



OFFER LETTER

Ottawa, 22 January 2025
SOPF File: 120-996-C1

BY EMAIL

Manager, Operational Support
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*Via email to **DFO.CCGERCostRecoveryRSP-
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RE: FV *Emma Marie* — Country Island, NS
Incident date: 2022-03-18

SUMMARY AND OFFER

- [1] This letter responds to a submission from the Canadian Coast Guard (“CCG”) with respect to the 35-foot fibreglass motor fishing vessel named *Emma Marie* (“Vessel”), which went adrift and ran aground on or about 18 March 2022, on Country Island, Nova Scotia (“Incident”).
- [2] On 15 March 2024, the Ship Fund of Ship and Rail Compensation Canada received a submission from the CCG on behalf of the Minister of Fisheries and Oceans. The submission advanced a claim totaling \$70,613.53 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 (“MLA”).
- [4] The amount of \$12,838.02 (“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 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 17 March 2022, CCG Marine Environmental and Hazards Response (“MEHR”) received a pollution report of the *Emma Marie* adrift. It ran aground on Country Island shortly thereafter. After the three people aboard were safely brought to shore, the response officers reported that the Vessel was aground and presumed to have fuels onboard, though there was no observable pollution.
- [8] On 18 March, as evidenced in the supporting materials, CCG personnel requested a National Aerial Surveillance Program (“NASP”) overflight. The overflight report indicated that it could not detect the Vessel because of cloud cover and that no pollution was observed. A helicopter overflight was subsequently requested.
- [9] At 1330 that day, two CCG MEHR response officers and a CCG helicopter pilot deployed from the Shearwater Helicopter Base to the Incident site to assess the situation via overhead flight. They located the Vessel and landed nearby. They noted that it was hard aground in the foreshore with no visible signs of pollution. It had not sustained any major damage, and the hull appeared to be intact. The only area of concern was around the keel aft of the wheelhouse where water was dripping. They could not determine if there were a breach or if it were just residual water. They removed seven empty jerry cans and three jugs of oil and moved them up shore. They inspected the fuel tank and found it full of diesel (approximately 200 litres) and found no breach. They secured the *Emma Marie* at the bow and stern. They departed the site at 1545.
- [10] The Regional Operations Center (“ROC”) reported the owner’s information to the CCG. Around 1820, the owner reported that he was near the site, but the conditions were too rough to get close to the Vessel. He had contacted RMI Marine Ltd. (“RMI”) and was waiting for their confirmation that they would be on site the next day. However, at 1835, RMI informed CCG ER personnel that they would not be on site until Tuesday, 22 March.
- [11] On 19 March, CCG response officers departed the Canso Canal with bulk oil removal equipment, a Pollution Response Vehicle-II (“PRV-II”), and two trucks to transport the equipment and PRV-II to Goldboro. A Rosborough 9.11 was used instead of the typical PRV-II because of its higher capability of handling rough marine conditions. Three response officers deployed from Goldboro on the PRV-II to the Incident site, but they could not land ashore due to the swell and rough coastline, requiring them to return to Goldboro. They noted that the Vessel seemed secure and that there was no observable pollution.

- [12] Around 1200, CCG MEHR personnel decided that the only safe option for removing bulk oil from the *Emma Marie* was to use a helicopter and sling the recovered oil ashore because of the harsh marine conditions “which would quickly demolish the vessel and release oil pollution,” prompting them to request the use of a helicopter.
- [13] On 20 March, the owners informed the CCG via text that they were unable to carry out a response. The next morning, one of the owners informed CCG personnel that RMI would not work directly with the owners due to a lack of insurance. By midday, the owners agreed to allow the CCG to take over the response operation.
- [14] On 21 March, three CCG personnel departed with equipment from the Canso Canal and two reported to the CCG Shearwater Helicopter Base for a flight to Goldboro where the two crews met up. They loaded the equipment onto the helicopter. Three response officers deployed and arrived at the Incident site around 1130. They set up pumps and containers to remove the oil from the *Emma Marie*. The equipment included the following: two battery operated oil transfer pumps, 150 feet of transfer hose, two 50-gallon steel oil containment barrels, access tools, and sorbent material. The response officers removed approximately 240 litres of oils (though the removal plan states 150 litres of diesel, and 12 litres of hydraulic oils were recovered) over a period of about one and half hours. However, the response officers were unable to access the main engine and transmission because they had become covered by water with the tide which entered through damage sustained to the hull from resting on the rocky shoreline.
- [15] Around 1315, the recovered oil and empty jerry cans were loaded onto the helicopter lift sling and flown to Goldboro. The helicopter then returned to Country Island to retrieve the three response officers. They returned and arrived back at Shearwater around 1430, and the crew of three returned to Canso Canal at 1530 with the equipment and recovered pollutants, completing the bulk oil removal.
- [16] Nevertheless, the narrative states that the *Emma Marie* continued to pose a pollution threat due to the presence of the residual oils, requiring the Vessel be removed and deconstructed. CCG personnel created a response plan to tow the Vessel further ashore, deconstruct it, and remove it from the site by helicopter before 1 May, when Country Island returned to bird sanctuary status.
- [17] On 25 March at 0800, two CCG personnel left Saint John, NB for Port Hawkesbury, NS, to support the deconstruction operation the following day.
- [18] On 26 March at 0600, CCG personnel met at Canso Canal and travelled to Goldboro where they staged and loaded the equipment into helicopter baskets and transported it to Country Island. They began the setup at the site by 1130 and moved the *Emma Marie* above the high-water mark by 1400. They then worked on dismantling the Vessel with gas powered saws and removing the remaining oil. At 1500, the wheelhouse was removed and deposited at Goldboro by 1530.

