



OFFER LETTER

2025-01-13

Ottawa, Ontario
SOPF File: 120-1011-C1

BY EMAIL

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*Via email to **DFO.CCGCostRecoveryRSP-
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RE: Kamara – Northwest Arm, Halifax, Nova Scotia
Incident date: 2023-06-30

SUMMARY AND OFFER

- [1] This letter responds to a submission from the Canadian Coast Guard (“CCG”) for an incident involving a 30-foot pleasure craft motor vessel, the *Kamara* (“Vessel”). The Vessel partially sank in the Northwest Arm in Halifax, Nova Scotia, on 30 June 2023 (“Incident”).
- [2] On 13 August 2024, the Ship Fund of Ship and Rail Compensation Canada (“Fund”) received a submission from the CCG on behalf of the Administrator. 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 \$42,902.26.
- [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 \$8,887.70, 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.
- [5] The reasons for the Offer are set forth below, along with a description of the submission.

THE SUBMISSION RECEIVED

- [6] The claim 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.

Narrative Summary

- [7] According to the narrative, on 30 June 2023, the Regional Operations Center (“ROC”) sent a pollution report to the Marine Environmental and Hazards Response (“MEHR”) division that the Vessel was partially submerged.
- [8] On 30 June, CCG response officers with the Inshore Rescue Boat (“IRB”) Program were deployed to the Incident site to assess the risk and ensure nobody was onboard. The response officers observed no pollution.
- [9] On 1 July, two CCG MEHR officers deployed to the Incident site to conduct an assessment. The MEHR officers traveled via truck because of the thick fog. The officers observed a light-colored rainbow sheen from the Vessel.
- [10] The CCG identified and contacted the owner of the Vessel.
- [11] The two MEHR officers returned to the Dartmouth depot. Two officers returned to the incident site by boat and a third officer traveled by truck. The officers deployed a containment boom. After the officers placed the boom, drone footage captured a silvery sheen inside the containment.
- [12] The CCG spoke with the owner and requested he provide a response plan by 3 July.
- [13] On 3 July, the original owner told the CCG that he sold the Vessel. There was no bill of sale. CCG response officers returned to the incident site.
- [14] The same day, the duty officer spoke with the new owner. The new owner told the CCG about their response plan.
- [15] On 4 July, six CCG responders on two Pollution Response Vessels (“PRV”) traveled to the incident site. The CCG responders collected the containment boom because they received an adequate response plan from the new owner of the Vessel. The responders did not observe a sheen.
- [16] On 4 July, the CCG spoke with the new owner to ensure that he intended to follow the response plan he provided. The new owner denied ownership. The CCG contacted the original owner and informed him that he was responsible for the response.
- [17] On 5 July, the owner unsuccessfully attempted to refloat the Vessel.
- [18] On 6 July, the owner requested the CCG to assume control of the response.
- [19] On 7 July, CCG personnel returned to the incident site to find the Vessel breached and listed to the starboard side.
- [20] Between 7-12 July, the CCG monitored the incident site.

- [21] On 14 July, CCG personnel removed 140 liters of diesel water, 15 liters of oily water, and 7 liters of coolant from the Vessel.
- [22] On 2 August, the CCG installed a BRNKL monitoring device on the Vessel to detect any significant change in its list.
- [23] On 9 August, the CCG awarded Dominion Diving the contract to remove, deconstruct, and dispose of the Vessel.
- [24] On 22 August, demolition was completed.

Cost Summary

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

Schedule	Cost Claimed
2 – Contract Services	\$28,692.50
4 – Salaries – Full time personnel	\$4,195.20
5 – Overtime – Full time personnel	\$2,338.22
11 – Pollution Counter-Measures Equipment (PCME)	\$7,546.71
13 – Administration	\$129.63
TOTAL	\$42,902.26

Table 1: Summary of amounts claimed.

DETERMINATIONS AND FINDINGS

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

- [26] The Incident resulted in oil pollution damage within the territorial seas or internal waters of Canada and 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.
- [27] The CCG is an eligible claimant under section 103 of the MLA.
- [28] The submission was received within the limitation periods set out under subsection 103(2) of the MLA.
- [29] 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.
- [30] 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

- [31] The description of the material events in the CCG narrative is accepted as generally accurate.

