



OFFER LETTER

Ottawa, 25 June 2021
SOPF File: 120-887-C1
CCG File: n/a

BY EMAIL

Manager, Response Services and Planning
Canadian Coast Guard
200 Kent Street (Stn 5N167)
Ottawa, Ontario K1A 0E6

**RE: MV *Seal Rock*– Lyall Harbour, Saturna Island, British Columbia
Incident date: 2019-04-04**

SUMMARY AND OFFER

[1] This letter responds to a claim submitted by the Canadian Coast Guard (the “CCG”) with respect to an incident involving the motor vessel *Seal Rock* (the “Vessel”), which was in danger of sinking in Lyall Harbour, BC, and presented an oil pollution threat to the marine environment (the “Incident”).

[2] On 18 March 2021, 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 claimed costs and expenses total \$51,805.59. The submission was reviewed and a determination has been reached. 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”).

[3] The Fund has determined that the CCG’s claim should be allowed. The claim is allowed in the amount of **\$13,390.66** (the “Offer”), plus statutory interest.

[4] The reasons which explain the Offer are set forth below.

THE SUBMISSION RECEIVED

[5] The CCG submission includes a narrative which describes relevant events relating to the Incident. It also includes a summary of the costs and expenses claimed and backup documents related to some of those costs and expenses. To the extent that these submitted documents are relevant to the Fund’s determination, their contents are described below.

Narrative

[6] On 4 April 2019, the CCG received word from a local resident that the Vessel was in danger of sinking in Lyall Harbour, off the coast of Saturna Island, BC. Three CCG personnel were dispatched to the scene and found that the Vessel was in a state of disrepair and that it contained 700-1000 liters of oil.

[7] The CCG contacted the owner of the Vessel, who submitted a response plan for the Incident. The CCG deemed the plan unsatisfactory and took charge of the response to the Incident.

[8] CCG personnel removed approximately 800 liters of fuel and oil from the Vessel and made repairs to its hatches to limit the ingress of rainwater. Some fuel remained in the Vessel, along with oil in the engine room and the oil-soaked timbers and machinery.

[9] On those grounds, a marine survey conducted by Building Sea Marine concluded that the Vessel posed an ongoing pollution threat. The CCG made further attempts to agree on a satisfactory response plan with the Vessel's owner without success. After the owner failed to respond to a direction order, the CCG determined to move the Vessel to a location where regular monitoring would be possible while awaiting a response from the owner.

[10] The CCG contracted Saltair Marine Services Ltd. ("Saltair Marine") to tow the Vessel to their facility in nearby Ladysmith, BC. Subsequently, due to continued inaction from the owner, the CCG determined that deconstructing the Vessel was the only remaining option to address the pollution threat that it posed. Saltair Marine began deconstruction on 16 July 2019 and finished on 17 September 2019.

The costs and expenses summary

[11] The submission also included the following summary of the costs and expenses claimed by the CCG:

INCIDENT:	SEAL ROCK	PROJECT CODE:	FHVJ5
INCIDENT DATE:	April 4, 2019	DATE PREPARED:	10-Mar-21
DEPARTMENT:	CANADIAN COAST GUARD	PREPARED BY:	[REDACTED]

		<u>SCH</u>
MATERIALS AND SUPPLIES	-	1
CONTRACT SERVICES	30,464.90	2
TRAVEL	-	3
SALARIES - FULL TIME PERSONNEL	4,049.10	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)	16,870.49	11
VEHICLES	316.84	12
ADMINISTRATION	104.26	13
	<hr/>	
TOTAL CCG COST OF INCIDENT	<u>\$ 51,805.59</u>	

Figure 1 - Screen capture of CCG cost summary

FINDINGS AND DETERMINATION

Eligibility of the claimant

[12] The Administrator has determined that the CCG is an eligible claimant and that the Incident occurred within the territorial seas or internal waters of Canada for the purposes of s. 103 of the MLA. As the Vessel posed an identified risk of oil pollution, it is further determined that at least some of the claims submitted by the CCG are eligible for compensation from the Fund.

The pollution threat posed

[13] It has been concluded that the Vessel posed a clear risk of oil pollution to the marine environment, due particularly to its poor condition, its age, and the amount of oil that it contained at the time of the Incident. In particular, the Vessel contained a considerable

amount of residual oil contamination after years of insufficient maintenance. While Saturna Island is sparsely populated, its economy depends substantially on summer tourism. In the circumstances, it was reasonable for the CCG to take measures to prevent the Vessel from sinking in the marine environment and minimize the risk of oil pollution that it posed.

The submitted evidence

[14] There are discrepancies between certain documents provided in the CCG submission, notably between the start date of the Saltair Marine contract and information provided elsewhere in the submission. In particular, it appears that certain documents, such as Personnel and Equipment Logs and the vehicle report, have been reformatted for cost recovery purposes, given the similarities in ink and handwriting across various forms and dates, as well as technical aspects of the claim submission, as noted in the Schedules below.

