials were not so saturated as to pose an oil pollution hazard. Pumps were placed on the Vessel and operated to keep it from sinking. There is no notes pertaining to a resulting sheen as water was pumped overboard – suggesting that any hydrocarbon presence was minimal and not a danger to the environment. The only recorded use of absorbent materials during the Incident was by Saltair, and from the description it appears those materials were placed inside the Vessel itself.

Further on the note about “oil-soaked planking”, the full facts add context to the note. CCG personnel made that observation on 9 October 2018. The Vessel was then left in the water for several weeks, apparently without pollution countermeasures being placed around it. It is assumed that the CCG personnel who actually made the observations of the Vessel did not believe it posed an oil pollution threat. Put another way, the CCG personnel who made the note were likely not trying to convey oil saturation given the steps they took or did not take.

In the result, it is concluded that the Vessel itself was not saturated with oil to the point where the Vessel itself constituted a hazard to the aquatic environment.

For that reason, costs and expenses relating to the deconstruction of the Vessel are, with a few exceptions, rejected. This conclusion significantly affects the Saltair invoice.

Findings with respect to the marine survey

The marine survey report does not appear to have been produced to assist the response to an oil pollution incident. The stated purpose of the report, according to the report itself, is set out at Figure 6 and repeated below for convenience :

The purpose of the surveys was to sight the vessel externally & internally, as much as was physically possible and permitted by the state of the vessel, in order to determine the following:

- The current condition of the vessel;
- If the vessel could be considered seaworthy &/or efficiently repaired;
- If the vessel is a reasonable candidate for salvage and reconstruction; and,
- What is the residual value (if any) if the vessel was de-constructed.

The body of the report is consistent with the description – which does not include assessing an oil pollution threat.

While assessing the extent of oil pollution present aboard the vessel could be implied as part of assessing “the current condition of the vessel”, the survey report does not do so. It is not clear whether the surveyor observed the engine systems, rather than the estimate of oil within the system being purely theoretical. Moreover, the description of the “glop” notes the theoretical presence of oil within it but goes no further.

It is concluded that the marine survey report was not procured as a measure in response to an oil pollution incident. This expense is therefore disallowed in its entirety.

CLAIM AND OFFER DETAILS

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 below explains why certain portions of the CCG’s claim have been allowed while others have been disallowed.

The CCG presents its claims as being broken down across four categories. The submission is analyzed below using that organization.

Schedule 2 – Contract Services

Claimed: \$18,369.53

The contract services in this case were divided among three companies:

Company	Invoice Date	Work Description	Claimed
Eagle Eye	2018-12-10	Towage, pumping	\$2,257.50
Building Sea marine	2019-01-25	Marine survey and report	\$1,633.80
Saltair	2019-01-18	Removal of the Vessel, storage, deconstruction	\$14,478.23

Table 1 – Summary and brief description of claimed contract services

The CCG submission did not include some important contractor documentation such as statements of work or agreements on rates.

Eagle Eye

For the reasons set out above, the amounts paid to Eagle Eye (\$5,251.73) are allowed in full.

BSM

For the reasons set out above, the cost of the BSM survey is disallowed.

Saltair

The Saltair invoice includes bills from two subcontractors, and a credit (steel salvage) from a third:

Company	Invoice Date	Work Description	Paid
D.B.L. Disposal	2018-12-15	Disposal of remains of a sailboat	\$5,251.73
Terrapure	2019-01-10	Disposal of waste sorbents	\$59.89
Schnitzer Steel	2018-12-20	Steel salvage	-229.79
Total			\$15,388.23

Table 2 – Summary and brief description of subcontractor and supplier invoices paid by Saltair

For the reasons set out above, the bulk of the Saltair invoice is rejected. The deconstruction of the Vessel has not been established as a measure reasonably taken to prevent an anticipated discharge, and the Saltair invoice is principally for deconstruction of the Vessel.

However, limited portions of the invoice are accepted as measures taken with respect to oil pollution.

The charge for hauling the Vessel out of the water (\$292.14 including tax) is accepted as reasonably necessary as part of the oil pollution response. The invoice line item for absorbent pads (\$70.35 including tax) is accepted as a measure taken with respect to oil pollution, as is the Terrapure invoice for disposing of contaminated liquids taken from the Vessel (\$59.89).

Further, some amount of the 55 hours of labour and 18 hours of equipment expenses charged by Saltair must have been taken with respect to oil pollution. For instance, to expose and drain the fuel tanks aboard the Vessel to allow them to be drained and the contents disposed of at Terrapure. The Saltair invoice provides some breakdown of time billed (7 hours relating to the haul out, allowed as noted above, at \$89.25 per hour, totaling \$624.75), but other parts of the time are mixed, and the descriptions of work do not allow precision in determining what portions are admitted.

It is considered that the great bulk of the work would have been for the deconstruction of the Vessel itself, rather than the removal of any oil hazard. Based on the descriptions, it is considered that two hours of work (two laborers each at \$89.25 per hour, plus the excavator at \$119.70 per hour) should be allocated to oil pollution removal (\$953.40).

The allowed portions of the Saltair invoice total \$2,000.53.

The contract services portion of this claim is allowed in the amount of \$4,258.03

Schedule 3 – Travel

Claimed: \$18.90

Two CCG personnel traveled to Ganges Harbour to inspect the Vessel. However, only one claimed for a meal during this trip. As the trip by one CCG personnel is accepted as reasonably necessary to facilitate measures take with respect to an anticipated discharge, and the amount sought is reasonable, this portion of the claim is accepted.

The travel portion of this claim is allowed in the amount of \$18.90.

Schedule 4 – Salaries – Full Time Personnel

Claimed: \$612.64

The CCG claims for two personnel to travel to and attend at the Vessel where it was moored alongside Eagle Eye Marine's wharf at Ganges, on 9 October 2018. The trip took seven hours. Inspecting the Vessel to assess its oil pollution threat was a reasonable measure to take in anticipation of a discharge. This portion of the claim is accepted in its entirety.

It is noted that the CCG has not claimed for time spent on the initial portions of the response by CCG SAR personnel.

The salaries portion of the submission is allowed in the amount of \$612.64

The CCG submission advances a claim for administration costs at a rate of 3.09%, applied against claimed travel and salary costs.

The 3.09% rate is generally accepted as reasonable. This portion of the claim is allowed in its entirety.

The administration portion of the submission is allowed in the amount of \$16.36.

OFFER SUMMARY AND CLOSING

The following table summarizes the claimed and allowed expenses with respect to the CCG claim regarding the Vessel:

Schedule	Claimed	Allowed
2 – Contract Services	\$18,369.53	\$4,258.03
3 – Travel	\$18.90	\$18.90
4 – Salaries – Full Time Personnel	\$612.64	\$612.64
13 – Administration	\$16.36	\$16.36
Totals	\$19,017.43	\$4,905.93

Table 3 – Summary of amounts claimed and allowed

Costs and expenses in the amount of \$4,905.93 are accepted and will be paid together with statutory interest calculated at the date of payment if the Offer is accepted.

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, 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 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