



OFFER LETTER

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BY EMAIL

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*Via email to **DFO.CCGERCostRecoveryRSP-
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**RE: F/V ORCA G — Ladysmith, British Columbia
Incident date: 2021-12-21**

SUMMARY AND OFFER

[1] This letter responds to a submission from the Canadian Coast Guard (the “CCG”) with respect to the fishing vessel ORCA G (the “Vessel), which sank on or about 21 December 2021, near Ladysmith, British Columbia (the “Incident”).

[2] On 20 June 2023, 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 totaling \$89,037.95 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 101 and 103 of the *Marine Liability Act*, SC 2001, c 6 (the “MLA”).

[4] The amount of \$18,691.87 (the “Offer”), plus statutory interest to be calculated at the time the Offer is paid and in accordance with section 116 of the MLA, is offered with respect to this claim.

[5] The reasons for the Offer are set forth below, along with a description of the CCG's submission.

THE SUBMISSION RECEIVED

[6] 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. To the extent that the narrative and corroborating documents are relevant to the determination, they are reviewed below.

The narrative

[7] According to the narrative, on 21 December 2021, the CCG duty officer was notified that the vessel had sunk near the Ladysmith Harbour. The vessel was discharging diesel oil and persistent oils into the marine environment.

[8] The duty officer contacted Saltair Marine Services ("Saltair") to follow up on the report. Saltair reported that the vessel was derelict with people living aboard prior to sinking. There was no known owner.

[9] The vessel was a 50-foot fishing vessel, which can hold up to 10,000 litres of fuel and engine oil. The amount of fuel on board was unknown, so the CCG ER team decided to respond.

[10] On 22 December 2021, CCG sent an ER specialist to the site to assess the vessel and the boom that Saltair laid around it. It was observed that the vessel was still discharging oil, and a small amount of pollution was escaping the boom. The CCG tried to locate an owner but was unsuccessful.

[11] It was decided that the vessel must be removed from the marine environment. Colmor Marine Co ("Colmor") was hired to assist Saltair in the lifting operations.

[12] On 23 December 2021, Colmor and Saltair successfully lifted the vessel and transferred it onto blocking in Saltair's boat yard in Ladysmith. Saltair cleared the boom of debris and pollution.

[13] On 24 December 2021, CCG ER personnel arrived at the boat yard and removed all oils from the vessel. They once again tried to locate an owner but were unsuccessful. It was determined that the vessel could not return to the marine environment due to the vessel's condition and lack of an identifiable owner.

[14] The vessel remained in storage until July 2022, when it was deconstructed. That concluded the CCG operation.

Cost summary

[15] The CCG submission summarizes the claimed costs as follows:

Schedule	Cost claimed (\$)
1. Material and supplies	Nil
2. Contract services	88,634.57
3. Travel	Nil
4. Salaries – Full time personnel	393.26
5. Overtime – Full time personnel	Nil
6. Other allowances	Nil
7. Salaries – Casual personnel	Nil
8. Ship costs (excluding fuel & overtime)	Nil
9. Ship propulsion fuel	Nil
10. Aircraft	Nil
11. Pollution countermeasures equipment	Nil
12. Vehicles	Nil
13. Administration	10.13
Total claim	89,037.95

Figure 1: Screen capture of the claim cost summary

DETERMINATIONS AND FINDINGS

The CCG submission presents potentially eligible claims under section 103 of the MLA

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

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

[18] The submission arrived prior to the limitation periods set out under subsection 103(2) of the MLA.

[19] 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, and are therefore potentially eligible for compensation.

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

Findings on the evidence submitted by the CCG

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

[21] This description of the material events in the CCG narrative is accepted as generally accurate.

The Vessel posed a pollution threat – but not all measures are established as reasonable on the facts

[22] The vessel sank and discharged diesel fuel into the marine environment when it sank. The amount of pollutants on board could not be confirmed. These facts warrant at least some response measures.

[23] Further to that threat, the CCG retained Saltair Marine to place a boom around the vessel. Thereafter the vessel was removed from the water and the pollutants onboard were removed. Again, these measures were warranted on the available information.

[24] It is noted that there is a discrepancy in some of the invoices for these initial steps. The totals shown in the invoices do not match the quantities listed in the invoice. Some reduction of the expense for these otherwise reasonable measures is therefore required.

[25] The difficulty with this claim is that the bulk of the expense was for the deconstruction of the vessel. Deconstruction of a vessel is not, in and of itself, a measure taken with respect to oil pollution. Deconstruction can be accepted as an oil pollution measure where the evidence demonstrates that a vessel itself constituted an oil pollution threat even after other measures were taken. In this case, there is no evidence that the Vessel, itself, posed an oil pollution threat requiring that it be deconstructed. Deconstruction-related expenses have, therefore, not been established as reasonable.

CLAIM AND OFFER DETAILS

[26] The CCG presented its claimed costs and expenses to the Fund across three schedules, each of which is outlined below.