The Vessel posed a pollution threat and some of the measures taken are admissible

- [32] The Vessel was partially submerged and merited some response measures.
- [33] According to the narrative, CCG personnel observed a light-colored rainbow sheen from the Vessel on 1 July. Between 30 June – 14 July, the measures the CCG took to respond to the incident were reasonable within the scope of oil pollution prevention.
- [34] On 14 July, CCG personnel removed bulk oil from the Vessel. The Vessel had sunk previously, and with bulk oils removed, it cannot be taken for granted that the Vessel remained an oil pollution threat. The evidence does not establish that, after this removal, the Vessel remained an oil pollution threat. Indeed, it does not appear that the oil pollution threat was reevaluated after bulk oil removal. It is noted that containment measures were not in place 14 to 17 July. It is inferred that the CCG response crew did not consider the Vessel remained a significant oil pollution threat, which supports a finding that the oil pollution threat was effectively ended by 14 July.
- [35] Much of the expense incurred by the CCG was for the deconstruction of the Vessel. Deconstruction can be an oil pollution measure where the evidence demonstrates that a vessel itself constituted an oil pollution threat even after other measures were taken. Here, as noted above, the evidence does not establish that the Vessel itself posed an oil pollution threat or that there was any reasonable oil pollution threat after 14 July. Deconstruction expenses, as well as those incurred after 14 July, are therefore disallowed.

CLAIM AND OFFER DETAILS

- [36] The CCG presented its claimed costs and expenses to the Fund across five schedules, each outlined below.
- [37] Under Part 7 of the MLA, the measures taken to respond to an oil pollution incident and the resulting costs must be reasonable and established in the evidence in order to be compensable by the Fund. To the extent that reasons are not already set out in this letter, the sections below elaborate.

Schedule 2 – Contract Services

Claimed: \$28,692.50

- [38] The claimed contract services in Schedule 2 total \$28,692.50. Contract service costs arise from one invoice from Dominion Diving. The CCG hired Dominion Diving to remove, deconstruct, and dispose of the Vessel.

- [39] The removal of the Vessel occurred after 14 July. There is no evidence the oil pollution threat was reevaluated after bulk oil removal, or that it otherwise persisted, after that date. For that reason, removal costs are rejected.
- [40] The deconstruction and disposal costs are rejected for that reason, and also because it has not been established that the Vessel itself posed an oil pollution threat. The narrative states that the wood underneath the fiberglass exterior was soaked with oily water. While this type of assertion, if established, might support a finding that the Vessel itself posed an oil pollution threat, here that assertion is unsupported by evidence.
- [41] Therefore, the costs claimed for Dominion Diving are rejected.
- [42] As noted above, on 14 July, CCG personnel removed 140 liters of diesel/water mixture, 15 liters of oily water, and 7 liters of coolant from the Vessel. The CCG provided no disposal documentation for these mixtures. No claim has been made for the related oil disposal.
- [43] Similarly, after the deconstruction of the Vessel, the Dominion Diving invoice and the CCG submission provide no waste stream disposal details.
- [44] This bolsters the conclusion that the oil pollution threat, even prior to 14 July, was limited.

The contract services portion of the submission is rejected in its entirety.

Schedule 4 – Salaries – Full-Time Personnel

Claimed: \$4,195.20

- [45] The costs for salaries (full-time personnel) are for regular hours worked by ten CCG personnel at various levels and hours of pay, including the Employee Benefit Plan (EBP).
- [46] The accepted salary for the nine days of the incident is summarized in the following table, with reasons for reductions provided below.

Date – July 2023	Accepted Salary with 27% of EBP
1 July	Not applicable
3 July	Not applicable
4 July	\$1,241.18
5 July	\$245.40
6 July	\$330.43
7 July	\$294.42
10 July	\$202.07
12 July	\$202.07
14 July	\$492.67
Total	\$3,008.24

- [47] The CCG claimed \$531.31 on 4 July for six CCG personnel. This appears to be an erroneous underclaim. On 4 July, each CCG employee worked 4.5 hours each. From the

submission, the correct value for the daily salary on 4 July should be \$1,241.18. The claim for 4 July is accepted for this higher amount, \$1,241.18.

[48] The salary costs incurred after 14 July are rejected.

