



## OFFER LETTER

Ottawa, 3 March 2023  
*SOPF File:* 120-923-C1  
*CCG File:*

### VIA EMAIL

Acting Senior Director of Incident Management  
Canadian Coast Guard  
200 Kent Street  
Ottawa, Ontario K1A 0E6

**RE: FV *Callie Belle* — Oak Bay, British Columbia**  
**Incident date: 2020-07-28**

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### 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 *Callie Belle*. That vessel was involved in a number of sinking or partial sinking events off Cattle Point, Victoria, British Columbia on and around 28 July 2020 (the “Incident”).

[2] On 11 July 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 \$42,247.10 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 \$11,945.61 (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 contains documents in support of the CCG's claimed costs.

[6] In many instances, assertions in the narrative were not supported by evidence. In several instances, claims made in the narrative are contradicted by the evidence which was available. Compounding this difficulty, requests for additional production of documents from the CCG were at least in part refused.

## **DETERMINATIONS AND FINDINGS**

### The submission is admissible

[7] 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.

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

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

[10] 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.

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

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

### Findings concerning the incident

[13] The *Callie Belle* was a wooden-hulled vessel was an 85' pleasure craft. It had been previously registered as a ship in the United States before being towed to Canada. It does not appear to have been registered in Canada. At the start of the Incident, the vessel was anchored approximately one mile offshore.

[14] At the relevant times, the *Callie Belle*'s engines were not operational. However, hydrocarbons were used on board the ship to operate generators, and lubricating oils may have remained present in its disused engine systems.

[15] The CCG became aware of the *Callie Belle* on or about 28 July 2020. A report was made by the owner of the vessel that it was sinking and that no one was aboard. The Victoria Lifeboat station was tasked to dewater the vessel and assess its pollution threat. It appears that the owner was able to restart the generators aboard the ship and that it was dewatered. However, the owner demonstrated a lack of familiarity with the ship's systems and the response officers had concerns as to whether there was adequate fuel aboard to keep the generators (and therefore its pumps) operating.

[16] Plainly, the *Callie Belle* was taking on water. The CCG submission identifies the source of ingress as patches in the hull, but this is not established on the evidence. What is clear is that while some amount of water was entering the vessel, when its pumps were in operation, the *Callie Belle* was not at risk of sinking.

[17] The CCG narrative asserts that the vessel posed a "high threat to pollute". The evidence supporting this conclusion is limited. As well, the initial conduct of the CCG response personnel is not consistent with a belief that a high risk of pollution existed. Initially only a verbal warning was issued. No positive steps were taken with respect to the ship for more than two weeks after the CCG became aware of its conditions.

[18] Notwithstanding limits on the evidence of the risk posed by the vessel, a discharge did occur. A sheen was observed around the vessel on the morning of 22 August 2020. The owner blamed this on the actions of a trespasser aboard the ship. The CCG did observe someone other than the owner was on the ship – and it is far from clear that the cause of the sheen was a rogue boarding a vessel in order to pump oil pollution into the water. In light of this and the *Callie Belle*'s poor condition and dependence on generators to operate pumps to keep afloat, it is accepted that it posed a risk of causing an oil pollution incident, albeit a relatively modest incident.

[19] The CCG determined that they should tow the vessel so that its oil pollution risk could be addressed at a marine facility. This is accepted as a reasonable decision after the discharge incident.

[20] By contrast, the way in which this measure was carried out is not entirely accepted as reasonable. The vessel, which had been positioned near Victoria, was towed to Ladysmith rather than a more local facility. The submission asserts that the Ladysmith facility had to be used, but the evidence available does not establish this as a fact. For this reason, the claim is reduced to account for the increased expenses arising from the longer than established as reasonable tow.

Assessing the claimed costs and expenses

[21] The CCG submission summarizes its \$42,247.10 in claimed costs as follows:

		<u>SCH</u>
MATERIALS AND SUPPLIES	-	1
CONTRACT SERVICES	19,279.85	2
TRAVEL	265.83	3
SALARIES - FULL TIME PERSONNEL	2,513.21	4
OVERTIME - FULL TIME PERSONNEL	3,111.62	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)	16,838.00	11
VEHICLES	165.67	12
ADMINISTRATION	72.93	13
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TOTAL CCG COST OF INCIDENT	<u>\$ 42,247.10</u>	

*Figure 1 – Screen capture of the cost summary*

[22] The contract services claim is not supported by a signed contract or standing offer and there is no documentation as to how the work was awarded, the price agreed for completion or if a ceiling on costs was established. An open-ended contract with little documentation poses a challenge when assessing reasonableness.

