



OFFER LETTER

Ottawa, 13 December 2023
SOPF File: 120-947-C1

VIA EMAIL

Manager, Operational Support
Compliance and Enforcement
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: *Princeton 1* – Alert Bay, British Columbia
Incident date: 2021-02-10

SUMMARY AND OFFER

- [1] This letter responds to a submission from the Canadian Coast Guard (“CCG”) with respect to a pleasure craft named *Princeton 1*, which released hydrocarbons in Alert Bay, British Columbia, on 10 February 2021 (“Incident”).
- [2] On 2 February 2023, the office of the Administrator of the Ship-source Oil Pollution Fund (“Fund”) received the claim submission from the CCG on behalf of the Minister of Fisheries and Oceans. The submission advanced a claim pursuant to sections 101 and 103 of the *Marine Liability Act*, SC 2001, c 6 (“MLA”), seeking compensation for costs and expenses arising from measures taken in response to the Incident, totaling \$262,683.11.
- [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 **\$158,197.04**, plus statutory interest calculated at the time the Offer is paid, in accordance with section 116 of the MLA (“Offer”), 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 as well as corroborating documents.

Narrative Summary

- [6] The response operation lasted sixteen days—February 10th through 25th, 2021. Deconstruction was completed the following month.
- [7] In the morning of February 10, 2021, the CCG responded to a report that the pleasure craft *Princeton 1*, a 56-foot wooden vessel, had sunk in 15 feet of water next to the dock on Cormorant Island and was actively discharging pollutants.
- [8] The CCG-ER Senior Response Officer from Port McNeill tasked the vessel *Cape Sutil* to respond. Two CCG-ER Port Hardy crew members drove to Port McNeill with two trucks, one response trailer, and one 5.4-meter vessel. They deployed to the Incident site for assessment and confirmed that that vessel was rapidly releasing hydrocarbons. Before the CCG crew members arrived, the Alert Bay Harbour Manager had deployed sorbent boom due to the active discharge.
- [9] Response officers contacted the local Namgis First Nation to notify them of the situation and that they would remain in contact. The CCG contacted the owner, who reported that he could not conduct a response nor provide a reasonable estimate of the quantity of hydrocarbons on board. The CCG accordingly took over operations. They deployed 250 feet of containment boom around the site and 270 feet of sorbent boom.
- [10] On February 11th, three CCG-ER response officers returned to the site. The sorbent boom was fully saturated with oils. The CCG arranged with Alert Bay Public Works to store the waste boom on their property. The sorbent boom was replaced. Officers noted that the sorbent boom could not keep up with the rate of discharge. They, therefore, decided to refloat the vessel.
- [11] On February 12th, the three response officers returned to the site. The *Princeton 1* was still rapidly discharging pollutants. The Incident Commander (“IC”), Namgis Band Manager, and Alert Bay Public Works met to plan to temporarily store the vessel after it had been refloated on the Namgis beach, half a nautical mile south of the Incident site.
- [12] The IC requested and was approved for emergency contracting. He contacted Colmor Marine Group—a commercial dive company already en route to Port McNeill responding to another incident. The CCG updated the owner with the plan who agreed that the vessel should be removed but that he could not finance the operation. They removed and replaced 270 feet of sorbent boom.
- [13] On February 13th, CCG officers did not attend on scene but arranged documentation for the response. The vessel continued to discharge pollutants.

