



OFFER LETTER

Ottawa, 8 August 2021
SOPF File: 120-892-C1
CCG File: n/a

BY EMAIL

Manager, Response Services and Planning
Canadian Coast Guard
200 Kent Street (Stn 5N177)
Ottawa, Ontario K1A 0E6

RE: F/V *Zac*– Port Alberni, British Columbia
Incident date: 2019-05-27

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 fishing vessel *Zac* (the “Vessel”), which sank in Port Alberni, British Columbia, on 27 May 2019 (the “Incident”).
- [2] On 22 April 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 \$43,758.69. The claim has been 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 CCG’s claim is allowed. The amount of \$40,277.24, plus accrued interest, is offered with respect to this claim (the “Offer”).
- [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, backup documents related to some of those claimed costs and expenses, and photos. To the extent that these submitted documents are relevant to the Fund's determination, their contents are described below.

Narrative

[6] On 27 May 2019, the CCG received word that the Vessel had sunk in the harbour of Port Alberni, BC. The Harbour Authority placed sorbent boom around the Vessel, from which an upwelling of oil was observed. CCG personnel arrived at the scene and deployed additional sorbent boom and pads.

[7] A Department of Fisheries & Oceans officer reported the owner's contact information to the CCG. When contacted by the CCG, the owner advised that he had agreed on a payment plan with Cold Water Divers Inc. ("Cold Water Divers"), a local contractor, to respond to the Incident and salvage the Vessel. The CCG requested details such as the waste disposal plan and tow plan. The owner later advised that he was no longer able to respond to the Incident and ceded control to the CCG.

[8] Cold Water Divers personnel arrived shortly thereafter and observed a continued upwelling of oil from the sunken Vessel. The next morning, they plugged all possible sources of fuel leakage on the Vessel and prepared for salvage operations.

[9] Four CCG personnel arrived and readjusted the sorbent boom, deployed additional boom, and prepared the soiled boom for disposal.

[10] With the assistance of the CCG, Cold Water Divers successfully raised and dewatered the Vessel later that day using lift bags and pumps. A marine surveyor then surveyed the Vessel to determine its condition and value.

[11] The results of the survey indicate that the Vessel posed an ongoing environmental threat and could not be made seaworthy again without substantial time and resources.

[12] Based on these results and the inability of the owner to take charge of the response, the CCG determined to remove the Vessel from the water and have it deconstructed. Another contractor completed the deconstruction later that day.

The costs and expenses summary

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

**COST SUMMARY
POLLUTION INCIDENT**

INCIDENT:	FV ZAC	PROJECT CODE:	FHV25
INCIDENT DATE:	May 27, 2019	DATE PREPARED:	9-Apr-21
DEPARTMENT:	CANADIAN COAST GUARD	PREPARED BY:	██████████

		<u>SCH</u>
MATERIALS AND SUPPLIES	-	1
CONTRACT SERVICES	34,573.34	2
TRAVEL	1,430.65	3
SALARIES - FULL TIME PERSONNEL	2,699.40	4
OVERTIME - FULL TIME PERSONNEL	3,215.63	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)	1,494.72	11
VEHICLES	231.24	12
ADMINISTRATION	113.72	13
TOTAL CCG COST OF INCIDENT		
\$ 43,758.69		

Figure 1 - Screen capture of CCG cost summary

FINDINGS AND DETERMINATIONS

Eligibility of the claimant

[14] The Administrator has determined that the CCG is an eligible claimant and that the Incident occurred within the territorial sea 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

[15] While the amount of oil onboard the Vessel at the time of the Incident is not specified in the CCG submission, the results of the marine survey indicate that it contained two fuel tanks, each with an estimated capacity of 150 gallons (about 568 liters), in addition to engine lube oil and hydraulic oil.

[16] The CCG submission includes photos of the Vessel during the response, several of which clearly depict the cleaning of oil contamination. Based on these photographs and the biographical details of the Vessel, it is accepted that the hull of the Vessel itself posed a threat of oil pollution.

CLAIM AND OFFER DETAILS

[17] 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 \$34,573.34

[18] These costs arise from work performed by four contractors during the response to the Incident. The following table summarizes these costs.

CONTRACTOR	SERVICE	COST incl. GST
Cold Water Divers Inc.	Raise and refloat the Vessel	\$21,909.55
TimberRose Ventures Ltd.	Tow, deconstruct, and dispose of the Vessel	\$8,235.94
Terrapure	Dispose of soiled pads and oil/water waste	\$2,632.35
Building Sea Marine	Survey of the Vessel	\$1,795.50
Total		\$34,573.34

Table 1 – Claimed contract services costs (Schedule 2)

[19] The narrative of events in the claim submission indicates that the owner of the Vessel initially informed the CCG that he had an agreement with Cold Water Divers

for the removal of the Vessel. He later informed the CCG that he was unable to proceed with the plan, and the CCG took over the contract.

