



OFFER LETTER

Ottawa, 14 November 2023
SOPF File: 120-941-C1
CCG File:

VIA EMAIL

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

Via email to [DFO.CCGERCostRecoveryRSP-
RecouvrementdescoutsIESIPGCC.MPO@dfo-mpo.gc.ca](mailto:DFO.CCGERCostRecoveryRSP-RecouvrementdescoutsIESIPGCC.MPO@dfo-mpo.gc.ca)

**RE: F/V *Ocean Tribune* — Steveston Harbour, British Columbia
Incident date: 2020-12-25**

SUMMARY AND OFFER

[1] This letter responds to a submission from the Canadian Coast Guard (the “CCG”) with respect to a wooden fishing vessel known as the *Ocean Tribune*. The vessel sank at its berth on 25 December 2020 at Steveston Harbour, British Columbia (the “Incident”). The CCG mounted a response operation, raising, removing, and ultimately deconstructing the vessel.

[2] On 23 November 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 \$130,411.28 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 \$83,475.93 (the “Offer”) is offered with respect to this claim. If the Offer is accepted, accrued interest will be calculated in accordance with section 116 of the MLA to the date of payment. 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 documentation in support of the CCG's claimed costs.

[6] The CCG summarizes its costs as follows:

		<u>SCH</u>
MATERIALS AND SUPPLIES	-	1
CONTRACT SERVICES	\$ 123,920.27	2
TRAVEL	\$ 103.46	3
SALARIES - FULL TIME PERSONNEL	\$ 1,633.73	4
OVERTIME - FULL TIME PERSONNEL	\$ 3,884.46	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)	\$ 608.00	11
VEHICLES	\$ 216.10	12
ADMINISTRATION	\$ 45.27	13
	<hr/>	
TOTAL CCG COST OF INCIDENT	<u>\$ 130,411.28</u>	

Figure 1 – CCG cost summary

DETERMINATIONS AND FINDINGS

The claim submission is admissible

[7] The CCG is an eligible claimant, and its claim was submitted within the applicable limitation period. The Incident occurred within the territorial sea or internal waters of Canada for the purposes of section 103 of the MLA and involved oil pollution from a ship.

[8] The claims submitted by the CCG are for responding to a ship-source oil pollution incident. Such claims may be eligible for compensation.

[9] Therefore, the claim is admissible, subject to determinations that the claimed costs were reasonably incurred for the purpose of mitigating oil pollution damage.

Summary of the Incident and the CCG's response thereto

[10] The paragraphs that follow summarize the core factual findings made with respect to the Incident and the CCG's response thereto. Those findings are based on the documentation originally submitted with the claim as well as on a follow-up communication with the CCG.

[11] On the morning of 25 December 2020, the Steveston Harbour Authority requested the assistance of the CCG with a roughly 17-metre fishing vessel known as the *Ocean Tribune*, which was taking on water dockside. It appears that the vessel was mostly submerged at that time, and that only its mooring lines kept it partially afloat. The vessel was of wooden construction and in poor condition. It had reportedly not left its berth for several years.

Figures 2 and 3 – Photographs of the vessel dated 25 December 2020

[12] The CCG spoke with a representative of the vessel's corporate owner, who stated that he was not able to manage an adequate response. He also informed the CCG that the vessel contained 10,000 litres of diesel fuel, plus lubricants and hydraulic oils.

[13] The CCG initiated a response operation, deploying Environmental Response personnel and booming off the vessel. Only minimal oil sheening was observed, but the CCG was concerned about the stability of the *Ocean Tribune*. If the vessel came loose or caused a more significant spill, there were concerns that surrounding vessels would be negatively impacted.

[14] The CCG entered an emergency contract with Mercury Transport Inc. ("Mercury") to have the vessel removed from the water the following day. Having "achieved scene stabilization", CCG personnel departed and left overnight monitoring of the vessel to the Steveston Harbour Authority.

[15] On 26 December 2020, Mercury arrived on scene. The vessel was first assessed by divers before it was raised, towed to Shelter Island Marina, and removed from the water. CCG personnel removed soiled boom and sorbent materials from the site.