[15] While reformatted evidence may in some cases raise questions of validity, in this case the Administrator has concluded that, despite these anomalies, there is sufficient evidence to demonstrate that the Vessel was a marine pollution threat and that the CCG did initiate a response thereto.

CLAIM AND OFFER DETAILS

[16] 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 the claimed costs and expenses have been allowed or disallowed.

Schedule Two – Contract Services \$30,464.90

[17] The following table summarizes the claimed contract services costs in this matter:

Contractor	Subtotal cost claimed	GST	Total cost claimed
Saltair Marine Services Ltd.	\$25,156.69	\$1,257.83	\$26,414.52
Building Sea Marine	\$3,857.50	\$192.88	\$4,050.38
Total	\$29,014.19	\$1,450.71	\$30,464.90

Table 2 – Summary of claimed Schedule 2 costs

Saltair Marine Services

[18] The CCG contracted with Saltair Marine to tow the Vessel to a facility for further monitoring and deconstruction. As mentioned, there is a timeline discrepancy involving these costs. The CCG Personnel and Equipment Logs state that the Vessel was towed from Lyall Harbour on 17 April 2019, whereas the Saltair Marine invoice indicates that towing occurred on 17 May 2019. Because no Statement of Work was provided for the contract between the CCG and Saltair Marine and the invoice from the latter was considerably detailed, the dates on the invoice are accepted as accurate.

[19] A month passed between the first Building Sea Marine survey and the removal of the Vessel from the water. This suggests the CCG did not view the Vessel as an urgent oil pollution threat. Notwithstanding that, considering the Vessel’s derelict condition and the largely unresponsive owner, it was prudent to remove the Vessel from the area as soon as reasonably practical. Even with accessible liquid oil product removed, the Vessel very likely would have leached oil into the water had it sunk. It was therefore reasonable to take steps up until the point that the Vessel was removed from the water.

[20] After the Vessel was removed from the water, the CCG had it deconstructed. Costs of deconstruction make up the bulk of the Saltair Marine invoice. Generally, deconstruction expenses are admissible where the vessel itself poses a threat of oil pollution and other measures, such as cleaning, cannot adequately mitigate the threat. In this case, the CCG reportedly observed some oil saturation during the initial response, and the survey report refers to the Vessel’s machine space as being only lightly fouled. This evidence is insufficient to ground a finding that the vessel deconstruction on dry land was a measure reasonably taken in response to a threat of oil pollution. The deconstruction portion of the expense is disallowed.

The claim arising from the Saltair Marine invoice is allowed in the amount of \$6,425.95

Building Sea Marine

[21] These costs arise from a marine survey of the Vessel conducted on two occasions: the first on 12 April 2019 while the Vessel was afloat at a dock in Lyall Harbour and the second on 12 June 2019 while it was stored at the Saltair Marine facility in Ladysmith.

[22] The survey results substantiate the Vessel’s age and state of disrepair. The survey results did not appear to be directed towards oil pollution, and the observations concerning oil pollution documented in the report could have (and apparently were) made by CCG personnel on the scene. As it could not be determined that the survey was secured as a measure with respect to ship-source oil pollution or the risk thereof, this portion of the claim cannot be admitted.

The claim from the Building Sea Marine invoice is disallowed in its entirety.

The following table summarizes the claimed and allowed contract services costs:

Contractor	Costs claimed	Costs allowed	Reason for markdown
Saltair Marine Services Ltd.	\$26,414.52	\$6,425.95	Storage, deconstruction, and disposal attributed to wreck removal operation
Building Sea Marine	\$4,050.38	\$0	Unrelated to oil pollution response operation
Total	\$30,464.90	\$6,425.95	

Table 2 – Claimed and allowed Schedule 2 costs

This portion of the claim is allowed in part in the amount of \$6,425.95.

Schedule Four – Salaries for Full Time Personnel

\$4,049.10

[23] The CCG claimed salary costs for three Response Specialists at the GT-04 level. This work was performed between 6:00 am and 2:00 pm on weekdays, with no overtime costs incurred. Such an adjustment of the routine work schedule for responding personnel sometimes occurs during watchkeeping aboard a vessel or a particularly complex emergency incident; however, as neither of these applies to the present case, the adjustment of working hours is unusual.

[24] The work involved four site visits, the first three of which included driving from Victoria to the Institute of Ocean Sciences at Patricia Bay, sailing to Lyall Harbour, and the return trip. The fourth included time spent monitoring the towing operation from Lyall Harbour to Ladysmith.