[23] Saltair Marine provided a breakdown of its expenses, which is summarized in the table below:

*Table 1 - Saltair Marine Services cost breakdown*

<b>Saltair Marine Services Ltd. Invoice Summary</b>			
		Per hour/unit	
31.5	Trade Personnel – Regular Time	95.00	2,992.50
9	Trade Personnel – Overtime above 8 hours to 11 hours	142.50	1,282.50
19.5	Trade Personnel – Double time above 11 hours	190.00	3705.00
17	Pumping	100.00	1,700.00

<b>Saltair Marine Services Ltd. Invoice Summary</b>			
17,5	Large Tug & Operator @ \$335.10 per hour	335.10	5,864.25
8	Wharfage at dock \$1.50 per foot per day	132.00	1,056.00
0.26	Electricity - \$2 per foot per month	176.00	45.76
0.5	Forklift/operator	125.00	
	Terrapure – Invoice #93140130		667.10
<b>Subtotal</b>			17,375.61
<b>GST</b>			868.78
<b>Total</b>			18,244.39

[24] The claim materials also include a further breakdown which indicates how much time was devoted to various tasks. The resources committed to towing the vessel to Ladysmith were considerable as compared to the 1 to 2 hours which would have been involved for a tow to a location in or near Victoria.

[25] A table to the expenses being allowed for the tow is set out below:

*Table 2 - Portions to the tow expense being allowed*

<b>Description</b>	<b>No of employees</b>	<b>Hours worked</b>	<b>Total hours</b>	<b>Cost per hour (\$)</b>	<b>Total (\$)</b>
Travel to vessel site	3	1	3	95.00	285.00
Time on site	3	2	6	95.00	570.00
Tow to shipyard	3	1	3	95.00	285.00
Tug and operator	1	4	4	335.10	1,340.40

[26] Saltair Marine also charged for monitoring the vessel. It is noted that as of 27 August, the oil was removed from the ship. No information was provided to explain why the ship continued to be monitored for five days after the oil removal. It is therefore not accepted that the monitoring was done for the purposes of preventing a ship-source oil pollution vessel. Monitoring for the first four days after the tow is allowed. The breakdown of the allowed expenses is set out below.

*Table 3 - Allowed monitoring expenses*

<b>Description</b>	<b>Time</b>	<b>Rate (\$)</b>	<b>Total (\$)</b>
Pumping/monitoring	9 hr	100.00/hr	900.00
Wharfage fees (80 ft)	4 days	\$1.50/ft/day	480.00
Electricity (80 ft)	4 days	\$2.00/ft/mo	19.20
Forklift/operator	0.5 hr	\$125.00/hr	62.50

[27] The costs of environmental disposal by Terrapure were claimed for in the amount of \$1,035.45. This is allowed in its entirety.

[28] All together, the contractor expense claim is allowed in the amount of \$5,875.12.

[29] The claimed travel expense resulted from the decision to tow the ship to Ladysmith. The decision to move the ship to Ladysmith has not been established as reasonable. That category of claim is disallowed in its entirety.

[30] With respect to personnel expense claim, a number of reductions are required.

[31] A number of reductions are needed because the logs produced by the CCG show fewer hours worked by CCG personnel than has been claimed. For example, on 29 July the logs show that the CCG response vessel departed to attend the *Callie Belle* at 09:45 and by 10:44 it had transitioned to a patrol. Nevertheless, two hours is claimed for each CCG response officer for that day.

[32] As well, three CCG personnel to attend the *Callie Belle* on 19 August is considered excessive. Other than issuing a direct order, no other work is performed. Two personnel could have completed this task.

[33] The logs for 27 August show work was carried out from 06:00 to 17:30. The claim also include overtime work for the owners between 13:00 to 19:00. The daily trip report shows that the vehicle returned to base at 17:30. Therefore, 11.5 hours is permitted.

[34] A table summarizing the reductions is set forth below:

*Table 4 - Salary claims allowed by personnel*

Name	Submitted hours worked	Adjusted hours worked	Hourly rate \$ (includes 27% EBP)	Adjusted Cost \$	Submitted cost \$
AT	14.25	12.25	55.17	675.83	786.17
JD	9.50	9.50	49.16	467.02	467.02
GR	9.25	9.25	49.16	454.73	454.73
PN	9.25	Nil	55.17	Nil	510.32
KW	3.00	1.00	49.16	49.16	147.48
HW	3.00	1.00	49.16	49.16	147.48
<b>Total</b>				<b>1,695.90</b>	<b>2,513.20</b>

[35] There are similar difficulties with the overtime claim. There is a claim for 13 hours of overtime for employee PN, however the supporting documentation shows only 7 hours worked. No evidence supports the rest of the overtime claim.