[16] On 7 January 2021, the *Ocean Tribune* was surveyed by Chris Small Marine Surveyors ("CSMS"). The resulting survey report describes a vessel in generally poor condition but makes very limited reference to oil pollutants. The report contains the following rough estimates:

- a. Approximately 200–250 litres of lubricant and hydraulic oils;
- b. Unknown quantity of fuel in tanks, but at least 50 litres in lines;
- c. Unknown quantity of contaminated bilge water; and

- d. Some oil-soaked timbers, planking, and framing in bilge and machinery spaces.

[17] The CCG contacted the owner's representative, who indicated that he lacked the resources to rehabilitate the vessel. The CCG ultimately decided to have the vessel deconstructed by Shelter Island Marina & Boatyard Inc. ("SIMBI"). The narrative offers the following in support:

Machinery spaces were typical of a vessel of this vintage (1959) with oil-soaked timbers, loose hydrocarbons in bilge areas and in a poor general condition. Due to the wooden construction of the vessel, there was no certainty that the vessel could be 100% remediated of all pollutants, and as a result CCG decided to deconstruct the vessel.

[...] In order to prevent the vessel from becoming a liability to the crown, it was deemed necessary to proceed with deconstruction to prevent any further potential costs.

[18] It is not clear whether the deconstruction and disposal operation was completed on 25 February 2021, as indicated in the narrative, or in late March, as suggested by vessel storage costs.

The CCG's response operation was broadly reasonable, but some reductions are required

[19] The goals of the CCG's response operation were reasonable from the perspective of oil pollution mitigation. The *Ocean Tribune* was known to contain some volume of oils, and these were discharging gradually as a result of the Incident. The CCG was therefore justified in mobilizing personnel, deploying boom, and hiring a contractor to undertake a raising and removal operation when it became clear that the owner of the vessel was either unable or unwilling on that front.

[20] Some elements of the CCG's claim require closer scrutiny, and some findings have been made that result in reductions to claimed amounts. Those findings are detailed below.

The urgency of the raising and removal operation is not supported on the evidence

[21] The CCG's narrative indicates that the *Ocean Tribune* contained 10,000 litres of diesel fuel at the time of the Incident. Such a volume of oils at imminent risk of discharge into a busy fishing harbour would generally support hasty vessel removal efforts and the associated costs.

[22] In April 2023, the Fund wrote to the CCG requesting further documentation and details on the basis of the CCG's belief that the vessel contained 10,000 litres of fuel. The CCG responded the following month stating that it had no further documentation to provide. Instead, it stated the following [sic]:

At the time, our basis to conduct salvage was on the owners claim of 10,000 liters onboard without the ability to initially confirm, due

to the unstable condition of the vessel and safety concerns with the unstable scene. The decision also included the impacts of government infrastructure and personal property as any further deterioration to the vessel stability would have increased costs in damages to both.

[23] The assertion that there were 10,000 litres aboard is not accepted as accurate. The CCG's response is at best double hearsay (the response is either based on some document which has not been disclosed or witness who has not been identified, who was given that information from the owner at some point). That such a quantity of diesel fuel remains aboard a derelict which had not moved for years is considered improbable. Moreover, the evidence in the record suggests a considerably smaller volume of oils was present. In light of this finding, the threat posed by the vessel was that of a conventional derelict with residual oils remaining on board.

[24] According to the narrative, CCG personnel stabilized the *Ocean Tribune* by the end of the day on 25 December 2020. The vessel was left in the hands of the local harbour authority that night, which further indicates that the CCG believed the situation was stabilized.

[25] As noted above, it is accepted that the mostly sunken *Ocean Tribune* posed some threat to pollute, and therefore the decision to raise and remove it from the marine environment is accepted. However, the CCG has not sufficiently supported the urgency of its contracting process. Accordingly, the heightened costs that resulted are not accepted as reasonable. Only costs that would have been incurred should the Mercury operation have been conducted on an ordinary business day, are accepted.

Schedule 2: Contract Services

[26] The CCG's contract services claim totals \$123,920.27. It comprises of amounts paid to three primary contractors: Mercury, CSMS, and SIMBI.

[27] Mercury was engaged to raise, tow, and remove the *Ocean Tribune* from the water. It did so effectively and efficiently with the assistance of four subcontractors and in the space of just one day. Its efforts and those of its subcontractors are adequately documented.

[28] As noted above, the decision to urgently undertake the raising and removal operation on 26 December 2020, a weekend and statutory holiday, is not justified by the evidence put forward by the CCG. Accordingly, identifiable excess costs that resulted are not accepted as compensable.

