



OFFER LETTER

Ottawa, 7 October 2022
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CCG File:

VIA EMAIL

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

RE: FV *Pa Boy* — Norris Point, Newfoundland and Labrador
Incident date: 2020-06-24

SUMMARY AND OFFER

[1] This letter responds to a submission from the Canadian Coast Guard (the “CCG”) with respect to a fishing vessel registered under the name *Pa Boy*. The vessel sank alongside the wharf at Norris Point, Newfoundland and Labrador on 24 June 2020 (the “Incident”).

[2] On 2 May 2022, 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 under sections 101 and 103 of the *Marine Liability Act*, SC 2001, c 6 (the “MLA”) totaling \$5,867.59 for costs and expenses arising from measures taken by the CCG to respond to the Incident.

[3] 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 MLA.

[4] The amount of \$2,366.38 (the “Offer”), plus statutory interest to be calculated at the time the Offer is paid, 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 submission.

THE SUBMISSION RECEIVED

[5] 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. Where relevant to the Offer, they are reviewed below.

Narrative and photographs

[6] According to the narrative, on 24 June 2020 [*sic*]:

At 13:35, the Canadian Coast Guard (CCG) Environmental Response (ER) was informed that the 32' "FV Pa' Boy" sank alongside the wharf in Norris Point, NL. The vessel was reported to have 30 gallons of fuel onboard. The owner had insurance that had been engaged immediately.

The ER Duty officer contacted the vessel owner and issued a verbal Notice. The vessel owner was booming the vessel and making arrangements for divers and heavy equipment to assist in refloating the vessel.

ER deployed three personnel to Norris Point at 15:00 with a response vehicle and response trailer to monitor [...] and ensure an appropriate response to this incident. ER personnel travelled until 22:30 and stoped in Deer Lake for the night. [...]

[7] The narrative goes on, with respect to 25 and 26 June 2020 [*sic*]:

ER personnel departed Deer Lake at 06:00 for Norris Point. Once arrived on-site, ER personnel engaged with the vessel owner and insurance representative. The hired divers arrived on-site at 09:00. The divers began operations at 10:00, plugging the vents on the fuel tanks and commenced securing lift bags to the vessel. They attached the lift bags around the hull, turned on-air and kept adjusting bags until enough lift was achieved to get pumps going. The contractor used 4" pump from Response trailer.

Refloating and dewatering operations were completed at 15:00. The vessel had been successfully refloated and fuel had been removed. ER operations concluded and ER personnel were released from the site. ER personnel departed the site at 16:00. ER personnel stopped at Humber Valley, NL for the night [...].

ER personnel departed Humber Valley at 08:00 [on 26 June 2020] and arrived at the ER Depot in St. John's NL at 15:50.

Figures 1 and 2 – Photos of the response to the Incident provided with the CCG narrative

Cost summary

[8] The CCG submission summarizes its claimed costs as follows:

		<u>SCH</u>
MATERIALS AND SUPPLIES	\$ -	<u>1</u>
CONTRACT SERVICES	\$ -	<u>2</u>
TRAVEL	\$ 1,502.55	<u>3</u>
SALARIES - FULL TIME PERSONNEL	\$ 2,030.08	<u>4</u>
OVERTIME - FULL TIME PERSONNEL	\$ 1,665.25	<u>5</u>
OTHER ALLOWANCES	\$ -	<u>6</u>
SALARIES - CASUAL PERSONNEL	\$ -	<u>7</u>
SHIPS' COSTS (EXCL. FUEL & O/T)	\$ -	<u>8</u>
SHIPS PROPULSION FUEL	\$ -	<u>9</u>
AIRCRAFT	\$ -	<u>10</u>
POLLUTION COUNTER-MEASURES EQUIPMENT (PCME)	\$ -	<u>11</u>
VEHICLES	\$ 551.27	<u>12</u>
ADMINISTRATION	\$ 118.44	<u>13</u>

Figure 3 – Screen capture of the cost summary

CCG internal documentation

[9] CCG internal costs are supported by various internal logs and receipts.

