



OFFER LETTER

Ottawa, 1 September 2021
SOPF File: 120-896-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: Unknown name (pleasure craft)– Cupids, Newfoundland and Labrador
Incident date: 2020-01-18

SUMMARY AND OFFER

- [1] This letter responds to a claim submitted by the Canadian Coast Guard (the “CCG”) with respect to an incident involving a forty-foot pleasure craft the name of which is unknown (the “Vessel”), which sank in Cupids, Newfoundland and Labrador, on 18 January 2020 (the “Incident”).
- [2] On 15 June 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 \$14,826.38. 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 \$14,766.79, 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 18 January 2020, the CCG received notice that the Vessel had sunk in Cupids, NL, during a strong snowstorm. A small oily sheen was visible in the surrounding water.

[7] The CCG worked with local authorities to identify the owner. A team of CCG personnel was unable to deploy to the scene due to the poor weather and resulting road closures in the area.

[8] On 20 January 2020, two CCG personnel responded at the scene and found the Vessel partially submerged in the water. The oily sheen had begun to disperse and travel downwind of the site. It was estimated that the Vessel contained approximately 40 gallons of diesel fuel. After identifying the owner, the CCG consulted with him to form a response plan.

[9] On 21 January 2020, an aerial assessment of the area revealed that the oily sheen was still present but had partially diminished. The following day, the CCG placed sorbent boom around the outboard side of the Vessel but was unable to do so on the inboard side due to the Vessel listing in the water.

[10] The owner failed to provide a response plan that was satisfactory to the CCG. In light of this, the continuing poor weather conditions, the oily sheen in the water, and concerns that the Vessel's mooring lines may break, the CCG took charge of the response to the Incident.

[11] On 23 January 2020, the CCG contracted a diving team and a waste management team to begin operations. The following day, the CCG raised the Vessel's bow using two pumps, but was unable to raise its stern. The CCG made more progress on this front by using a third pump. One of the contractors used lift bags to bring the Vessel's transom above the waterline.

[12] The team stopped using the pumps when oil was discovered in their discharge. A vacuum truck was subsequently used to remove pollutants from the interior of the Vessel. No ingress of water was detected.

[13] On 25 January 2020, two CCG personnel again travelled to the site and found the owner cleaning some of the debris. They inspected the Vessel and found some water in the bilge that they believed to have come from the waterlogged items in the cabin rather than ingress of water. They helped the owner secure the Vessel.

[14] On 28 January 2020, the Vessel remained secure, and the CCG retrieved the sorbent boom from the water and removed about one liter of diesel fuel and a partially filled 20-liter pail of lube oil from the dock. Finally, the CCG disposed of these items.

The costs and expenses summary

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

COST SUMMARY			
POLLUTION INCIDENT			
INCIDENT:	Sunken Vessel, Cupids, NL	PROJECT CODE:	2E185
INCIDENT DATE:	January 17, 2020	DATE PREPARED:	March 3, 2021
DEPARTMENT:	Canadian Coast Guard	PREPARED BY:	██████████
			<u>SCH</u>
MATERIALS AND SUPPLIES	\$ 600.00		1
CONTRACT SERVICES	\$ 11,304.80		2
TRAVEL	\$ 202.20		3
SALARIES - FULL TIME PERSONNEL	\$ 647.40		4
OVERTIME - FULL TIME PERSONNEL	\$ 1,328.14		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)	\$ 266.69		11
VEHICLES	\$ 376.11		12
ADMINISTRATION	\$ 101.04		13
TOTAL CCG COST OF INCIDENT	\$ 14,826.38		

Figure 1 - Screen capture of CCG cost summary

FINDINGS AND DETERMINATIONS

Eligibility of the claimant

[16] 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

[17] Marine Communications and Traffic Services Labrador, which reported the Incident to the CCG, observed an oily sheen in the water surrounding the Vessel. This is substantiated by photos included in the submission, which depict the sunken Vessel and oily sheen. Additionally, invoices from one of the contractors note that fuel and oily water were removed from the sunken Vessel.

[18] The oily sheen was reported in the water until 24 January 2020, when the Vessel was refloated and pumped. At this point, the pollution threat had been mitigated, which the CCG confirmed through a visit to the scene the following day.

[19] On these grounds, the CCG submission establishes that the Vessel did pose a threat of hydrocarbon oil pollution to the marine environment. Accordingly, it was reasonable for the CCG to take steps to mitigate this threat.

CLAIM AND OFFER DETAILS

[20] 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.