[29] In general, the invoices provided by the CCG allow for straightforward removal of excess costs. The only other reduction applied to the CCG's Mercury costs is to adjust the markup applied to subcontractor fees from 15% down to 10%. The lower rate is generally accepted as reasonable, whereas higher rates will require justification that is absent in this case. The following table breaks down the amounts claimed and allowed with respect to the Mercury invoice.

Item	Description	Claimed	Allowed
Mercury	Labour and project management for salvage operation	\$39,540.00	\$33,300.00
Canadian Dewatering LP	Rental and transport of generator, pumps, and hoses	\$3,958.06	\$3,708.06
Hydra Marine Services	Diver assistance in raising operation	\$7,799.00	\$4,271.00
SIMBI	Removal and storage of vessel to 25 January 2021	\$4,327.00	\$3,327.00
Vancouver Pile Driving	Derrick barge and crew for lifting operation	\$19,879.44	\$15,106.64
Markup	Rate applied on top of fees paid to subcontractors	\$5,394.53	\$2,641.27
GST		\$4,044.90	\$3,117.70
PST		\$277.06	\$277.06
Totals		\$85,219.99	\$65,748.73

Table 1 – Summary of claimed and allowed amounts with respect to the Mercury invoice

[30] The CSMS survey and report cost the CCG \$1,977.10. As noted above, the surveyor’s comments on the oil pollution threat posed by the *Ocean Tribune* are limited. The vessel’s fuel tanks were not sounded. All oil volumes presented by the surveyor were estimates. The report would not have provided the CCG with any better understanding of the oils on board the vessel than basic observations falling well within the competency of its own Environmental Response personnel. Accordingly, the claimed CSMS costs are not accepted.

[31] The SIMBI costs are spread across two primary invoices. The first, at \$5,554.04, covers storage of the *Ocean Tribune* on blocks from 26 January through 31 March 2021. In the absence of an explanation for the extended storage period and noting that the storage costs to 25 January have already been accepted (see Table 1), the first SIMBI invoice is rejected. The vessel was surveyed within two weeks of its removal, and the delay in moving forward with next steps is not accepted as reasonable.

[32] The second SIMBI invoice, totalling \$31,379.25, covers the deconstruction and disposal of the *Ocean Tribune* and its contents, including some identified oils and oiled materials. It is further supported by a statement of work dated 17 March 2021, and three subcontractor invoices.

[33] From the primary invoice and the accompanying subcontractor invoices, it is clear that a substantial majority of claimed deconstruction and disposal costs are attached to materials that were neither oils nor contaminated with oils. These materials were disposed of through ordinary waste streams and associated costs are therefore not accepted.

[34] The primary invoice does, however, identify the following items of interest:

- a. \$6,120.00 pre-tax for 72 hours of labour for “Cleaning Fuel/Liquids from Vessel”; and

b. \$5,000.00 pre-tax for “Disposing of Fuel and Liquids”.¹

[35] The SIMBI labour costs for cleaning the vessel are accepted in full. The subcontracted disposal costs, which include a 20% markup, have been reduced to \$4,583.33, to reflect a 10% markup. Inclusive of GST, a total of \$11,238.50 is accepted with respect to claimed SIMBI costs.

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

Contractor	Work Description	Claimed	Allowed
Mercury	Raise, tow, and remove vessel from water	\$85,219.99	\$65,748.73
CSMS	Survey vessel and report thereon	\$1,977.10	\$0.00
SIMBI	Vessel storage, deconstruction, and disposal	\$36,723.18	\$11,238.50
Totals		\$123,920.27	\$76,987.23

Table 2 – Summary of claimed and allowed amounts for contract services

Schedules 3, 4, and 5: Travel, Salaries, and Overtime

[37] The CCG’s travel claim of \$103.46 represents meal and private vehicle usage allowances paid to two personnel with respect to 25 December 2020. No explanation is offered in support of these amounts, but they are nonetheless accepted. That day was a statutory holiday, the personnel in question were likely on call, and the amounts claimed are modest.

[38] Four CCG personnel took part in the response operation over two days. Claimed regular salary costs include a 27% markup on base rates, representing employee benefits costs. Overtime was paid at either a multiple of 1.5 or 2.0 times each employee’s base rate (less benefits). The claimed rates are considered reasonable.