[10] Claimed regular salary costs include a 20% markup on base rates, representing employee benefits. Overtime was paid at a multiple of 1.5 times each employee’s base rate (less benefits):

Name, Group, Level	Rates	Hours Claimed by Date (June 2020)			Total Hours	Claimed Cost
		24 Wed	25 Thurs	26 Fri		
AE	Reg: \$48.96	1.0	7.5	7.5	16.0	\$783.36
GT-05	1.5x: \$61.20	6.5	4.0	–	10.5	\$642.60
PS	Reg: \$39.55	1.0	7.5	7.5	16.0	\$632.80
GT-04	1.5x: \$49.44	6.5	4.0	–	10.5	\$519.12
JP	Reg: \$38.37	1.0	7.5	7.5	16.0	\$613.92
GT-04	1.5x: \$47.96	6.5	4.0	–	10.5	\$503.53
Totals					79.5	\$3,695.33

Table 1 – Claimed salary and overtime by date (full names of CCG personnel replaced with initials)

[11] Travel costs for each of the responding Environmental Response (“ER”) personnel consist of \$263.35 for hotels (one night at Deer Lake and one night at Humber Valley) and \$237.50 for *per diem* costs, calculated in accordance with the Treasury Board rates that were in effect at the time of the Incident.

[12] CCG vehicle costs are claimed with respect to the three-day use of a response vehicle, at a day rate of \$67.56, and fuel costs of \$348.59.

CORRESPONDENCE WITH THE CLAIMANT

[13] On 20 July 2022, the Fund put the following to the CCG:

[It] is not clear [...] why CCG decided to attend the incident directly instead of utilizing a form of remote monitoring. Prior to leaving St. John's for Norris Point, the CCG documentation provides evidence that:

1. The Owner had insurance and was deploying resources to not only mitigate the pollution threat but also to remove the vessel,
2. CCG had no apparent concerns over the reliability of the owner or the appropriateness of the response plan, and
3. CCG had an appreciation of the type (mostly gasoline) and limited volume of product involved as well as the potential environmental impacts.

In addition, CCG had access to other Federal resources on the west coast of Newfoundland, including but not limited to, a DFO office located relatively close to Norris Point.

Did CCG consider remote monitoring with possible on-site verification by any locally available entities prior to deploying resources from St. John's?

An explanation of the factors that prompted the CCG decision to send the three ER personnel and equipment along with any supporting field notes or log entries [...] would be appreciated.

[14] A reply was received from the CCG on 3 August 2022. In its reply, the CCG stated that (1) There were no CCG personnel in the Norris Point area at the time of the Incident; (2) The *Pa Boy* had sunk with pollutants on board; and (3) Non-ER resources are generally not qualified to fulfill the Minister of Fisheries and Oceans' monitoring function under paragraph 180(1)(b) of the *Canada Shipping Act, 2001*, SC 2001, c 26 (the "CSA"). The CCG's reply continued:

While CCG had spoken to the owner and been told that action was going to be taken, even the most positive of intentions, in CCG's experience, often fail to translate to appropriate action (even when owners have insurance, as this one did); the ER team has attended to several sunken vessels and had them raised before the insurance representatives even showed up on site, and Marine Insurance usually requires that the owner conduct the response and pay for the response before submitting expenses to the insurance. Additionally, many owners who are initially cooperative will say at some point throughout the response that they are no longer willing or able to respond, and this situation poses significant delays in addressing the incident if ER is not already on scene.

Of note, it's common for CCG ER to ask local resources to provide on-site verification. This information helps determine our requirement for on-site presence for incidents that may continue for several days. In

accordance with ER's mandate, it was essential that CCG be on site during this incident.

[15] The CCG also provided copies of three pages of handwritten notes dated 24 and 25 June 2020 and attributed to the ER Duty Officer in St. John's. Those notes identify the oil pollution threat from the *Pa Boy* as consisting of 30 gallons of diesel fuel.