- [19] Around that time, unexpected fog quickly set in, grounding the helicopter and preventing it from returning to the vessel site for the rest of the day. Alternative arrangements were made, and the CCG *Port Bickerton* lifeboat was tasked to recover the response officers still on site. However, when it arrived, the conditions were too difficult for it to safely land on shore. Instead, they sent food and water via rocket line, and the six response officers stayed overnight. Communications were maintained between the officers and the ROC and Deputy Superintendent throughout the night.
- [20] On 27 March at 0600, the on-site response officers notified the ROC that the fog had lifted. By 0830, the response officers were air lifted from the island by helicopter and flown to Goldboro. They returned to the Canso Canal depot and were off duty by 1030.
- [21] On 28 March, two response officers confirmed having COVID-19, suspending operations until 6 April. Note that the narrative does not mention use of the helicopter on this date, but the Helicopter Request, Manifest and Flight Plan included in the claim submission shows that it was used for shortly less than an hour.
- [22] On 5 April at 1000, two CCG response officers left Saint John for Port Hawkesbury to support the deconstruction process occurring on the following day.
- [23] On 6 April at 0600, six response officers met at Canso Canal and traveled to Goldboro where they met with two other officers at the helicopter pad. At 0930, a crew flew to the Incident site to continue the deconstruction process. The remaining hull was cut into five sections and a further 40 litres of oil was reportedly recovered from the lines and hoses within the hull. By 1610, the hull sections, pollutants, and debris had been airlifted from the island. By 2000, the response officers had returned to the Canso Canal depot. Note that this day's helicopter usage is not included in a Helicopter Request, Manifest and Flight Plan in the submission, only in the narrative.
- [24] On 7 April, three personnel traveled to Goldboro to assist the contracted salvage company, Wilf's Demolition & Salvage Ltd., with loading the recovered materials for disposal. To abide with regulations, they had to cut sections into smaller pieces and dispose of them by transporting them in two trips to the waste management facility. They completed operations by 1200 and returned to their respective bases.

Cost summary

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

Schedule	Amount claimed (\$)
2. Contract services	2,361.26
3. Travel	5,176.98
4. Salaries – Full time personnel	7,345.00
5. Overtime – Full time personnel	15,480.23

Schedule	Amount claimed (\$)
10. Aircraft	25,594.97
11. Pollution countermeasures equipment	2,027.57
12. Vehicles	11,449.71
13. Administration	1,177.81
Total claim	70,613.53

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 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.
- [27] The CCG is an eligible claimant for the purposes of section 103 of the MLA.
- [28] The submission arrived prior to 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, and are therefore potentially eligible for compensation.
- [30] Accordingly, the submission presents claims that are potentially eligible for compensation under section 103 of the MLA.
- [31] The extent to which the measures taken were reasonable must be evaluated.

The CCG’s response operation was reasonable

- [32] The description of the material events in the CCG narrative is accepted as accurate.
- [33] The Vessel was found in a compromised state and at risk to release oil into the marine environment. Accordingly, the CCG response to the Incident is accepted as overall relatively reasonable. However, an important exception to this acceptance lies with respect to the operational decision on 21 March 2022 to remove oils that were accessible and above the waterline while leaving some oils because they were temporarily inaccessible, for a matter of a few hours, due to the tidal schedule. Further analysis of this issue is set out below.