[39] CCG personnel deployment and costs are summarized in the below table.

Name, Group, Level	Rates	Hours Claimed by Date (December 2020)		Total Hours	Claimed Cost ²
		25 Friday	26 Saturday		
LD GT-04	Reg: \$49.16	7.5	–	7.5	\$368.70
	1.5x: \$58.06	–	–	0.0	\$0.00
	2.0x: \$77.42	7.0	–	7.0	\$541.94
JT GT-04	Reg: \$49.16	7.5	–	7.5	\$368.70
	1.5x: \$58.06	–	–	0.0	\$0.00
	2.0x: \$77.42	7.0	–	7.0	\$541.94
DH GT-04	Reg: \$49.16	7.5	–	7.5	\$368.70
	1.5x: \$58.06	–	–	0.0	\$0.00
	2.0x: \$77.42	7.0	12.0	19.0	\$1,470.98
GS GT-07	Reg: \$70.35	–	7.5	7.5	\$527.63
	1.5x: \$83.09	–	–	0.0	\$0.00
	2.0x: \$110.79	–	12.0	12.0	\$1,329.60
Totals				75.0	\$5,518.19

Table 3 – Claimed salary and overtime by date (full names of CCG personnel replaced with initials)

¹ Subcontractor invoices identify the disposal of both oiled liquids and solids.

² Rounding accounts for any minor discrepancies.

[40] It appears that the personnel deployed on 25 December 2020 worked only 7.5 hours, but that double time was paid to them over and above their ordinary wages on account of that day being a statutory holiday. This is accepted as reasonable for employees under collective bargaining. All salary and overtime amounts claimed with respect to 25 December are accepted as having been reasonably incurred by the CCG to assess and stabilize the Incident.

[41] While some reductions would otherwise be necessary to account for the excessive overtime costs incurred on 26 December 2020, none are made in this case. It is accepted that extended monitoring of the sunken *Ocean Tribune* would have been necessary if the raising operation had been delayed into the following working week. That delay would have increased regular salary costs, vehicle costs, and perhaps sorbent and containment boom costs too. Those consequential heightened costs are considered roughly in line with the amounts that would otherwise be deducted from the CCG’s overtime claim, so no reductions are necessary under Schedule 5.

Schedules 11 and 12: Pollution Counter-measures Equipment and Vehicles

[42] The CCG’s pollution counter-measures equipment costs of \$608.00 cover four bales of sorbent boom and 400 feet of containment boom that were deployed on 25 December 2020. These costs are considered reasonable and are accepted in full.

[43] The CCG’s \$216.10 claim for the use of vehicles on 25 and 26 December 2020, including mileage costs, is also accepted in full.

Schedule 13: Administration

[44] The CCG seeks \$45.27 in compensation for administrative costs. It calculates these costs by applying a rate of 3.09%, applied against its costs for travel and regular salaries (less employee benefits costs at a rate of 20%).

[45] The above calculation method accords with that historically accepted as reasonable. However, the calculation in this instance uses a 20% markup for employee benefits costs, whereas the rest of the claim applies a rate of 27%. The former rate is understood to be correct, so some minor adjustments are required.

[46] Applying the 3.09% administrative rate to allowed travel costs and salary costs, less employee benefits (at a 27% rate), the amount of \$42.95 is accepted under Schedule 13.

OFFER SUMMARY AND CLOSING

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

Schedule	Claimed	Allowed
2 – Contract Services	\$123,920.27	\$76,987.23
3 – Travel	\$103.46	\$103.46
4 – Salaries – Full Time Personnel	\$1,633.73	\$1,633.73

Schedule	Claimed	Allowed
5 – Overtime – Full Time Personnel	\$3,884.46	\$3,884.46
11 – Pollution Counter-measures Equipment	\$608.00	\$608.00
12 – Vehicles	\$216.10	\$216.10
13 – Administration	\$45.27	\$42.95
Totals	\$130,411.28	\$83,475.93

Table 4 – Summary of amounts claimed and allowed

[48] Costs and expenses in the amount of \$83,475.93 are accepted and will be paid together with statutory interest calculated at the date of payment if the Offer is accepted.

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

[50] 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.

[51] 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.

[52] 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.

[53] 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.
Administrator, Ship-source Oil Pollution Fund