The salaries portion of the submission is allowed in part in the amount of \$3,008.24.

Schedule 5 – Overtime – Full-Time Personnel

Claimed: \$2,338.22

[49] The costs for overtime (full-time personnel) are reasonable. The costs are for regular hours worked by four CCG personnel at various levels and hours of pay.

[50] The CCG incurred overtime costs on 1 and 3 July. These costs are reasonable because CCG personnel attended the incident on a statutory holiday.

[51] The CCG also incurred overtime costs on 5 July. The overtime costs on 5 July were a result of the CCG monitoring the Owner's refloating attempt. The presence of CCG personnel was reasonable, and the costs are accepted.

[52] Overtime costs were necessary to be incurred for this response.

The overtime portion of the submission is allowed in full in the amount of \$2,338.22.

Schedule 11 – Pollution Counter-measures Equipment

Claimed: \$7,546.71

[53] The use of pollution counter-measures is accepted in part.

[54] The CCG claimed \$7,546.71 for the use of pollution response vessels (PRVs), 100 feet of containment boom, and one bundle of sorbent boom.

[55] The use of the 100 feet of containment boom and sorbent boom are accepted in its entirety.

[56] Between 1 July and 22 August, the CCG used two PRV 1's and one PRV 2. The daily rate of a PRV 1 is \$53.21. The daily rate of a PRV 2 is \$1,194.23.

[57] On 1 July, the CCG used a PRV 2 for 5 hours. The CCG submits costs for a full day, \$1,194.23. The accepted costs are \$1,194.23. The use of the PRV 2 was necessary due to the uncertainty of the response requirements.

[58] On 3 July, the CCG submits costs for a full day, \$1,194.23. The CCG used a PRV 2 for 2.5 hours. The cost of use for a half day is accepted, \$597.12.

[59] On 4 July, the CCG deployed six personnel in two boats to recover containment and sorbent boom. The CCG used a PRV 2 for 4.5 hours and a PRV 1 for 4.5 hours. The accepted costs are \$1,247.44. The CCG needed to be present at the incident site to manage owner complication issues.

[60] On 5 July, the CCG used a PRV 2. The CCG submits costs for a full day, \$1,194.23. The CCG monitored the owner's attempt to refloat the Vessel. The operational capabilities of a PRV 2 were not necessary. The accepted costs are \$53.21, the PRV 1 daily rate.

[61] On 6 and 7 July, two CCG personnel attended the incident site. The CCG submits costs for a full day, \$1,194.23. The operational capabilities of a PRV 2 were not required. The accepted costs are \$53.21, the PRV 1 daily rate.

[62] On 10, 12, and 14 July, the CCG used a PRV 1 for monitoring purposes. The daily rate of \$53.21 is accepted for a total of \$158.63.

The pollution counter-measure equipment portion of the submission is allowed in part in the amount of \$3,468.05.

Schedule 13 – Administration

Claimed: \$129.63

[63] The CCG submission advances a claim for administration costs at a rate of 3.09% as applied to full-time salaries. The 3.09% rate is generally accepted as reasonable as applied to salary expenses. When calculating the administrative costs for these claims, the sum of the accepted salary costs, \$3,008.24, minus the EBP amount of \$639.55 becomes \$2,368.69. Applying the 3.09% administrative rate to \$2,368.69 the amount equals \$73.19.

The administration portion of the submission is allowed in part in the amount of \$73.19.

OFFER SUMMARY AND CLOSING

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

Schedule	Cost Claimed	Offered
2 – Contract Services	\$28,692.50	\$0
4 – Salaries – Full time personnel	\$4,195.20	\$3,008.24
5 – Overtime – Full time personnel	\$2,338.22	\$2,338.22
11 – Pollution Counter-Measures Equipment (PCME)	\$7,546.71	\$3,468.05
13 – Administration	\$129.63	\$73.19
TOTAL	\$42,902.26	\$8,887.70

Table 2: Summary of amounts claimed and accepted.

[65] Costs and expenses in the amount of **\$8,887.70** are accepted and will be paid together with statutory interest calculated at the date of payment if the Offer is accepted.

[66] 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.

[67] 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 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.

[68] 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.

[69] Finally, when 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 Ship Fund in its subrogation efforts.

Yours sincerely,

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