



OFFER LETTER

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VIA EMAIL

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RE: M/V *Hydra Mariner* — Wright's Cove, Dartmouth, Nova Scotia
Incident date: 2021-01-17

SUMMARY AND OFFER

[1] This letter responds to a submission from the Canadian Coast Guard (the “CCG”) with respect to a roughly 34-metre motor vessel known as the *Hydra Mariner*. The vessel grounded on Navy Island, in Wright's Cove, Nova Scotia, on 17 January 2021 (the “Incident”) and discharged oils. The CCG responded, ultimately removing and disposing of the vessel.

[2] On 5 January 2023, the Ship Fund of Ship and Rail Compensation Canada (the “Ship Fund”) received a submission from the CCG. The submission advanced claims under sections 101 and 103 of the *Marine Liability Act*, SC 2001, c 6 (the “MLA”) totaling \$2,543,803.16 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 \$1,339,930.08 (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 relevant portions of the submission.

THE SUBMISSION RECEIVED

[5] The submission includes a narrative that describes events relating to the Incident. It also includes documents supporting the CCG's claimed costs.

[6] The CCG summarizes its claimed costs and expenses as follows:

		<u>SCH</u>
MATERIALS AND SUPPLIES	\$ -	1
CONTRACT SERVICES	\$ 2,387,462.87	2
TRAVEL	\$ 13,157.53	3
SALARIES - FULL TIME PERSONNEL	\$ 33,421.46	4
OVERTIME - FULL TIME PERSONNEL	\$ 44,602.62	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)	\$ 61,827.59	11
VEHICLES	\$ 1,503.19	12
ADMINISTRATION	\$ 1,827.90	13
TOTAL CCG COST OF INCIDENT	\$ 2,543,803.16	

Figure 1 – CCG cost summary

DETERMINATIONS AND FINDINGS

Summary of the Incident and the CCG's response thereto

[7] The paragraphs that follow summarize the relevant 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 further submissions from the CCG and some additional investigatory work conducted by the Fund.

[8] The *Hydra Mariner*, launched in 1963, was originally a steel fishing trawler. It was 295 gross tons and roughly 34 metres in length. Beginning in about 2001 a series of owners undertook efforts to convert the vessel to a pleasure craft. None of those attempted conversions was completed, and the vessel decayed at anchor in Wright's Cove, Nova Scotia, from 2009 onward. There was reportedly a grounding event in 2015, but that event did not breach the hull of the *Hydra Mariner*, and the vessel was refloated and towed back to its moorings.

[9] On 17 January 2021, high winds caused the *Hydra Mariner* to break its moorings and ground on Navy Island. The CCG dispatched three personnel, but poor weather limited them to making observations from the shore. No pollution around the stricken vessel was observed. The CCG requested precautionary environmental sensitivity and spill trajectory mapping from the National Environmental Emergencies Centre as well as monitoring flyovers from the National Aerial Surveillance Program.

[10] The CCG contacted the owner of the *Hydra Mariner*, who undertook to have the vessel refloated. His initial plan was rejected by the CCG on the grounds that it lacked sufficient detail on pollution mitigation strategies. On 27 January 2021, a contractor engaged by the owner boarded the vessel. That contractor noted that the engine room was tidal, and that the water ingress was heavily oiled. The contractor secured the vessel to Navy Island with mooring lines.

Figure 2 – Undated photograph showing the vessel aground on Navy Island

[11] The discovery that the vessel’s hull was compromised increased the complexity of the situation. The owner of the *Hydra Mariner* informed the CCG that he could not afford to take further measures. An oil sheen was first observed around the vessel on 28 January 2021.

[12] With the owner out of the picture, the CCG took over the response to the Incident on 30 January 2021. Boom was deployed around the vessel, and CCG personnel boarded it to assess the volume of pollutants aboard. Additional mooring lines were put in place to secure it *in situ*, and plugs were placed in accessible locations from which oils might be discharged.