- [14] On February 14th, the IC (change of appointment occurred on this day) and Colmor Marine returned to the site to refloat the vessel. The CCG also contracted with a local for Colmor Marine to use his vessel. An initial plan to refloat the *Princeton I* with airbags was unsuccessful because the vessel was larger and heavier than expected. The contractors deemed it unsafe due to the vessel size, draft, and stability issues. While the CCG adjusted the response plan and contacted other potential contractors, Colmor divers assessed the hull for damage (none found) and plugged eight vents to slow the discharge. Officers deployed 140 feet of sorbent boom.
- [15] On February 15th, CCG officers did not attend on scene. They were trying to make contracting arrangements with AB Towing but did not receive a response by the end of the day. The vessel continued to discharge pollutants.
- [16] On February 16th, two CCG response officers returned to the site and continued to work on a new plan, including a different site to store and deconstruct the vessel after refloating it. They contracted with Heavy Metal Marine to lift the vessel out of the water. Colmor continued to provide divers for the response operation. The IC contacted the Activation Authority to update with the revised plan and to request approval which was granted. The vessel continued to discharge pollutants.
- [17] On February 17th, the IC began procuring a barge and crane from the Procurement Hub. The local hired contractor from Alert Bay deployed 130 feet of sorbent boom. CCG response officers delivered more sorbent boom and pads to restock. The vessel continued to discharge pollutants.
- [18] On February 18th, the IC continued work with the Procurement Hub. The local contractor deployed another 130 feet of sorbent boom. More supplies were delivered.
- [19] On February 19th, the IC continued procurement work, completing the contract work by the afternoon. The local contractor recovered 260 feet of soiled boom and stored it for later disposal. He deployed 32 feet of sorbent boom and 12 feet of sorbent roll.
- [20] On February 20th, an ER First Response Trailer was towed to Port McNeill and staged for lifting operations. The CCG assessed the site and returned to Port McNeil. The trailer was returned to base because it was not needed.
- [21] On February 21st, two CCG response officers deployed to the Incident site on the CGE 777. Another officer arrived via ferry with the Port Hardy ER First Response Trailer in tow. The officers, Heavy Metal Marine, and Colmor prepared the site for refloating the next day. They observed sheening and recoverable hydrocarbons in the contained area. The CCG deployed 30 feet of sorbent sheets.
- [22] On February 22nd, CCG officers and contractors commenced lift operations at 1048. Some upwelling occurred. By 1230 the *Princeton I* was alongside the barge and being dewatered. Officers noticed a gap in the planks on the port quarter below the waterline. Dewatering was completed by 1400. A CCG officer conducted an interior assessment and recorded the oil saturated wooden hull bilge.
- [23] The initial couple of attempts at lifting the vessel onto the barge proved to be unsuccessful because it weighed too much. To lighten the vessel, officers removed

the house works, which was completed by 1630. It was further dewatered and lifted from the water. Officers discovered two full diesel fuel tanks with an estimated 2000 litres of fuel. The full tanks and saturated wooden hull continued to prevent response officers from being able to lift the *Princeton I* onto the barge. The aft strap was readjusted to prevent the hull from collapsing, and the vessel was left in slings partially floated for contingency lightering operations the next day. The vessel was observed overnight.

- [24] On February 23rd, equipment and personnel were staged, and the CCG IC met with Alert Bay City Council to develop a contingency plan should the need arise to demolish the vessel on the beach. The Namgis Nation was contacted regarding the contingency plan.
- [25] Vessel lightering recommenced at 1000. Approximately an hour later, four additional fuel tanks were discovered, requiring more storage equipment to be brought in. Lightering operations were completed by 1257 and lifting commenced at 1306. The *Princeton I* was successfully lifted onto the barge by 1354 and readied for transportation to the deconstruction location. CCG response officers departed the incident site by 1515.
- [26] On February 25th, officers returned to the site and recovered the containment boom. They collected the soiled sorbent boom and pads and stored them for later pick-up and disposal.
- [27] The *Princeton I* was deconstructed by Heavy Metal Marine in March 2021.

Cost Summary

- [28] The CCG submits the amount of \$262,683.11 in claimed costs, summarized as follows:

		<u>SCH</u>
MATERIALS AND SUPPLIES	-	1
CONTRACT SERVICES	\$218,790.80	2
TRAVEL	\$5,263.50	3
SALARIES - FULL TIME PERSONNEL	\$10,503.53	4
OVERTIME - FULL TIME PERSONNEL	\$7,020.25	5
OTHER ALLOWANCES	\$0.00	6
SALARIES - CASUAL PERSONNEL	\$0.00	7
SHIPS' COSTS (EXCL. FUEL & O/T)	\$0.00	8
SHIPS PROPULSION FUEL	\$0.00	9
AIRCRAFT	\$0.00	10
POLLUTION COUNTER-MEASURES EQUIPMENT (PCME)	\$19,658.51	11
VEHICLES	\$1,013.40	12
ADMINISTRATION	\$433.11	13
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TOTAL CCG COST OF INCIDENT	<u>\$262,683.11</u>	

Figure 1 – Screen capture of the cost summary

DETERMINATIONS AND FINDINGS

The submission is admissible

- [29] Most of the costs and expenses are accepted as payable. In brief, some contract costs are reduced where they are unsubstantiated in the evidence or unreasonably incurred due to the delays caused by inaccurate vessel weight estimates.
- [30] 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.
- [31] The CCG is an eligible claimant for the purposes of section 103 of the MLA.
- [32] The submission was received within the limitation periods set out under subsection 103(2) of the MLA.
- [33] 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.