[20] The owner's inability to implement the response plan left the CCG to deal with a genuine threat of oil pollution. In the circumstances, it was reasonable for the CCG to take charge of the contract. The expenses associated with the efforts by Cold Water Divers are generally accepted given the circumstances of the Vessel.

[21] However, there is a difficulty with respect to some delay on 27 May which is not explained in the submission. While the provided invoice is not completely clear on this point, it appears that four Cold Water Divers personnel attended at the scene on 27 May. Meal expenses for four people on this day are included in the costs. It also appears that only three personnel worked to raise the Vessel the following day.

[22] The Cold Water Divers invoice indicates that Cold Water Divers personnel spent nearly two hours awaiting direction from the CCG on the night of 27 May 2019, at which point the CCG delayed the operation to the next day. Cold Water Divers personnel stayed in a hotel in nearby Nanaimo on the night of 27 May.

[23] Given the lack of evidence as to the reasons for the delay, that portion of the expense has not been established as reasonable and is therefore disallowed.

[24] Once the Vessel was raised on 28 May, it was turned over to TimberRose Ventures to be towed to the deconstruction site, located eight nautical miles from Port Alberni. The Cold Water Divers crew and one CCG officer boarded the Vessel during the tow to ensure its stability.

[25] After the Vessel was beached and being prepared for deconstruction, two Cold Water Divers personnel spent eight hours cleaning and decontaminating equipment used during the response. While the equipment list included with the invoice is not itemized by cost and does not specify which equipment was actually used, the amount and type of equipment listed is accepted as appropriate for the work that was performed.

[26] With the exception of the costs related to delays on the part of the CCG on the night of 27 May 2019, the Cold Water Divers invoice is accepted as reasonable, considering the state of the Vessel and the timeline of the response plan.

The Cold Water Divers invoice costs are allowed in part in the amount of \$20,440.55.

[27] The second invoice, from TimberRose Ventures, covers costs incurred in towing and deconstructing the Vessel. Some of these costs were incurred by Franklin Forest Products, of which TimberRose Ventures appears to be a subsidiary, based on the submitted documentation.

- [28] While the Franklin Forest Products invoices contain limited information, a record of email correspondence between TimberRose Ventures and the CCG, dated 19 September 2019, provides further information. As in the Cold Water Divers invoice, the prices provided in the email are a combination of personnel and equipment costs.
- [29] TimberRose Ventures towed the Vessel to a Franklin Forest Products facility on 28 May 2019. Per the email, they returned two days later to assist in beaching the Vessel, which was subsequently deconstructed.
- [30] The additional costs listed in the TimberRose Ventures invoice arise from Franklin Forest Products personnel, who deconstructed the Vessel and cleaned and transported the debris for disposal. Finally, a subcontractor, Rayner & Bracht Ltd., supplied dumpster bins and disposed of the debris.
- [31] TimberRose Ventures charged \$225 per hour for the use of a tug and two crew members for 5.75 hours. The rate would normally be \$215 per hour, but due to the presence of CCG personnel aboard the Vessel during towing, a carrying charge was imposed. The rate charged is slightly less than the comparable rate used by some response organizations for a similar service and is accepted as reasonable. The 5.75-hour time is also considered reasonable, given the slow speed required to tow the Vessel with people onboard and the time required to disconnect the tow and unload people and equipment at the Franklin Forest Products facility.
- [32] TimberRose Ventures did not provide details on how long the beaching and deconstruction of the Vessel took, and the CCG did not oversee this work. However, the aforementioned email from TimberRose Ventures to the CCG indicates that the deconstruction and disposal were completed on or around 1 June 2019, for a total of about four days of work. This estimate is based on the use of a Bobcat Loader at a rate of \$85 per hour for 29 hours. The average rental rate for such a vehicle is \$40 per hour, leaving about \$45 per hour for personnel costs. These costs are accepted as reasonable.
- [33] TimberRose Ventures also charged for the use of a log loader at \$225 per hour for eight hours. A log loader can be rented for about \$5,000 per week. Assuming a 40-hour work week, this yields a rate of about \$125 per hour, with about \$100 per hour left over for personnel costs. These costs are also accepted as reasonable.
- [34] The remaining TimberRose Ventures costs arise from the additional use of a tug to assist in beaching the Vessel, dumpster bin rentals, and the disposal of oil contamination. These costs are also accepted as reasonable.