[13] The CCG also retained London Offshore Consultants (Canada) Ltd. (“LOC”) to assess whether the *Hydra Mariner* might be safely refloated and towed from the site of its grounding. Preliminary inspections of the vessel were limited due to the estimated 234,000 litres of oil contaminated water on board. The tanks that could be sounded were found to contain approximately 4,000 litres of oils. Portions of the interior of the vessel were tidal, while others were dry. Further oils were identified in pails and drums on board. The vessel was in poor condition, with heavy corrosion on its deck and superstructure. It was listing approximately ten degrees to port.

[14] From 31 January through 6 February 2021, the CCG removed accessible oils from the *Hydra Mariner*. In total, 1,250 litres of fuel and 8,250 litres of oily water were pumped from the vessel into bulk totes on a Pollution Response Vessel, Class 2 (“PRV II”), then disposed of through special waste streams, with the assistance of CleanEarth Industrial Services Inc. (“CleanEarth”). Sorbent pads were deployed inside the vessel following the pumping operation.

[15] After a competitive bidding process, the CCG hired RMI Marine Ltd. (“RMI”) to conduct a dive survey of the *Hydra Mariner*’s hull and plug any accessible water ingress sites. The dive operation took place on 6 February 2021. The source of water ingress was not visible, so it was believed to be the underside of the hull, the port side of which rested on a large rock. Random soundings were taken to assess hull thickness, and no immediate concerns were identified. While there were some rocks in the vicinity, the divers reported that a clear path for towing could be established.

[16] From 6 February 2021 onward, CCG personnel attended the vessel periodically to change out sorbent materials and boom as needed. They also skimmed oils from the engine room. On 12 February, CCG personnel determined that the rate of water ingress was slow. Regular upwelling of oils in the engine room led the CCG to believe that there were considerable volumes of inaccessible residual oils on board.

[17] The CCG considered that it had three options for dealing with the *Hydra Mariner*:

- a. Refloat the vessel, effect the hull repairs necessary to keep it afloat, and return it to its original anchorage;
- b. Refloat the vessel, conduct temporary hull repairs, and tow it to a marine facility for dismantlement; or
- c. Dismantle the vessel *in situ*.

[18] Ultimately, the CCG opted for the third option, which it considered to be the least costly and lowest risk approach. Wright's Cove is a particularly sensitive area from both environmental and economic standpoints. In light of the vessel's state and the owner's financial limitations, the CCG ruled out returning it to his custody. In deciding not to have the vessel refloated and temporarily repaired before towing it away, the CCG considered the unknown condition of the lower parts of the hull. As a result, the scope and cost of the temporary repairs needed to prepare the vessel for towing could not be reliably estimated. According to the CCG, the nearest vessel recycling facility was at Sheet Harbour, over 100 kilometres up the open Atlantic coast from Wright's Cove. The CCG completed a draft scope of work document with respect to the *in situ* dismantlement of the *Hydra Mariner* in March 2021.

[19] A complication arose in May 2021 when the Department of National Defence ("DND") informed the CCG that Navy Island is considered a federally contaminated site. The Bedford Magazine explosion of 1945 had scattered unexploded ordnance on and around the island, and it was possible that subsurface disturbances around the *Hydra Mariner* could lead to a detonation.

[20] The CCG held discussions with both the Halifax Regional Municipality (the "HRM"), the owner of Navy Island, and DND, the owner of any remaining munitions. The CCG was provided with historical surveys of the area, which confirmed the concerns that ordnance could be present around the site of the grounding. The CCG was informed that while DND would not be responsible for surveys or ordnance removal, any recovered ordnance would need to be returned to its custody. Further, the HRM stated that it had no plans for the area around Navy Island, so any survey or recovery efforts would have to be funded exclusively by the CCG.

[21] The CCG worked with DND to draft a statement of work for a survey of the area within a 150-foot radius of the *Hydra Mariner*, both ashore and underwater. The proposed scope of work also included the preparation of a report on site safety, the removal of any discovered ordnance, and potential guidance throughout the vessel removal process, including at the planning stages. A competitive bidding process was held, and the lowest qualified bidder, GEMTEC Consulting Engineers and Scientists Limited ("GEMTEC"), was awarded the contract on 19 November 2021.