[25] Except for the one dated 8 April 2019, the Personnel & Equipment Daily Logs provide few details on the work that the three personnel performed each day. While the 4 and 8 April logs provide evidence that the response to the Incident began on 4 April and that the three Response Specialists travelled to the site on both 4 and 8 April, these trips cannot be cross-referenced with the other documentation included in the CCG submission. Additionally, the Building Sea Marine survey report indicates that two of the personnel attended the survey, whereas the logs indicate that all three attended.

[26] For the purposes of this claim, it is accepted that the site visit that ostensibly occurred on 17 April 2019 is more likely to have occurred on 17 May 2019, when the personnel may have made a comparable trip to attend to the Saltair Marine work. Accordingly, despite the aforementioned discrepancies, the 17 April documentation is accepted and attributed to 17 May.

[27] The claimed salary costs for 4, 8, and 17 April are accepted as reasonable, as there is sufficient evidence to conclude that three CCG personnel did work on these days to respond to the Incident, despite the fact that only one of these days can be cross-referenced with the other documentation. However, the salary costs of \$1,012.27 associated with 12 April, arising primarily from the marine survey of the Vessel, are rejected because, like the survey itself, these costs were not established as a reasonable measure taken with respect to ship-source oil pollution or the threat thereof.

This portion of the claim is allowed in part in the amount of \$3,036.83.

Schedule 11 - Pollution Counter-Measures Equipment

\$16,838.00

[28] These costs arise from the use of a CGE 705 boat, an electric fuel pump, and a generator. The boat was used for four days of the response to the Incident, and the other equipment was used only on 8 April 2019.

[29] Based on standard charge-out rates, the rate used for the fuel pump corresponds to a pump valued at \$4,400. It is unlikely that an electric fuel pump would have such a high value. Rather, it appears that the documented pump rate was the best match for the pumps

listed in the CCG manual. Nonetheless, a rate of \$24.44/day for a pump and \$8.05/day for a 2,000-watt generator, for a combined total of \$32.49 for one day, is reasonable, particularly because no costs are claimed for the 1,000-liter storage tank.

[30] The use of the PRV III charge-out rate of \$4,209.50/day for the use of a CGE 705 boat is considered unreasonable. Because both a PRV III and CGE 705 have an LOA of at least 27 feet, they are charged at the same rate in the CCG manual. However, the CGE 705 differs considerably from the PRV III in operational capabilities. The PRV II charge-out rate of \$1,194.23/day for the use of a CGE 705 is more appropriate. Accordingly, that rate is substituted for the rate claimed.

This portion of the claim is allowed in part in the amount of \$3,615.18.

Schedule 12 – Vehicles \$316.84

[31] The use of a vehicle to travel from Victoria to Patricia Bay is accepted as reasonable, and the calculated distance matches the vehicle report for each of the four relevant days. The claimed vehicle rate matches the daily rate of \$67.56/day provided in the CCG manual. While gas receipts are not provided in the claim, the CCG used the flat rate of \$.22/kilometer, which the Administrator has accepted as reasonable in past claims from the CCG.

[32] Based on the above disallowance of costs associated with the marine survey performed on 12 April 2019, the vehicle costs for this day are also disallowed. The remaining vehicle charges are accepted as reasonable.

This portion of the claim is allowed in part in the amount of \$237.63.

Scheduled 13 – Administration \$104.26

[33] The claimed administration costs were charged at a rate of 3.09%, which is the rate on which the CCG and the Administrator have agreed. While the portion of the administrative costs attributed to the disallowed portion of full-time salary costs (Schedule 4) is also disallowed and the 20% Employee Benefits Program contribution has been excluded, the remaining administrative costs are accepted as reasonable.

This portion of the claim is allowed in part in the amount of \$75.07.

OFFER SUMMARY AND CLOSING

[34] The following table is provided to summarize the claimed and allowed expenses with respect to the CCG claim for the MV *Seal Rock* incident.

SCHEDULE	CLAIM	OFFER
2: Contract Services	\$30,464.90	\$6,425.95
4: Salaries	\$4,049.10	\$3,036.83

SCHEDULE	CLAIM	OFFER
11: Pollution Countermeasures Equipment	\$16,870.49	\$3,615.18
12: Vehicles	\$316.84	\$237.63
13: Administration	\$104.26	\$75.07
Total	\$51,805.59	\$13,390.66

Table 3 – Claimed and allowed expenses (all schedules)

[35] The amount of the Offer is \$13,390.66, plus statutory interest accrued to the time payment is made.

[36] In considering this Offer, please observe the following options and time limits that arise from section 106 of the MLA.

[37] 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.

[38] 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 on Form 337. You must serve it upon the Administrator, who shall be named the Respondent. Pursuant to Rules 317 and 350 of the *Federal Courts Rules*, you may request a copy of the Certified Tribunal Record.

[39] 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.

[40] 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