<i><u>Schedule One – Materials and Supplies</u></i>	<i><u>\$600.00</u></i>
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[21] These costs arise from the use of eight units of 8-inch sorbent boom at the cost of \$75.00 per unit. This yields a total cost of \$600.00.

[22] The CCG placed this boom around the sunken Vessel and later collected and disposed of it once the pollution threat had been addressed. This is substantiated by the Personnel & Equipment Daily Log for 24 January 2020, which lists the boom as a resource, as well as the included photos, some of which clearly depict the boom surrounding the Vessel.

[23] Given the documented oil pollution threat that the Vessel posed, this measure and the resulting cost are accepted as reasonable.

This portion of the claim is allowed in its entirety in the amount of \$600.00.

Schedule Two – Contract Services

\$11,304.80

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

CONTRACTOR	SERVICE	COST incl. GST
Sea-Force Diving Ltd.	Diving crew to raise and salvage the Vessel	\$8,765.89
Purdy’s Waste Management and Industrial Services Ltd.	Use of vacuum truck and disposal of debris and soiled boom	\$2,538.91
Total		\$11,304.80

Table 1 – Claimed contract services costs (Schedule 2)

[25] The submitted documentation does not include contract documentation or information concerning the negotiated tasks and effort allocation for either of the contractors. Nonetheless, based on the provided invoices, it is concluded that the CCG did contract with the two aforementioned contractors for the listed services.

[26] The invoice for Sea-Force Diving Ltd., dated 27 January 2020, includes hourly rates for 14 hours of work by a dive crew to salvage the Vessel and five hours to clean gear afterward, lump sum costs for lift bags and rigging, a daily rate for the use of a compressor, and a personnel travel cost charged at \$.85 per kilometer.

[27] The invoices and narrative do not contain a detailed breakdown of the actual hours worked by Sea-Force Diving Ltd. personnel. Nonetheless, the work hours listed in the Personnel and Equipment Daily Log for 24 January 2020 align with the hours billed by Sea-Force Diving Ltd., and the rates charged are reasonable. This work is accepted as necessary in the circumstances, and the costs are allowed in their entirety in the amount of \$8,765.89.

[28] The claim also includes two invoices and two work orders from Purdy’s Waste Management and Industrial Services Ltd. One work order is for the transport and disposal of one drum of oily boom, with the attached invoice listing a flat rate of \$258.75. The other work order covers the rest of the work performed by this contractor, with the attached invoice listing five hours for the use of a vacuum truck as well as 2.5 hours of overtime, 5.5 hours of work by a crew to remove fuel and oily water from the Vessel as well as 2.5 hours of overtime, and a per-liter rate for the disposal of fuel and oily water.

[29] The submitted evidence indicates that the vacuum truck was on the wharf at Cupids, NL, from 1200 to 1745 on 24 January 2020, and one of the aforementioned invoices identifies a total of 5,000 liters of fuel and oily water being removed from the scene.

The CCG then dropped off one remaining drum of soiled boom for disposal at Pardy's Waste Management on 28 January 2020.

[30] These measures to remove and dispose of the Vessel's pollutants were reasonable and necessary in the circumstances. The resulting costs are also accepted as reasonable. The Pardy's Waste Management costs are allowed in their entirety in the amount of \$2,538.91.

This portion of the claim is allowed in its entirety in the amount of \$11,304.80.

Schedule Three – Travel \$202.20

[31] The claimed travel costs cover meal expenses for two of the three CCG personnel who responded at the scene. These meal expenses were incurred on 24 and 25 January 2020 and are substantiated by the included Expense Report Statements.

[32] The CCG also submitted an excerpt from the National Joint Council of the Public Service of Canada that verifies that these amounts are within the compensable range for meal expenses incurred on government travel.

This portion of the claim is allowed in its entirety in the amount of \$202.20.

Schedule Four – Salaries for Full Time Personnel \$647.40

[33] The salary costs are attributed to the three CCG personnel who responded at the scene. A total of 7.5 work hours per person is claimed for 24 January 2020, when the Vessel was raised and pumped.

[34] According to the submitted Personnel & Equipment Daily Logs, one person began working at 0630 on this day and finished at 2030, the second began at 0700 and finished at 1930, and the third began at 0630 and finished at 2000. The claim also includes individual employee work calendars for each person, which confirm the number of regular salary hours charged on this day.

This portion of the claim is allowed in its entirety in the amount of \$647.40.