[22] GEMTEC began its work on 30 November 2021. Its survey was completed on 14 December. A total of 60 anomalies were identified. Investigations thereof uncovered two live

shells and 80 kilograms of munitions scrap. Both shells were safely recovered and handed over to DND for disposal. A final report was provided by GEMTEC on 31 January 2022. The CCG chose not to engage further assistance from GEMTEC, including during the vessel removal operation.

[23] Meanwhile, in early September 2021, CCG personnel had discovered that the vessel's forepeak tank and fish hold—two areas that had previously been dry—were flooded and tidal. An external inspection revealed a hole low on the hull near the vessel's port bow: the vessel was continuing to deteriorate. Site visits by CCG personnel continued.

[24] On 15 October 2021, the CCG retained AqualisBraemar LOC (Canada) Ltd. (“ABL”), formerly LOC, to conduct a disposal assessment for the *Hydra Mariner*. The ABL assessment report is dated 9 November. It concludes, *inter alia*, that dismantling the vessel *in situ* would likely be the safest and most cost-effective path forward. It estimates the costs of that course totalling between \$1,039,400.00 and \$1,327,800.00.¹ In addition to oils, the ABL report also identifies the presence of asbestos, polychlorinated biphenyls, and lead on the vessel.

[25] The competitive bid process for the *in situ* deconstruction of the *Hydra Mariner* began on 2 May 2022. Public Works and Government Services Canada (“PWGSC”) was engaged to translate the Statement of Work and associated documentation, including the GEMTEC and ABL reports, into French. Ultimately, Marine Recycling Corporation (“MRC”), the lowest qualified bidder, was selected on 14 June.

[26] The MRC operation began on 16 July 2022, with two barges secured on site, one of which was equipped with a crane. Safeguards and contingencies were put in place to protect against a possible spill. Those measures included the deployment of two layers of containment boom: one around the vessel itself and a second around the entire site, including the MRC barges.

[27] The Dartmouth Yacht Club (the “DYC”) was used as a staging base for both MRC and CCG personnel and equipment during the operation. Three CCG personnel were on scene daily to monitor MRC's progress and possibly intervene in the event of pollution. In addition, the CCG fielded a PRV II, an aerial drone, and a Mobile Incident Command Post. Its personnel worked closely with MRC, and they periodically liaised with the HRM and the DYC. In addition, they managed local vessel traffic.

[28] Asbestos abatement was prioritized, and that process was completed on 22 July 2022. The removal of all other known pollutants and other hazardous materials was completed on 24 July. In total, 4,000 litres of oils and oily water were removed and disposed of through appropriate waste streams. The pollutant removal process also included the cleaning of the vessel's tanks, and some other internal spaces. MRC then cut the vessel into sections and removed them to one of its barges.

[29] The MRC operation proceeded largely without incident, with CCG personnel logs documenting only two minor discharges of oil. The first, on 30 July 2022, was attributed to a minor

¹ It is not clear if this estimate is intended to be inclusive or exclusive of applicable taxes. That said, the report's emphasis on prevailing industry rates seems to suggest that taxes are not included. As the ABL report predated the GEMTEC report, it is also not clear to what extent the former's estimates considered the complexities of working in an area potentially contaminated with unexploded ordnance.

hydraulic hose leak on one of the MRC barges. It was addressed with the deployment of sorbents and an adjustment of boom. The second, on 7 August, was noted as a light, unrecoverable sheen.

[30] On 8 August 2022, MRC removed the final piece of the *Hydra Mariner* from Navy Island and placed it on one of its barges, which was towed to a Halifax pier to await a weather window for towing to a recycling facility in Sydney, Nova Scotia. The following day, CCG personnel undertook a shoreline survey on Navy Island. A dive survey of the area was also completed by MRC before the demobilization process began.

Figures 3 and 4 – MRC progress photographs respectively dated 18 July and 3 August 2022, provided by the CCG

[31] The barge containing the remains of the *Hydra Mariner* reached Sydney on 3 September 2022 and offloaded its cargo. CCG personnel conducted a site inspection at the MRC facility in Sydney on 6 September before declaring the response operation complete.