[16] Significantly, the notes report that, at 13:54 on 24 June 2020 (i.e. before the departure of the ER crew from St. John's), the Duty Officer requested that the CCGS *Cape Fox* attend the scene of the Incident to assess the situation. The *Cape Fox* is a motor lifeboat operated as part of the CCG's Search and Rescue program. It arrived at Norris Point around 17:25 and provided an update that included photographs. Consequently, the CCG was aware that the *Pa Boy* was boomed off and that no pollution was visible.

[17] It appears that the involvement of the *Cape Fox* was overlooked by the CCG both in preparing its claim submission and in its response to the Fund's questions. There is no mention of the *Cape Fox* or its role in the response save for in the handwritten notes from the ER Duty Officer.

[18] Finally, the Duty Officer's notes indicate that a written response plan was requested from the owner of the *Pa Boy* at approximately 13:35 on 24 June 2020. The notes report that the owner provided verbal updates over the telephone throughout the remainder of the day, and that a formal plan was received by the Duty Officer at some point prior to 22:10 that evening, when it was forwarded to the ER crew, which was in transit at the time.

DETERMINATIONS AND FINDINGS

Identification and description of the *Pa Boy*

[19] A search of Transport Canada's Vessel Registration Query System was carried out to properly identify the vessel, which is referred to by various names in the CCG's documentation. The search revealed a vessel registered under the name *Pa Boy*. That vessel was identified on the basis that its registered owner's name matches the owner information provided by the CCG, the registered owner's address is in Norris Point, and the Registry's description of the vessel roughly matches that provided by the CCG.

[20] The official number of the *Pa Boy* is 809323. It is listed as a fishing vessel of reinforced plastic construction with a length of 8.47m and a gross tonnage of 10.42. It was built in 1987. According to the listing in the Registry, the vessel is powered by a single gasoline engine of 165 brake horsepower.

The CCG submission presents potentially eligible claims

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

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

[23] The submission was received within the limitation periods set out under subsection 103(2) of the MLA.

[24] 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. Alternatively, those costs and expenses arise from “preventive measures”, as contemplated under the International Convention on Civil Liability for Bunker Oil Pollution Damage. In either case, some of the claimed costs and expenses are potentially eligible for compensation.

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

[26] The extent to which the measures taken were reasonable must be evaluated.

Findings on the evidence submitted by the CCG

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

[27] The CCG included with its submission a narrative and supporting documents that set out the facts of the Incident and the response thereto in some detail. The descriptions of material events contained in the CCG’s claim documentation, including in the later submissions made on 3 August 2022, are accepted as generally accurate, though one key discrepancy is addressed below.

The oil pollution threat posed by the vessel was minimal

[28] The narrative notes that the *Pa Boy* was reported as having approximately 30 gallons of an unspecified type of fuel on board when it sank. The notes of the ER Duty Officer reference diesel fuel. Conversely, the listing for the vessel in Transport Canada’s Registry suggests that the fuel in question would have been gasoline. The difference is not material to this decision. Both products are non-persistent, volatile, and largely non-recoverable once lost to the marine environment. The vessel would also have had heavier oils aboard for use in its engines, but the quantities of those substances would have been limited.

[29] In any event, the owner of the *Pa Boy* was already engaged in a pollution response and salvage operation by the time the CCG became aware of the Incident, at 13:35 on 24 June 2020. Boom had been deployed. Though the CCG’s claim documentation does not disclose the deployment of the *Cape Fox*, it is concluded that the crew of that vessel independently confirmed the owner’s account around 17:25, well within three hours of the departure of the ER crew from St. John’s. The CCG knew the owner’s operation was backed by an insurer, which ought to have bolstered confidence that a broadly low-risk situation was being handled competently. A written plan was received from the owner, as requested, on the evening of 24 June. There is no evidence that the CCG believed that the owner’s response plan or its implementation was inadequate.