CLAIM AND OFFER DETAILS

- [34] The CCG presented its claimed costs and expenses to the Ship Fund across eight schedules, each of which is outlined below.
- [35] 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 Ship Fund. To the extent that reasons are not already set out in this letter, the sections below elaborate.

Schedule 2 – Contract Services

Claimed: \$2,361.26

- [36] Contract service costs were incurred for two contractors in this response operation. The amount of \$1,875.96 was paid to Wilf's Demolition & Salvage Ltd. for removing the deconstructed vessel parts. The amount of \$485.30 was paid to Bio-Liquid Waste Disposal Inc. for portable toilet rentals used during the deconstruction process.
- [37] The decision to deconstruct the *Emma Marie* is not accepted as having been reasonably taken with respect to a risk of oil pollution. This determination is based on a few factors.
- [38] First, the bulk oil removal was completed on 21 March. This significantly reduced the threat of oil pollution. A reassessment of the risk was appropriate after that removal was completed. It is noted that during deconstruction, only approximately 40 litres of further oils were removed.
- [39] Second, had the bulk oil removal operation been timed to occur closer to the day's low tide, it is probable that the CCG officer would have been able to access more of the oil on the vessel. Based on photos and information included in the claim submission and tide tables for the area on that day, the following information can be ascertained: high tide occurred 1053, the CCG crew removed accessible oils starting from approximately 1130 to 1300 (i.e., during the ebbing tide and only shortly after high tide), the crew departed the site at approximately 1400, low tide was at 1734, and the next high tide was not until 2309. There is no evidence showing that any local sea and weather conditions were sought prior to departing for the site.
- [40] This evidence shows that the operation was carried out when the water was relatively high yet going out, which would eventually reduce the water within the vessel and expose the temporarily submerged engine and transmission within a few hours. Moreover, the initially inaccessible oil was located in the main engine and transmission which are regularly accessed during vessel maintenance, as opposed to a typically inaccessible area of the Vessel. The time available until the next high tide would have amply allowed for the

response officers to dewater the Vessel and gain access to these areas. The rationale behind the decision to leave the site, with a small amount of oil remaining aboard, has not been provided with the claim and is not understood. The attendance that day has been accepted as a reasonable measure, but in the absence of an explanation for the early departure, costs flowing from that early departure are not accepted as reasonable.

- [41] As well, the narrative correctly points out the need to remove oil to preserve a protected wildlife area. However, ensuring that the operation is done in a manner which avoids putting the habitat at further risk is an essential part of establishing reasonability. It appears that virtually all of the oil should have been able to be removed on the 21st. Had it been, there would not have been a need to return to the site and further disturb the ecologically sensitive area. Multiple attendance increases the risk and also expends a disproportionate amount of oil relative to the amount being recovered. Absent evidence as to why the bulk oil removal was ended early, the protected status of the incident location also militates against a finding of reasonability in the approach taken.
- [42] Further, the submission includes an email from a Preparedness and Response Officer at Environment and Climate Change Canada. The email, sent on 22 March, recommended salvage activities be completed before the breeding season started, and a plan submitted for review. This plan was submitted and approved the next day. While the plan was reasonable with oil remaining on site, the recommendations were developed in the context of remaining oils. There is no evidence showing consideration was given to the possibility of leaving behind the Vessel cleared of pollutants. As such, this evidence does not necessarily support a finding that deconstruction was reasonable. It is also noted that recommendations from Canadian Wildlife Service (“CWS”) expressed concern at the use of saws to dismantle the Vessel, leaving behind particulate matter which could potentially harm the birds’ breeding patterns and development. They further stated that helicopter use in the area should be minimised, yet there were at least five flights between Goldboro and Country Island during the operation. This again points to a need to understand why the bulk removal was halted, apparently prematurely, and why consideration was not given to completing that operation.
- [43] For these reasons, an additional four hours of work is added (split between regular salary and overtime costs, examined below) to account for the time needed to properly complete oil removal. However, costs associated with a continuing oil threat after that point are rejected. As the bulk oil removal was not completed, there is also no assessment of the vessel after bulk oil was completed and therefore there is not a sufficient basis to conclude that the vessel itself posed an oil pollution threat necessitating deconstruction.
- [44] **The contract costs are rejected in their entirety.**