The claim submission is admissible

[32] 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 and involved oil pollution from a ship.

[33] The amounts sought by the CCG represent costs associated with responding to a ship-source oil pollution incident. Such amounts may be eligible for compensation from the Ship Fund.

[34] Therefore, the claim is admissible under section 103 of the MLA, subject to determinations that the claimed costs were reasonably incurred for the purpose of mitigating oil pollution damage.

CCG costs up to the engagement of MRC are largely accepted

[35] Broadly, the CCG's actions from the date of the Incident and leading up to the engagement of MRC are considered reasonable from the perspective of oil pollution mitigation.

[36] The vessel was relatively large and in substantially deteriorated condition. It was grounded and holed, and the owner was unwilling or unable to take necessary measures. The CCG reasonably believed that meaningful quantities of oils and oiled water were on board, even after its initial pumping operations in January and February 2021. In short, it is accepted that the *Hydra Mariner* posed an oil pollution threat to the environmentally and economically sensitive waters around Navy Island that would have continued and worsened if additional measures were not taken to mitigate that threat.

[37] While it is surprising that the possibility of unexploded ordnance in the immediate vicinity of the *Hydra Mariner* did not come to light until May 2021, several months after the vessel's grounding in January of that year, the delays caused by this discovery are understandable. Though the decision to engage GEMTEC was not directly related to oil pollution mitigation, that contractor's services were reasonably necessary to ensure personnel safety at the site around the *Hydra Mariner*. Without at least a survey of the area surrounding the vessel and a proper risk assessment, the CCG could not reasonably expect any contractor to operate in the vicinity.

[38] It was not until July 2022 that MRC began its operations. The delays due to the GEMTEC operation, the ensuing winter, and the competitive bidding process are accepted, however. Further, the continued decay of the *Hydra Mariner* that resulted only reinforced the CCG's decision not to attempt refloating the vessel.

The evidence does not show that the vessel remained an oil pollution threat after 25 July 2022

[39] The documentation provided in support of the MRC's actions is very limited relative to the nearly \$2 million claimed in respect thereof. That poses problems. Importantly, there is no evidence that the CCG had any reason to believe that meaningful volumes of oil remained on the vessel as of 25 July 2022. MRC had completed its removal of bulk pollutants from the vessel on 24 July, with the CCG Personnel and Equipment Daily Log of that date reporting "all know pollutants-hazmat's recovered" [sic]. That report followed extensive hot washing of the vessel's ten tanks by MRC, as well as the removal and disposal of fluids, sludge, and oils in pipes, hydraulic lines, and loose containers. A CCG log entry dated 25 July reports "Inspection of Pipes, engines, day tanks, manifolds complete, no know pollutants remaining" [sic].

Figure 5 – Photograph of the vessel's engine room dated 20 July 2022, provided by the CCG

[40] CCG reports indicate that the vessel's engine room, which had been substantially flooded for some time, was pumped mostly dry by MRC on 20 July 2022. Water ingress continued at that point, but it was kept below the deck plates in that compartment by a single 3-inch pump. A photograph taken on that day (see Figure 5) shows a relatively clean space. With the exception of a hydraulic tank containing 300 litres of oils, all other tanks were found to be empty. The hydraulic tank was later pumped dry, and it and all tanks were ultimately hot washed.

[41] The Ship Fund reached out to the CCG for further documentation and detail, *inter alia*, with respect to the MRC operation, in the winter and spring of 2023. In its responses, the CCG declined to provide its situation reports, stating "The CCG does not distribute these reports externally as they are internal-to-CCG/Government of Canada documents." With respect to the MRC operation, the CCG stated that all available documentation had been provided. Finally, the CCG made the following statement with respect to the alleged residual oil pollution threat posed by the *Hydra Mariner* after 24 July 2022:

After [MRC] submitted that removal of bulk pollutants was completed, a visual examination was completed by onsite CCG personnel to ensure large quantities of oil were removed from tanks, compartments and machinery prior to acceptance of the milestone. A written reassessment of oil pollution after bulk removal was not conducted as oil pollution remaining on bulkheads, in tanks, in engine and machinery, on bilge plating, etc would all be removed during the deconstruction phase. The deconstruction phase was required to permanently eliminate the threat of pollution posed by the vessel.