[27] Under Part 7 of the MLA, the measures taken to respond to an oil pollution incident and the resulting costs must be reasonable in order to be compensable by the Fund. To the extent that reasons are not already set out in this letter, the sections below explain why certain portions of the CCG’s claim have been allowed while others have been decreased.

Schedule 2 – Contract Services

Claimed: \$88,634.57

[28] These costs arise from invoices for services provided by multiple different companies, Saltair in the amount of \$24,268.67, Colmor for \$5,145.90, Frykas Marine Service (“Frykas”) for \$630.00, and Khowutzun Industrial and Marine Joint Venture (“Khowutzun”) for \$58,590.00. The invoice from Saltair is for the equipment and labour associated with the pollution containment, vessel monitoring, vessel removal, and storage. The invoice from Colmor is for assisting Saltair with the refloating and removal of the vessel. The Frykas invoice is for the survey conducted while the vessel was in storage, and the Khowutzun invoice is for the deconstruction of the vessel.

[29] The costs submitted by Colmor for the purpose of assisting Saltair in the removal of the vessel are accepted in full, as this measure is reasonable for the purpose of pollution prevention.

[30] The costs that Saltair incurred to contain, monitor and remove the vessel are accepted as reasonable measures to prevent pollution. However, the tally of hours that Saltair submitted in invoice 1264 had calculation errors. Those errors are shown in the table below:

Hours Billed vs Audited	Type	Rate	Total Billed vs Audited
9.25 vs 11.25	Salvage Master – regular time	\$165	\$1526.25 vs \$ 1897.50
49.25 vs 46	Trade Personnel – per hour	\$100	\$4925.00 vs \$4600.00
7.5 vs 6.25	Trade Personnel – overtime	\$150	\$1125.00 vs \$ 937.50
9.25	SR’ Barge & Crane	\$450	\$4162.50
3	Oil boom – 200’	\$200	\$600.00
4	Bales oil absorbents	\$67	\$268.00
Days 55 vs 1	49 feet daily storage upland	\$51.25	\$2818.75 vs \$51.25
		Sub-total	\$15,425.50 vs \$12,516.75
		GST	\$771.28 vs \$625.83
		Total	\$16,196.78 vs \$13,142.58

[31] As there is no evidence that the any oil pollution threat remained after December 24, 2021, storage beyond that date is rejected. That is also reflected in the table above and leads to further reductions.

[32] In the result, invoice 1264 is allowed in the amount of \$13,142.58. The other Saltair Marine invoice is rejected in its entirety as it relates to storage of the vessel for a protracted period with no evidence.

[33] The costs incurred for a survey are rejected as the text of the survey shows it was not directed towards an oil pollution threat.

[34] As well, the costs from Khowutzun for deconstruction of the vessel are rejected as the evidence does not support the reasonableness of deconstructing the ship as an oil pollution prevention measure.

The contract services portion of the submission is allowed in part in the amount of \$18,288.48.

Schedule 4 – Salaries – Full Time Personnel Claimed: \$393.26

[35] These costs are for the one CCG ER personnel that attended the incident site on 22 December to assess the vessel and the boom deployment, and once again on 24 December to remove pollutants from the vessel once at the boat yard.

[36] Details regarding the employees’ involvement on site are limited, but the measures taken are connected to the objective of preventing pollution and the cost amount is reasonable. Thus, these costs are established.

The salaries portion of the submission is allowed in its entirety in the amount of \$393.26.

Schedule 13 – Administration Claimed: \$10.13

[37] The CCG submission advances a claim for administration costs at a rate of 3.09%, applied against claimed salaries.

[38] The 3.09% rate is generally accepted as reasonable. In this case, only salary costs qualify for administrative costs. When recalculating the administrative costs for the readjustments to the salary claims, the sum of the recommended costs (Schedule 4 [less EBP] = \$393.26) remains \$393.26. Applying the 3.09% administrative rate to this amount equals \$10.13.

The administration portion of the submission is allowed in its entirety in the amount of \$10.13.

OFFER SUMMARY AND CLOSING

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

Schedule	Cost claimed (\$)	Offer (\$)
Material and supplies	Nil	Nil
Contract services	88,634.57	18,288.48
Travel	Nil	Nil
Salaries – Full time personnel	393.26	393.26
Overtime – Full time personnel	Nil	Nil
Other allowances	Nil	Nil
Salaries – Casual personnel	Nil	Nil
Ship costs (excluding fuel & overtime)	Nil	Nil
Ship propulsion fuel	Nil	Nil
Aircraft	Nil	Nil
Pollution countermeasures equipment	Nil	Nil
Vehicles	Nil	Nil
Administration	10.13	10.13
Total claim	89,037.95	18,691.87

Table 1 – Summary of amounts claimed and allowed.

[40] Costs and expenses in the amount of \$18,691.87 are accepted and will be paid together with statutory interest calculated at the date of payment if the Offer is accepted.

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

[42] 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.

[43] 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.

[44] 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 its claim, and further it must cooperate with the Fund in its subrogation efforts.

Yours sincerely,

Chiamaka Mogo, MPPGA
Deputy Administrator, Ship-source Oil Pollution Fund