The TimberRose Ventures invoice costs are allowed in the amount of \$8,235.94.

[35] The third invoice comes from Terrapure for the disposal of 15 drums of oiled sorbents and one drum of liquid oil waste recovered during the salvage operation. This invoice is supported by a Bill of Lading and Movement Document.

[36] While it is unclear from the invoices and narrative how the liquid was recovered, the volume recovered is accepted. According to the Movement Document, the combined volume of contaminated sorbents and liquid amounted to 3,280 liters, just over twice the estimated fuel capacity of the Vessel, as calculated by the marine surveyor. While the estimated oil volume and disposal volume do not coincide, they suggest that at the time of the Incident, the Vessel was carrying about half of its fuel capacity.

The Terrapure invoice costs are allowed in the amount of \$2,632.35.

[37] The final contract services costs arise from a marine survey conducted by Building Sea Marine. The survey notes the poor condition of the Vessel, notably that it was covered in a layer of fuel and that a pump was required to keep it afloat. Despite the value of this information, the survey report does not contain specialized information that CCG personnel could not have discovered otherwise. A Senior Response Officer or Environmental Response Technician would have the required knowledge and technical expertise to produce a comparable report.

[38] Moreover, the survey appears directed at establishing the value of the vessel, rather than aiding an investigation into oil pollution. It is therefore not accepted that the report was secured as a measure taken with respect to oil pollution.

The Building Sea Marine costs are disallowed.

[39] The following table summarizes the claimed and allowed contract services costs.

CONTRACTOR	CLAIMED	ALLOWED	MARKDOWN
Cold Water Divers Inc.	\$21,909.55	\$20,440.55	Administrative delays on the night of 27 May 2019
TimberRose Ventures Ltd.	\$8,235.94	\$8,235.94	-----
Terrapure	\$2,632.35	\$2,632.35	-----
Building Sea Marine	\$1,795.50	\$0	Not established as a measure taken with respect to oil pollution.
Total	\$34,573.34	\$31,308.84	

Table 2 – Claimed and allowed contract services costs (Schedule 2)

This portion of the claim is allowed in part in the amount of \$31,308.84.

Schedule Three – Travel

\$1,430.65

[40] These expenses arise from the four CCG personnel who responded at the scene and are comprised of a one-night stay in a Port Alberni hotel for three of the personnel, private accommodation for the fourth person, private vehicle travel, and meal costs.

[41] The meal and incidental allowances claimed for each of the four personnel do not exceed the National Joint Council travel rates that were in force at the time of the response and are accepted as reasonable.

[42] The hotel costs for three of the personnel are supported by hotel invoices and are accepted as reasonable. However, the private accommodation allowance is \$50 per night, rather than the claimed \$100. Therefore, \$50 has been subtracted from the allowed accommodation costs for the person who stayed in private accommodation, identified in the table below as Officer 4.

[43] For two of these personnel, the claimed travel costs are slightly lower than their Total Reimbursable Expenses (“TRE”) as calculated in their Expense Report Statements. There is no explanation for this in the submission. For the other two personnel, a GST cost was applied to their TREs to obtain the claimed travel costs. However, TREs already include GST for commercial costs, and GST does not apply to allowances.

[44] In all cases, the lower of the TREs and claimed costs was accepted. The following table summarizes the claimed and allowed travel costs.

OFFICER	TRE	CLAIMED	ALLOWED
1	\$392.87	\$399.93	\$392.87
2	\$353.29	\$359.45	\$353.29
3	\$360.01	\$349.67	\$349.67
4	\$331.94	\$321.60	\$271.60
Total		\$1,430.65	\$1,367.43

Table 3 – Claimed and allowed travel costs (Schedule 3)

This portion of the claim is allowed in part in the amount of \$1,367.43.

Schedule Four – Salaries for Full Time Personnel

\$2,699.40

- [45] The salary costs are attributed to the four CCG personnel, all of whom are paid at the GT-04 level, who responded at the scene on 28-29 May 2019. Personnel and Equipment Daily Logs and salary forms listing individual work hours are included in the CCG claim.
- [46] The use of four Environmental Response personnel over two days is accepted as reasonable. The CCG Fleet Safety Manual requires at least three people to operate a Pollution Response Vessel (“PRV”), such as the one that was used in this response, with a fourth person ashore for communication and coordination purposes.
- [47] The claimed hourly salary rate of \$44.99 (including Employee Benefit Program contributions) is slightly higher than the calculated rate of \$44.84. It appears that the CCG divided the annual salary rate by 52 (the number of weeks per year) and then divided that weekly rate by 37.5 (the number of work hours per week).
- [48] Instead, Public Service and Procurement Canada advises that the annual pay rate should be divided by 52.176 to obtain the weekly rate and then divided by 37.5. This yields a rate of \$44.84 per hour, which was applied to the salary costs.