Schedule Five – Overtime for Full Time Personnel \$1,328.14

[35] The CCG also claims a total of 31 overtime hours for the three aforementioned personnel. Ten of these hours are attributed to one person on 24 and 25 January 2020, 9.5 are attributed to another on 24 and 25 January, and 4.5 are attributed to the other on 24 January.

[36] These hours are substantiated by individual overtime calendars for each of the three personnel, copies of online pay status forms, and Personnel and Equipment Daily Logs for both days.

[37] The overtime hours claimed for 24 January align with the work performed by the contractors on this day, and it is accepted that these hours could not have been avoided, particularly given the severe winter weather in the area at the time.

[38] The overtime hours claimed for 25 January align with the mention in the narrative that two personnel returned to the scene on this day to inspect the Vessel and help the owner secure it. These actions were reasonable in order to ensure that the work performed on the previous day had been successful.

This portion of the claim is allowed in its entirety in the amount of \$1,328.14.

Schedule 11 - Pollution Counter-Measures Equipment \$266.69

[39] These costs arise from the use of a response trailer at a rate of \$138.89 for one day, a 4-inch pump at a rate of \$86.67 for one day, and fuel for the pump in the amount of \$41.13. These charges are substantiated by the Personnel and Equipment Daily Log for 24 January 2020 and fuel receipts from a gas station.

[40] This equipment was required to effectively respond to the Incident, and the claimed charges are accepted as reasonable in the circumstances.

This portion of the claim is allowed in its entirety in the amount of \$266.69.

Schedule 12 – Vehicles \$376.11

[41] The CCG claimed for the use of a response vehicle, which was used to travel to and from Cupids, NL, over the course of four days. The daily rate for the use of the vehicle is listed as \$67.56, for a total of \$270.24 for four days. A gas receipt totaling \$105.87 is also included in the claim. These costs yield a total of \$376.11.

[42] Given the nature of the Incident, these costs were unavoidable, as it was necessary for CCG personnel to drive to the wharf in Cupids. The rates as listed are accepted as reasonable.

This portion of the claim is allowed in its entirety in the amount of \$376.11.

Scheduled 13 – Administration \$101.04

[43] Pursuant to an agreement with the Administrator, the CCG may claim for administrative costs at 3.09% of certain response costs and expenses. In this case, the claim appropriately applied that factor to the claims for Materials and Supplies (Schedule 1), travel (Schedule 3), and salary (Schedule 4) costs, excluding Employee Benefit Program contributions.

[44] The calculations for the administration rate are rejected, for two reasons.

[45] First, in calculating the administration rate, the amount of \$750.00 was used for the materials and supplies (Schedule 1) cost. The correct amount, as claimed in the CCG submission, is \$600.00. With that correction in place, the total administration claim is \$41.45.

[46] Second, the CCG added a figure of \$47.52 to the first total, which had been calculated using the 3.09% factor against eligible categories of costs and expenses. This added figure is labelled “Corporate Administration Cost”. The added figure was calculated by adding Supplies (Schedule 1), travel (Schedule 3), and salary (Schedule 4) costs to the result of the first calculation (i.e. the result of the administration calculation) - and then multiplying the total by 3.09%. This second calculation would result in both double counting the eligible expenses and claiming administrative costs on administrative costs. The “Corporate Administration Cost” claim is therefore rejected.

[47] The Regional Administration Cost, when corrected, amounts to \$41.45, and is accepted as reasonable.

This portion of the claim is allowed in part in the amount of \$41.45.

OFFER SUMMARY AND CLOSING

[48] The following table is provided to summarize the claimed and allowed expenses with respect to the CCG claim for the sunken pleasure craft in Cupids, NL.

SCHEDULE	CLAIM	OFFER
1: Materials and Supplies	\$600.00	\$600.00
2: Contract Services	\$11,304.80	\$11,304.80
3: Travel	\$202.20	\$202.20
4: Salaries	\$647.40	\$647.40
5: Overtime	\$1,328.14	\$1,328.14
11: Pollution Countermeasures Equipment	\$266.69	\$266.69
12: Vehicles	\$376.11	\$376.11
13: Administration	\$101.04	\$41.45
Total	\$14,826.38	\$14,766.79

Table 2 – Claimed and allowed expenses (all schedules)

[49] The amount of the Offer is \$14,766.79, plus statutory interest accrued to the time payment is made.

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

[51] 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.

[52] 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 the named Respondent. Pursuant to Rules 317 and 350 of the *Federal Courts Rules*, you may request a copy of the Certified Tribunal Record.

[53] 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.

[54] 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