[42] The CCG's references to oil pollution remaining on bulkheads and bilge plating, and in tanks and machinery, are not supported by contemporaneous evidence, including photographs presumably taken by CCG personnel. The above account, related almost a year after the fact,

cannot serve to substantially tip the scales against the extremely limited but generally contradictory contemporaneous record. It is further noted—given the CCG’s refusal to provide copies of its situation reports—that that record is incomplete. Claimants must put their best foot forward in the context of any evidence-based assessment.

[43] It should be stressed that the above-quoted statement from the CCG is not rejected outright. It is considered plausible that—however extensively MRC had cleaned the vessel—*some* volume of oils remained on the *Hydra Mariner*. But, in a regime dependent on evidence and the requirement that measures and costs be reasonable, plausibility is not enough. In other words, it is not accepted that the approximately \$1 million spent after 25 July 2022 to remove and dismantle the *Hydra Mariner* was in fact directed at mitigating an undocumented oil pollution threat, and further that the expense was not greatly disproportionate to whatever undocumented risk remained.

[44] As noted above, there were two documented instances of small quantities of oils entering the water in the vicinity of the *Hydra Mariner* after 25 July 2022. The first came from MRC equipment. The second, which may have come from the vessel itself, was deemed unrecoverable by CCG personnel. Neither of these minor instances provide support to the CCG’s apparent position that the vessel remained a meaningful oil pollution threat during the later stages of its response operation. The first instance is of little relevance to this assessment, as its source was not the *Hydra Mariner*. The second, while perhaps showing that some small quantity of residual oils remained on the vessel as late as 7 August, is by no means sufficient to counter the overwhelming weight of the other existing evidence, which shows that all meaningful volumes of oils had been removed and that the interior of the vessel was generally quite clean. The available evidence does not justify the continued presence of CCG personnel on scene after 25 July from the perspective of oil pollution mitigation, and that is the only justification relevant to the Ship Fund in these circumstances.

[45] In light of the foregoing, it is concluded that the oil pollution component of the CCG’s response operation was concluded on 25 July 2022. Accordingly, none of the costs arising after that date are accepted. The paragraphs that follow provide additional detail with respect to the specific amounts claimed by the CCG and the reasons for accepting or rejecting those amounts.

Schedule 2: Contract Services

[46] Claimed contract services costs are summarized as follows:

Contractor	Work and/or Service Description	Invoice Date(s)	Amount Claimed
LOC	Vessel survey and draft report	2021-03-15	\$13,616.58
CleanEarth	Vacuum removal and disposal of oily fluids	2021-02-05 to 2021-05-31	\$4,519.08
RMI	Dive inspection of vessel	2021-02-17	\$4,080.20
GEMTEC	Site survey, safety guidance, and ordnance removal	2021-12-31	\$344,140.12
ABL	Vessel disposal assessment	2022-01-30	\$11,488.50
PWGSC	Translation of Statement of Work and associated materials	2022-03-31 and 2022-04-20	\$9,407.50
MRC	Removal, deconstruction, and disposal of vessel	2022-07-18 to 2022-09-02	\$1,997,665.00
Minuteman Press	Unspecified large format printing and lamination	2022-07-26	\$43.49
DYC	32 days of storage, dockage, and electrical	2022-08-09	\$2,502.40

Contractor	Work and/or Service Description	Invoice Date(s)	Amount Claimed
Total			\$2,387,462.87

Table 1 – Claimed contract services costs

[47] The amount claimed with respect to work done by LOC is accepted in part, in the amount of \$8,280.00. Whereas the decision to engage a surveyor to assess the *Hydra Mariner* early in the CCG’s response is accepted as reasonable, there are important deficiencies in the documentation provided by the CCG with respect to LOC costs. Initially, the CCG submitted to the Ship Fund only an invoice in support. Following a request for further documentation, the CCG provided a “Call-up Against a Standing Offer” dated 1 February 2021. That document cites two tasks: (1) “help establish pollutants in tanks – sounding of tanks etc” and (2) “help perform a damage assessment”. It quotes a total cost for services of \$8,280.00, including HST.