This portion of the claim is allowed in part in the amount of \$2,690.40.

Schedule Five – Overtime for Full Time Personnel

\$3,215.63

- [49] The claimed hourly overtime rate of \$37.50 is based on the aforementioned claimed hourly rate of \$44.99. In light of the recalculated salary rate as detailed in Schedule 4, the correct hourly overtime rate is \$35.87.
- [50] While the claimed overtime costs for each CCG officer are substantiated by Extra Duty Pay forms, only one of these is signed by the officer and a supervisor. The costs are, however, also substantiated by the narrative and Personnel and Equipment Daily Logs, except for the work done on 27 May 2019. The overtime costs claimed for this day are only mentioned in the narrative, from which it is reasonable to conclude that one person was fulfilling the role of a Duty Officer, with two others preparing equipment for departure the following day.
- [51] The overall amount of 85.75 overtime hours claimed is accepted as reasonable at a rate of \$35.87 per hour.

This portion of the claim is allowed in part in the amount of \$3,075.85.

Schedule 11 - Pollution Counter-Measures Equipment

\$1,494.72

- [52] These costs arise from the use of a CGE 734 PRV, an electric pump, a 2000-watt generator, and 200 feet of 24-inch containment boom. Personnel and Equipment Daily Log forms also note the use of 20 bales of sorbent pads and 14 bales of sorbent boom on 29 May 2019, for which costs are not claimed in this matter.
- [53] While the quoted rate for the electric pump corresponds to a portable fuel pump with a capital cost of \$4,400, which is unlikely to have been used in this response, the \$32.49 combined cost of the pump and generator is accepted as reasonable.
- [54] The CCG claimed for the use of the PRV for one day, which is supported by a vessel log. The rate matches that provided in the CCG Charge-Out Manual and is accepted as reasonable as well.
- [55] Finally, the amount and type of containment boom is accepted as reasonable, given the context of the Incident and the perceived risk of oil pollution. The rate again matches that provided in the Charge-Out Manual, and photos substantiate the use of the boom.

This portion of the claim is allowed in its entirety in the amount of \$1,494.72.

Schedule 12 – Vehicles

\$231.24

- [56] The CCG claimed for the use of a Ford F-350 truck for two days. The claimed daily rate of \$65.57 is lower than the rate listed in the Charge-Out Manual and is accepted.
- [57] While the claim includes no fuel receipts, fuel usage for the truck was calculated at the rate of \$.22 per kilometer. This rate has been accepted in past claims from the CCG and is accepted here.
- [58] Finally, the claimed distance of 455 kilometers is supported with a vehicle log and is accepted, given the distance travelled.

This portion of the claim is allowed in its entirety in the amount of \$231.24.

Schedule 13 – Administration

\$113.72

- [59] The claimed administration fees were charged at a rate of 3.09%, the rate on which the CCG and the Administrator have agreed, and were applied to the claimed travel (Schedule 3) and salary (Schedule 4) costs.

[60] The accepted costs for both of these schedules total \$3,519.75, after removing Employee Benefit Program contributions from the salary costs. Applying the 3.09% administrative rate to this amount yields an accepted administration cost of \$108.76.

This portion of the claim is allowed in part in the amount of \$108.76.

OFFER SUMMARY AND CLOSING

[61] The following table is provided to summarize the claimed and allowed expenses with respect to the CCG claim for the F/V Zac incident.

SCHEDULE	CLAIM	OFFER
2: Contract Services	\$34,573.34	\$31,308.84
3: Travel	\$1,430.65	\$1,367.43
4: Salaries	\$2,699.40	\$2,690.40
5: Overtime	\$3,215.63	\$3,075.85
11: Pollution Countermeasures Equipment	\$1,494.72	\$1,494.72
12: Vehicles	\$231.24	\$231.24
13: Administration	\$113.72	\$108.76
Total	\$43,758.69	\$40,277.24

Table 4 – Claimed and allowed expenses (all schedules)

[62] The amount of the Offer is \$40,277.24, plus statutory interest accrued to the time payment is made.

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

[64] 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.

[65] 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.

[66] 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.

[67] 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