- [45] The claimed travel costs cover expenses incurred by seven CCG personnel for meals, incidentals, and accommodations from 18 March – 7 April 2022.
- [46] The meals and incidentals are consistent with the Travel Directive, Appendix C – Allowances for 1 October 2021, save for a few small corrections to subtract a slight amount for one incorrect lunch price on 21 March and one extra dinner on 19 March, plus to add the cost of dinners for four officers on the 21st and for one officer on the 26th and the amount of \$305.62 left off for 27 March. The total claimed travel costs should therefore be \$5,429.60.
- [47] Travel costs are reduced in part. The costs for the travel to the Incident site on 19 March are rejected. The evidence does not establish that travel to Country Island on the 19th was appropriately planned. The crew was not able to land on site, apparently due to weather – but there is no evidence that they had sought weather reports prior to commencing the attempt.
- [48] For the work completed on 20 March, the costs are overall accepted as reasonable. A minor correction is needed for an additional amount of \$4.00 for a toll fee, and the cost of breakfast is reduced because work did not start until approximately 1100. The amount of \$274.20 is accepted for this day of the operation.
- [49] For 21 March, a lunch claimed in the amount of \$23.05 which should be \$21.60. For the reasons explained in the previous section, the cost of dinner for the response officers is included for the expenses on 21 March to account for the additional hours. The other costs are accepted. The amount of \$447.05 is accepted for this day.
- [50] The travel costs for the helicopter pilot were included in Schedule 10 of the claim submission. No receipts or cost breakdowns were provided, though it is reasonable to assume that the pilot's travel costs would be the same as the CCG response officers'. As such, travel costs are not accepted for the incurred costs on 18 March, but the costs of lunch and dinner are added for 21 March, amounting to \$74.60 for the day.
- [51] The costs incurred from 25 March to 7 April 2022 are rejected for the reasons stated in the previous section.
- [52] **The amount of \$721.25 (\$650.65 for ER personnel and \$74.60 for the pilot) is accepted for travel costs.**

- [53] The claim submission includes costs for regularly incurred salaries for the response officers, including 27% EBP.

- [54] The costs incurred on 18 March are accepted. For the reasons stated above, the costs incurred on 19 March are rejected. No hours were incurred on 20 March.
- [55] For 21 March, hours are added for the amount of time it would have taken to complete the oil removal, allotting 7.5 hours at the standard salary rate for each officer. The costs incurred after this point are rejected.
- [56] **The amount of \$1,890.48 is accepted for salary costs.**

Schedule 5 – Overtime – Full Time Personnel

Claimed: \$15,480.23

- [57] Overtime costs were incurred for nine personnel and rates of 1.5 times and 2.0 times the standard salary rate and exclude the 27% EBP.
- [58] The overtime costs incurred on 18 March are established as reasonable and accepted.
- [59] The costs incurred on 19 March are rejected on the basis that there was a lack of appropriate planning because there is no evidence demonstrating that accurate weather and sea conditions were sought prior to departing for the site and failing to land on the island due to the conditions. In lieu of overtime costs incurred by one officer that day for travel from Saint John, NB to Dartmouth, NS, five hours of overtime at the 2.0x rate is accepted on the basis that the officer was involved in the oil recovery operation 21 March.
- [60] As explained above, four hours of work are added to the costs incurred on 21 March, resulting in three hours of overtime for the two officers who traveled by helicopter and four hours of overtime for the other three officers.
- [61] The overtime costs incurred after 21 March are rejected as they were incurred for deconstruction efforts which are unsubstantiated, as elaborated above.
- [62] Contrary to CCG's *Environmental Response Cost Recovery Costing Documentation Guidelines By Cost Element* (November 16, 2015), the claim included the helicopter pilot's overtime costs in Schedule 10 - Aircraft. These costs are assessed in this section in accordance with the guidelines.
- [63] The overtime costs incurred by the helicopter pilot are claimed to be 9 hours at the 1.5x rate and 19 hours at the 2.0x rate. However, the daily Helicopter Request, Manifest and Flight Plan sheets show that, in fact, 11 hours were incurred at the 1.5x rate and 17 hours at the 2.0x rate. The two hours incurred on 18 March are accepted. No hours were incurred on 19 March.
- [64] Note that one of the Helicopter Request, Manifest and Flight Plan sheets seems to be dated incorrectly for 20 March and instead should be 21 March. The pilot is granted the additional

hours also allotted to the response officers for the work which should have been completed on 21 March, as explained above, therefore increasing it by three hours.

[65] **The amount of \$1,833.39 is accepted for overtime costs.**

Schedule 10 – Aircraft

Claimed: \$25,594.97

[66] The aircraft costs incurred were for the use of the helicopter, fuel, and the pilot's salary and overtime. The costs and expenses associated with travel and overtime have been removed from this schedule and are included and assessed in Schedules 3 and 5, respectively. The claim did not include information for the fuel burn rate, the cost of fuel, the pilot's hourly rate, nor travel receipts.