[48] The LOC invoice refers to a report and the assessment of general hydrostatic grounding-reaction forces and preliminary damage stability. On request from the Ship Fund, the CCG provided a draft LOC report dated 12 February 2021, noting that it was never finalized. The draft report generally aligns with the description in the LOC invoice, but it does not contain stability calculations.

[49] While the work done by LOC was of value to the CCG’s overall response operation, the additional costs beyond the amount of the standing offer are not accepted. On the evidence provided, there are two important shortcomings. First, the scope of work actually requested by the CCG is vague. Second, it is not clear if the CCG actually received all of the services that are included in the LOC invoice.

[50] The amounts claimed with respect to CleanEarth, RMI, GEMTEC, ABL, and PWGSC are accepted in full, for a total of \$373,635.40. The associated costs are documented, all are sufficiently justified, and all are ultimately considered reasonable in the circumstances.

[51] With respect to the CleanEarth and RMI costs, no further comment is necessary given the nature of the work done by each contractor (removal and disposal of oily fluids and an underwater inspection of the vessel and site, respectively). The ABL and PWGSC work similarly served to directly advance the vessel removal operation by, respectively, advising the CCG of the intricacies of the operation to be undertaken and by allowing broadening the scope of potential bidders to companies operating primarily in French. Given the value of the contract in question, and noting standard Government of Canada procurement practices, translation services and their associated costs were reasonable and proportionate: there was a real chance that they could have lowered overall costs by a meaningful amount.

[52] GEMTEC was retained following a competitive bidding process. Generally, costs of this character will be accepted in full provided that the scope of the work undertaken is reasonable and related to oil pollution mitigation. As noted, the survey and ordnance removal work done by GEMTEC are considered necessary steps that were incidental to fully mitigating the residual oil pollution threat posed by the *Hydra Mariner*. GEMTEC costs are clearly documented and the safety threat posed by unexploded ordnance was real. Accordingly, the GEMTEC costs are accepted in full.

[53] With respect to the MRC costs, detailed discussion is necessary. Despite the approximately \$2 million value of the MRC contract, the supporting documentation provided by the CCG is limited. It includes the initial contract and seven invoices, each corresponding with a milestone identified in the contract. Beyond a very brief description of each milestone and a dollar amount (inclusive of taxes), the invoices are of little assistance. They are summarized as follows:

Invoice Date	Milestone, Description, and Overall Percentage of Costs	Amount
2022-07-18	1 – Advance payment on contract acceptance (10%)	\$199,766.50
2022-07-18	2 – Mobilization of personnel and equipment to site and set up (20%)	\$399,533.00
2022-07-18	3 – Completion of unexploded ordnance survey at site (10%)	\$199,766.50
2022-08-01	4 – Bulk pollutant and hazardous waste removal (15%)	\$299,649.75
2022-08-09	5 – Dismantlement of vessel and removal from marine environment (20%)	\$399,533.00
2022-08-09	6 – Remediation of site (10%)	\$199,766.50
2022-09-02	7 – Disposal of vessel sections and components at Sydney facility (15%)	\$299,649.75
Total		\$1,997,665.00

Table 2 – Breakdown of MRC work milestones and corresponding invoices

[54] As noted, the MRC invoices provided by the CCG contain no detail beyond that presented at Table 2. The details of the operation are illuminated somewhat by the entries in CCG Personnel and Equipment Daily Logs, as well as by the MRC contract and Statement of Work, but the level of detail present is not sufficient to paint a clear picture of what was done and how. Further, the use of broad and sometimes ambiguous milestones frustrates any attempt to consider the specific costs associated with each stage of the operation with any granularity.