[36] As well, a claim is made for employee PN to attend on 22 August to observe the towing operations carried out by Saltair Marine. It does not appear that four employees were needed to supervise the contractor hired by the CCG. The claim for three employees is allowed.

[37] The overtime claim on 27 August is for several employees to attend in Ladysmith to inspect the vessel. The overtime arose because of the distances involved. The decision

to tow the ship away from Victoria has been previously rejected, and so this portion of the overtime claim is also disallowed.

[38] The following table summarizes the allowed overtime expenses.

*Table 5 - Allowed overtime*

<b>Overtime allowed</b>				
<b>Name</b>	<b>Hour worked (per EDP sheets)</b>	<b>Total overtime hours (1.5X)</b>	<b>Hourly rate \$</b>	<b>Cost \$</b>
AT	7.0	10.5	43.44	456.12
JD	7.0	10.5	38.71	406.46
GR	7.0	10.5	38.71	406.46
<b>Total</b>				<b>1,269.04</b>

[39] The pollution countermeasures claim is comprised mostly of claims for the use of CCG vessels. As a starting point, the CCG claim identifies the CGE 777 vessel used as a PRV III class ship. This classification is not accepted. The classification of PRV II is better applicable to that class of ship and that daily rate is applied.

[40] As well, the claim is for full day use of the vessel on 4 separate days. The vessel was used on three occasions for two hours and on one occasion for 5. Where a ship is used for only a few hours, it is not reasonable to award compensation to the ship's owner as if it had been used for a full day. In this case, half of the daily rate is awarded for the days the ship was used for two hours, and a full day is allowed for the day it was used for five hours.

[41] The following table summarizes the allowed portions of the pollution countermeasures claim:

*Table 6 - Allowed portions of pollution counter-measures claim*

<b>Allowed costs for the use of a PRV II</b>			
<b>Date/Away/Return (CCG 777 logs)</b>	<b>Time used (hrs)</b>	<b>Applicable rate</b>	<b>Cost (\$)</b>
29 Jul/0945/1148	2.05	½ day	597.12
14 Aug/1015/1200	1.75	½ day	597.12
19 Aug/0920/1040	1.33	½ day	597.12
22 Aug/0600/1115	5.25	Full day	1,194.23
<b>Total</b>			<b>2,985.59</b>

[42] The claim for the use of a CCG vehicle if for traveling to Ladysmith. As it has been concluded that the vessel should not have been towed to a distant location, the mileage claim

should be lower. Some milage still would have been incurred to travel to a local shipyard. 40% of the amount claimed is permitted, in the amount of \$67.56.

[43] The administrative costs claim is based on a percentage of salaries and travel. As the amounts of those claims has been reduced, some adjustment to the administrative calculation is needed:

*Table 7 - Administrative cost calculation*

<b>Schedule</b>	<b>Cost claimed \$</b>
3 – Travel (as per recommendation)	Nil
4 – Salaries – Full time personnel ( as per the recommended \$1,695.90 less 27% EBP)	1,695.90
<b>Subtotal</b>	<b>2,109.67</b>
Administrative cost (3.09% of subtotal)	52.40
<b>Total administrative cost (excluding EBP)</b>	<b>52.40</b>

### **OFFER SUMMARY AND CLOSING**

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

*Table 8 - Summary of allowed claims*

<b>Schedule</b>	<b>Claim \$</b>	<b>Offer \$</b>
1 – Materials and supplies	Nil	Nil
2 -- Contract services	19,279.85	5,875.12
3 -- Travel	265.83	Nil
4 -- Salaries – CFT personnel	2,513.21	1,695.90
5 -- Overtime – CFT personnel	3,111.62	1,269.04
6 -- Other allowances	Nil	Nil
7 -- Salaries casual personnel	Nil	Nil
8 -- Ships costs (excluding fuel and overtime)	Nil	Nil
9 -- Ships propulsion fuel	Nil	Nil
10 -- Aircraft	Nil	Nil
11 -- Pollution countermeasures equipment	16,838.00	2,985.59
12 -- Vehicles	165.67	67.56
13 -- Administration	72.93	52.40
<b>TOTAL</b>	<b>42,247.11</b>	<b>11,945.61</b>

[45] Costs and expenses in the amount of \$11,945.61 are accepted and will be paid together with statutory interest calculated at the date of payment if the Offer is accepted.

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

[47] 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.

[48] 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.

[49] 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.

[50] 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