[67] The helicopter was used for a total of 6.7 hours. The claimed rate is \$2,928.00 per hour. However, documentation supporting the hourly rate was not included in the submission, nor was it provided upon request. Accordingly, reference has been made to the rates established in the 2017/2018 CCG Memorandum file number EKME #373370. Because it is a more recent publication, it has been relied upon for reference instead of the 2015 *Environmental Response Cost Recovery Manual*. Given the lack of documentation to prove the higher hourly rate, the rate set out in the Memorandum is accepted.

[68] The type of helicopter used was a Bell 429, which, according to the Memorandum, has a charge rate of \$1,748.00, assumably per hour. As explained above, costs incurred after 21 March are rejected. Accordingly, 1.4 hours is accepted for 18 March and 2.2 hours for 21 March, for a total of 3.6 hours of accepted time at the \$1,748.00 rate for a total of \$6,292.80.

[69] The claimed fuel cost is \$2,149.09. The submission states that it is charged at a rate of \$1.84 per litre at 297 litres per hour for 6.7 hours, which should amount to \$3,661.42. In other words, the rate actually charged is \$1.08 per litre. Accordingly, the rate of \$1.08 is the accepted rate. Therefore, for 3.6 hours of fuel use, the amount of \$1,154.74 is accepted.

[70] **The amount of \$7,447.54 is accepted for aircraft costs.**

Schedule 11 – Pollution Counter-measures Equipment

Claimed: \$2,027.57

[71] The costs claimed for pollution counter-measures equipment ("PCME") are for the use of a PRV-II and a trailer. Based on the reasons for rejecting costs incurred on 19 March, set out above, the costs for PCME on that day are also rejected.

[72] The claim did not include costs for equipment such as hoses and pumps, and because no specifics are given about their charge rates, no basis can be formed on the Administrator's

part for including their costs. Furthermore, based on the reasons described above, the costs incurred after 21 March are rejected.

[73] **The PCME costs are rejected in their entirety.**

Schedule 12 – Vehicles

Claimed: \$11,449.71

[74] The vehicle costs incurred are for the use of six vehicles and one boom/crane truck and include fuel rates.

[75] As stated above, the costs incurred for vehicle 17-240 on 19 March are rejected. Notwithstanding, the costs for the use of vehicle 16-220 to travel from Dartmouth to Shearwater round-trip are accepted in an amount equivalent to the distance it would have traveled to the Incident site on 20 March.

[76] The costs incurred on 21 March are accepted. The cost for fuel is doubled to account for travel from Saint John to the Incident site and back.

[77] Costs incurred after 21 March are rejected, for the reasons stated above.

[78] **The amount of \$650.30 (\$337.80 for the daily cost of the vehicles and \$312.50 for fuel) is accepted for vehicle costs.**

Schedule 13 – Administration

Claimed: \$1,177.81

[79] Administration costs can be applied to the time required to prepare the claim and at a rate of 3.09% of indirect costs related to response support. For this claim, the administration costs apply to regular salary (less EBP), travel, and aircraft costs.

[80] Because the amount accepted for salaries, travel, and aircraft are reduced, administration costs are also reduced. The accepted amount for travel is \$721.25, for salaries is \$1,890.48 (\$1,488.57 with EBP reduced), and \$7,447.54 for aircraft. The amount of \$9,657.36 is eligible for administration rate applicability.

[81] **The amount of \$295.06 is accepted for administration costs.**

OFFER SUMMARY AND CLOSING

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

Schedule	Amount claimed (\$)	Amount Accepted (\$)
2. Contract services	2,361.26	0
3. Travel	5,176.98	721.25
4. Salaries – Full time personnel	7,345.00	1,890.48
5. Overtime – Full time personnel	15,480.23	1,833.39
10. Aircraft	25,594.97	7,447.54
11. Pollution countermeasures equipment	2,027.57	0
12. Vehicles	11,449.71	650.30
13. Administration	1,177.81	295.06
Total claim	70,613.53	12,838.02

Table 2: Summary of amounts claimed and accepted.

- [83] Costs and expenses in the amount of \$12,838.02 are accepted and will be paid together with statutory interest calculated at the date of payment if the Offer is accepted.
- [84] 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.
- [85] 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.
- [86] 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.
- [87] 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 Ship Fund in its subrogation efforts.

Yours sincerely,

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