[30] Moreover, there is no evidence the CCG factored the *Cape Fox* into its decision to deploy. Indeed, consideration of involving other resources, like the *Cape Fox*, was precisely why the Fund posed its questions to the CCG. The CCG denied the consideration and even availability of such resources – apparently overlooking that in fact the *Cape Fox* had been deployed and provided information which ought to have caused a reconsideration of the CCG response.

[31] It is concluded on the evidence and all the factors set out above that the oil pollution threat posed by the *Pa Boy* was minimal, and that this was known, or ought to have been known, by the CCG before it dispatched its ER personnel to Norris Point.

Deployment of Search and Rescue assets was reasonable, but deployment of ER assets was not

[32] Though the CSA gives the CCG extensive discretionary powers to monitor polluter-led response operations, its costs and expenses on that front must be assessed for reasonableness in the context of a claim under Part 7 of the MLA. A core component of reasonableness is the concept of proportionality. In essence, the evidence must show that effort allocation and its attached costs match a perceived pollution threat. In this case, the CCG's decision to deploy ER personnel into the field on a costly long-distance monitoring operation is not considered proportional to the oil pollution threat disclosed by the evidence, particularly given what was known or ought to have been known by the time of deployment.

[33] The travel time by road between St. John's, where the CCG ER team was stationed, and Norris Point is at least eight hours with appropriate rest breaks. As a result, any personnel deployed to the scene would have been away from home base for at least three days, inevitably running into substantial overtime. Given its 15:00 departure on 24 June 2020 the ER team was not able to reach Norris Point until the next morning, a considerable delay given that the owner's plan was already in place and ready for implementation, and given that the crew of the *Cape Fox* had confirmed the owner's account.

[34] In order to efficiently fulfil its monitoring mandate in remote locations, the CCG has access to a broad array of federal resources, including Search and Rescue assets. Here, it is clear on the evidence that the *Cape Fox* was deployed to the scene in advance of the ER team. When the *Cape Fox* report was received, the ER crew was much closer to St. John's than to Norris Point.

[35] Ultimately, it is determined that the deployment of the *Cape Fox* in a preliminary monitoring capacity was reasonable. With that vessel en route to Norris Point, and in light of the other facts understood by the CCG at the time, it was not reasonable to deploy an ER team from St. John's until a report from the *Cape Fox* had been received. The report from that vessel's crew, received sometime before 17:25 on the evening of 24 June 2020, ought to have substantially eased the CCG's concerns: the owner's account was reliable and its ongoing response was adequate.

[36] In the result, the CCG's decision to deploy three personnel from St. John's to Norris Point is not accepted as reasonable. Associated travel, labour, and vehicle costs are

therefore rejected. In their place, seven regular labour hours at the GT-05 rate have been accepted, representing the labour allocation deemed reasonable in the remote monitoring context. Certain additional amounts are also allowed, representing the deemed costs associated with the deployment of the *Cape Fox* and its crew. All of these amounts are detailed below.

CLAIM AND OFFER DETAILS

[37] The CCG presented its costs and expenses across five schedules, each of which is outlined below. To the extent that reasons are not already set out in this letter, explanations are provided below as to why each portion of the claim has been allowed or disallowed.

Schedule 3 – Travel Claimed: \$1,502.55

[38] For the reasons set out above, the CCG’s claimed travel costs are not accepted.

The travel portion of the submission is rejected.

Schedule 4 – Salaries – Full Time Personnel Claimed: \$2,030.08

[39] As noted above, a portion of claimed regular salary costs is accepted with respect to ER personnel on the basis that a remote monitoring response to the Incident would have represented a reasonable allocation of resources. It is determined that one ER employee at the GT-05 level would have been sufficient, so the claimed hourly rate of \$48.96 (see Table 1), inclusive of employee benefits costs, has been used to calculate accepted costs.

