



OFFER LETTER

Ottawa, 4 July 2023
SOPF File: 120-944-C1
CCG File:

VIA EMAIL

Manager, Response Services and Planning
Canadian Coast Guard
200 Kent Street
Ottawa, Ontario K1A 0E6

RE: FV *Jolly Roger* – Ahousaht Harbour, British Columbia
Incident date: 2021-02-02

SUMMARY AND OFFER

- [1] This letter responds to a submission from the Canadian Coast Guard (“CCG”) with respect to a fishing vessel known as the *Jolly Roger*, which released hydrocarbons in Ahousaht Harbour, British Columbia, on or about 2 February 2021 (the “Incident”).
- [2] On 17 January 2023, the office of the Administrator of the Ship-source Oil Pollution Fund (“Fund”) received the claim submission from the CCG. The submission advanced claims under sections 101 and 103 of the *Marine Liability Act*, SC 2001, c 6 (“MLA”) totaling \$88,472.09 for costs and expenses arising from measures taken in response 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 \$18,845.22 (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 for which the CCG seeks reimbursement and corroborating documents.

Narrative Summary

- [6] The CCG and local Fisheries Officer were initially made aware of the oil pollution on February 2, 2021. On February 4, 2021, CCG Environmental Response (“ER”) tasked a lifeboat to assess the situation.
- [7] On February 5, 2021, response officers could observe an oil sheen coming from the vessel and smell a strong fuel odor. Officers encountered the vessel owner when they attempted to deploy sorbent boom, but the owner did not cooperate with the operations.
- [8] On February 8, CCG ER issued the owner a Direction per s.180 of the *Canada Shipping Act, 2001* to immediately take measures to remove all oils not contained in the tanks or engines and to supply a written plan for vessel removal, giving him a deadline of February 11th to respond.
- [9] Expecting no response from the owner, CCG took planning steps on February 10, 2021, to have the vessel towed. The tow was conducted over the following two days. Upon arrival at the port on February 12th, the vessel was removed from the water via synchrolift and held until it could be towed for deconstruction.
- [10] On February 17, 2021, the vessel was surveyed. It was towed on or about February 22nd to Canal Beach. It was deconstructed and disposed of between March 22nd to April 19th.

Cost Summary

- [11] The CCG submission summarizes the amount of \$88,472.09 in claimed costs as follows:

		<u>SCH</u>
MATERIALS AND SUPPLIES	-	1
CONTRACT SERVICES	80,534.41	2
TRAVEL	807.92	3
SALARIES - FULL TIME PERSONNEL	2,347.43	4
OVERTIME - FULL TIME PERSONNEL	4,631.36	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)	-	11
VEHICLES	65.57	12
ADMINISTRATION	85.41	13
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TOTAL CCG COST OF INCIDENT	<u>\$ 88,472.09</u>	

Figure 1 – Screen capture of the cost summary

DETERMINATIONS AND FINDINGS

The submission is admissible

- [12] The claimed costs and expenses are accepted as payable in part. In brief, the costs are reduced where the operative goal was vessel deconstruction, not pollution remediation, or where there were calculation errors.
- [13] 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.
- [14] The CCG is an eligible claimant for the purposes of section 103 of the MLA.
- [15] The submission was received within the limitation periods set out under subsection 103(2) of the MLA.
- [16] 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

- [17] Accordingly, the submission presents claims that are potentially eligible for compensation under section 103 of the MLA.
- [18] The extent to which the measures taken were reasonable must be evaluated.

The CCG's response operation was reasonable

- [19] The *Jolly Roger* is a 39-foot (11.98-meter) wooden motor vessel, 22.64-GRT, built in 1966. It was operated by a single 110-HP Detroit diesel engine. An auxiliary diesel engine (generator) was also on board. Fuel was stored in two 1,100-litre tanks, and hydraulic oil was stored in a single 90-litre tank with lube oil in separate containers in the engine room.
- [20] Considering the evident oil emissions from the vessel and the owner's refusal to respond accordingly, the CCG's response was reasonable and warrants no particular comment. Notwithstanding the reasonability of the response measures, the costs incurred after February 13th are generally rejected because the vessel was removed from the marine environment and the pollution threat mitigated by this date. As such, costs incurred after this date were primarily for deconstruction and disposal.
- [21] The claimed contract service costs set out in Schedule 2 total \$80,534.41. This amount was paid to two contractors: \$3,045.00 to Building Sea Marine for its survey and report of the vessel on February 17th and \$77,489.41 to Canadian Maritime Engineering ("CME") for towing, storing, dewatering, deconstructing, and disposing of the vessel.
- [22] The expenses paid to Building Sea Marine are rejected because the survey and report provided negligible value to the effectively concluded oil pollution remediation response. Rather, the survey was about establishing the salvage value of the vessel.
- [23] The amount of \$13,662.59 is accepted as payable for the remaining contract service costs paid to CME and its subcontractors. Where mark-up costs are applied, they are reduced from 20% to 10%. In general, a 10% mark-up is considered reasonable and nothing on the facts supports a higher rate.
- [24] In general, the contract service costs incurred from the Incident date through 13 February 2021, are accepted, and costs incurred after this date are rejected as the oil pollution threat had been remedied. Thereafter, operations shifted to deconstruction and disposal. The evidence does not establish that those activities were measures taken with respect to the threat of oil pollution. Exceptions to this

reduction are made for subcontractor costs paid to Terrapure for oil and oily water disposal that took place on May 13, 2021, and for storage fees for February 12th and 13th, as these costs were related to oil pollution mitigation.

- [25] The claimed travel costs set out in Schedule 3 total \$807.92. The amount of \$766.07 is accepted for the costs incurred on February 11th and 12th but rejected for those incurred on February 24th as they were not incurred for oil pollution mitigation.
- [26] The claimed salary costs set out in Schedule 4 total \$2,347.43. The amount of \$1,564.95 is accepted for the costs claimed on February 11th and 12th, per the reasons stated above.
- [27] The claimed overtime costs set out in Schedule 5 total \$4,631.36. The amount of \$1,109.02 is accepted. The reduction is due to rejected costs incurred after February 12th and to a calculation error based on an incorrect rate amount of \$38.32. The correct amount is \$43.44 for Response Officer Walker and \$38.71 for Response Officer Harris.
- [28] The claimed vehicle costs set out in Schedule 12 total \$65.57 and are accepted in full.
- [29] The claimed administration costs set out in Schedule 13 total \$85.41. This amount is reduced in accordance with the previously reduced salary costs, resulting in an accepted amount of \$58.97.

OFFER SUMMARY AND CLOSING

- [30] The following table summarizes the claimed and offered expenses.

Schedule	Claimed	Offered
2 – Contract Services	\$80,534.41	\$15,280.64
3 – Travel	\$807.92	\$766.07
4 – Salaries – Full time personnel	\$2,347.43	\$1,564.95
5 – Overtime – Full time personnel	\$4,631.36	\$1,109.02
12 – Vehicles	\$65.57	\$65.57
13 – Administration	\$85.41	\$58.97
TOTAL	\$88,472.09	\$18,845.22

Table 1 – Total claimed versus offered costs.

[31] Costs and expenses in the amount of **\$18,845.22** are accepted and will be paid together with statutory interest calculated at the date of payment if the Offer is accepted.

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

[33] 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.

[34] 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.

[35] 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.

[36] 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.

[37] This offer replaces and retracts the offer on this claim made on 07 June 2023. The original offer included a computational error with respect to the contractor costs allowed.

Yours sincerely,

Mark A.M. Gauthier, B.A., LL.B.
Administrator, Ship-source Oil Pollution Fund