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

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

The CCG’s response operation was reasonable

[36] The CCG’s response was generally reasonable. Within the claim, however, some costs were unsupported in the evidence. As well, some costs claimed for supposedly arose because the estimated tonnage of the vessel differed from the actual weight of the vessel, resulting in unsuccessful attempts to remove it from the water.

[37] The claimed contract services costs in Schedule 2 total \$218,790.80. The amount of \$114,304.70 is accepted.

[38] Contract services costs were paid to five groups: \$188,898.65 to Heavy Metal Marine for removal and deconstruction, \$2,843.34 to Colmor Marine Group for diving services, \$480 to the Village of Alert Bay, \$16,450.50 to the Namgis First Nation, and \$10,118.31 to Terrapure for waste disposal.

[39] The costs paid to Colmor Marine Group, the Village of Alert Bay, the Namgis First Nation, and Terrapure are reasonable and accepted in full.

[40] The costs paid to Heavy Metal Marine are reduced by \$104,486.06. The amount of \$20,073.48 is reduced for the surcharge for the weight difference from the registry, and \$84,412.58 is reduced for the absence of evidence submitted to substantiate the costs.

[41] The surcharge for the weight difference is rejected because the evidence does not establish why it was payable. It appears that this charge was made because the vessel’s actual weight differed from its registered weight. It is not clear that the CCG made any representation to Heavy Metal Marine about the vessels’ weight. In any event, Heavy Metal Marine is a “long and good standing” contractor to the CCG and relied upon for their expertise. That expertise should entail adequate research and equipment for the response and knowledge that registry weights are not necessarily 100% accurate. Moreover, Colmor had attempted an initial refloat on February 14th and would have been able to inform Heavy Metal that there was a difference between the vessel’s registered weight and its effective weight. While it is accepted that there was some discrepancy weight with respect to the vessel’s tonnage, the validity of an extra charge as a result is not established on the facts.

[42] On 23 March 2023, the Fund contacted the CCG for further documentation to support the claim, including daily reports, field notes, and copies of the response plans developed with the Namgis Band Manager and the contractors. The CCG responded on 1 May 2023. They provided the Incident Information Form but were unable to

provide reports from Heavy Metal Marine, informing the Fund that the CCG had informed Heavy Metal Marine that no time sheets or operations logs were submitted. This omission is a violation of the Statement of Work, at section 5.1.2. Heavy Metal Marine insisted that they had in fact submitted them to the CCG. The CCG paid the invoice but cannot produce the backup documents. It was also learned that the response plan made with the Namgis Band Manager could also not be provided as it was not written, only verbal.

- [43] The lack of documents means there is no evidence establishing the need for the deconstruction of the ship as an oil pollution response measure. The lack of documents also means that it is not possible to identify which Heavy Metal Marine costs relate to deconstruction as opposed to the oil pollution response. Considering the absence of evidence required to support the costs set out in the Heavy Metal Marine invoice, the cost is established in the amount of \$84,412.59—a fifty percent reduction of the invoice remaining after the removal of the \$20,073.48 weight surcharge.
- [44] The remaining costs claims are summarized below:
- a. the claimed travel costs in Schedule 3 total \$5,263.50;
 - b. the claimed salary costs in Schedule 4 total \$10,503.53;
 - c. The claimed overtime costs in Schedule 5 total \$7,020.25;
 - d. The claimed pollution counter-measures equipment (“PCME”) costs in Schedule 11 total \$19,658.51;
 - e. The claimed vehicle costs in Schedule 12 total \$1,013.40;
 - f. The claimed administration costs in Schedule 13 total \$433.11;
- [45] These Items are well established in the evidence and modest considering the length of the response. They are accepted in full.

OFFER SUMMARY AND CLOSING

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

Schedule	Claimed	Offered
2 – Contract Services	\$218,790.80	\$114,304.70
3 – Travel	\$5,263.50	\$5,263.50
4 – Salaries – Full time personnel	\$10,503.53	\$10,503.53
5 – Overtime – Full time personnel	\$7,020.25	\$7,020.25
11 – Pollution Counter-Measures Equipment (PCME)	\$19,658.51	\$19,658.51
12 – Vehicles	\$1,013.40	\$1,013.40

Schedule	Claimed	Offered
13 – Administration	\$433.11	\$433.11
TOTAL	\$262,683.11	\$158,197.04

Table 1 – Total claimed versus offered costs.

[47] Costs and expenses in the amount of **\$158,197.04** are accepted and will be paid together with statutory interest calculated at the date of payment if the Offer is accepted.

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

[49] 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.

[50] 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.

[51] 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.

[52] 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