[40] With respect to 24 June 2020, it is considered that two hours would have represented a reasonable allocation of effort. This would have allowed CCG ER to receive and process the initial pollution report, assess the situation, task the *Cape Fox*, and receive the report of its crew.

[41] As to 25 June 2020, the day of the owner’s salvage operation, four hours are accepted. That timeframe would have allowed the CCG to follow the progress of the owner’s operation, seeking telephone updates as needed, and to verify its completion. A single hour is accepted with respect to 26 June, for confirming that there were no remaining issues and completing any outstanding paperwork.

[42] A total of \$342.72 is accepted with respect to ER personnel regular salaries.

[43] With the *Cape Fox* stationed at Lark Harbour, approximately 42 nautical miles from Norris Point, it is determined that a one-way trip for that vessel would have taken approximately two hours. The time required for a roundtrip with an hour on scene would therefore have been approximately five hours. Assuming the vessel was crewed by four personnel, paid at an average hourly rate of \$40.00 including the standard 20% markup for benefits, it is determined that the salary costs associated with the use of that vessel were approximately \$800.00. Accordingly, that amount is accepted in addition to the amount noted above.

The salaries portion of the submission is allowed in the amount of \$1,142.72.

Schedule 5 – Overtime

Claimed: \$1,665.25

[44] As the substantive response to the Incident took place during regular weekday hours, it is determined that a remote monitoring operation would not have resulted in any overtime. As a result, no overtime costs are accepted.

The overtime portion of the submission is rejected.

Schedule 11 – Pollution Counter-measures Equipment

Claimed: \$0.00

[45] The CCG does not seek compensation with respect to pollution counter-measures equipment. However, it has been determined that compensable costs were incurred with respect to the use of the *Cape Fox*. Though the operating costs for that vessel would considerably exceed those of a Pollution Response Vessel, Class II (“PRV II”), it is noted that the *Cape Fox* was used for a few hours only. Accordingly, in the absence of published hourly charge-out rates for Search and Rescue vessels, the full day rate for a PRV II, or \$1,194.23, is accepted.

Pollution counter-measures equipment costs are allowed in the amount of \$1,194.23.

Schedule 12 – Vehicles

Claimed: \$551.27

[46] For the reasons set out above, the CCG’s claimed vehicle costs are not accepted.

The vehicles portion of the claim is rejected.

Schedule 13 – Administration

Claimed: \$118.44

[47] Ostensibly, this portion of the CCG’s claim represents 3.09% of the claimed amounts for travel and regular salary costs. Generally, this method of calculating administration costs is accepted as reasonable. However, the CCG’s calculations in this case are unusual and difficult to understand. Whereas the salary costs amount subject to the administration rate is normally exclusive of employee benefits costs (a markup of 20% in this case), here it seems that the CCG seeks administration costs based on regular salary base rates plus an employee benefits markup of substantially more than 20%. This method of calculation is not accepted, and reductions are necessary as a result.

[48] Further adjustments under this schedule are necessary because none of the claimed travel costs have been accepted, reductions have been made to the claimed amounts for ER personnel regular salary costs, and additional Search and Rescue personnel salary costs have been allowed.

The administration portion of the submission is allowed in the amount of \$29.43.

OFFER SUMMARY AND CLOSING

[49] The following table summarizes the claimed and allowed expenses:

Schedule	Claimed	Allowed
3 – Travel	\$1,502.55	\$0.00
4 – Salaries – Full Time Personnel	\$2,030.08	\$1,142.72
5 - Overtime	\$1,665.25	\$0.00
11 – Pollution Counter-measures Equipment	\$0.00	\$1,194.23
12 – Vehicles	\$551.27	\$0.00
13 – Administration	\$118.44	\$29.43
Totals	\$5,867.59	\$2,366.38

Table 2 – Summary of amounts claimed and allowed

[50] Costs and expenses in the amount of \$2,366.38 are accepted and will be paid together with statutory interest calculated at the date of payment if the Offer is accepted.

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

[52] 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.

[53] 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.

[54] 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 be issued.

[55] 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