[55] MRC’s services were procured following a competitive bidding process in which it was the lowest bidder, so the reasonableness of those costs is not questioned *vis-à-vis* the entire scope of the project to remove and dispose of the *Hydra Mariner*. Unfortunately, that is of little assistance here, where only some of the MRC operations are accepted as having been reasonably directed at oil pollution mitigation. Where evidence is limited and as vague as it is here, corresponding findings and determinations can be no better. The below paragraphs are an attempt to identify the costs that were in fact attributable to oil pollution.

[56] The costs associated with Milestones 1 and 2 of the MRC contract are accepted in their entirety. In general, a determination of what measures are reasonable will be fairly broad and generous in circumstances where all of the relevant facts cannot be reasonably ascertained or understood by a responding party at the time that a decision is made. Here, the CCG could not reasonably have known the scope of work required to sufficiently mitigate the oil pollution threat posed by the *Hydra Mariner*. The vessel was partially flooded and the precise volumes, location, and accessibility of residual oils could not have been fully understood. It was not clear at that time to what degree the vessel would have to be dismantled to allow for the removal of the bulk of onboard oils, so the mobilization of deconstruction-related equipment is accepted as reasonable. Accordingly, all of the costs associated with MRC mobilization and planning, which are deemed to have been covered by Milestones 1 and 2, are accepted.

[57] Milestone 3 at first glance appears to be justified, in light of legitimate safety concerns identified with respect to potential unexploded ordnance on and around Navy Island. However, the only piece of relevant direct evidence available results in a finding that Milestone 3 was duplicative of the work already completed by GEMTEC several months earlier.

[58] In response to a request from the Ship Fund to provide detail on this stage of the MRC operation, the CCG provided a one-page “UXO [unexploded ordnance] Field Daily Report” dated 11 July 2022 from Mine EOD, a Quebec-based explosives consultant. That report provides some detail on three dives performed around the *Hydra Mariner* and the following comment thereon: “Underwater UXO search ops covered 400 sq meters resulting in 15kg of litter [retrieved]. No explosive hazard found” [sic]. In the absence of evidence that distinguishes the work of Mine EOD from that already done by GEMTEC, or to explain why a second ordnance survey was necessary, Milestone 3 is deemed to have been duplicative of that earlier work, which appears to have been much broader in scope in any case. Milestone 3 costs are therefore not accepted.

[59] Milestone 4 (pollutant and hazardous waste removal) is detailed to a large extent in CCG logs. It is accepted that the measures taken with respect to this stage of the MRC operation were directed at removing oil pollutants from the vessel, or at removing other hazardous materials, such as asbestos, that might have stood in the way of the safe removal of those oil pollutants. Accordingly, the costs associated with Milestone 4 are accepted in full.

[60] Finally, Milestones 5 through 7 are not accepted. There is no compelling evidence that the *Hydra Mariner* continued to pose a meaningful oil pollution threat following the completion of Milestone 4. Indeed, the detail provided by CCG logs and photographs supports a conclusion that it had ceased to pose such a threat. Accordingly, costs associated with its deconstruction, removal, and disposal (i.e., Milestones 5 and 7) cannot be compensated by the Ship Fund.

[61] Whereas costs associated with site remediation (Milestone 6, in this case) can sometimes be compensable, here they are not. There is no evidence that any remediation was necessary because of oil contamination. No significant quantity of oils was discharged as a result of the Incident or during the response thereto. Whereas compensation from the Ship Fund is available for physical damage to the environment and property that resulted from an oil pollution response operation, here there is no evidence that such damage would have occurred. Rather, it is considered that any property or environmental damage that may have occurred, the details of which are not provided by the CCG, would much more likely have been attributable to the heavy industrial operation that took place from 25 July 2022 onward that saw the dismantlement of a 34-metre steel vessel at the location of its grounding.

[62] Ultimately, only MRC costs associated with Milestones 1, 2, and 4 of its operation are accepted, for a total of \$898,949.25.

[63] The Minuteman Press costs are not explained in the CCG documentation, nor is the invoice provided in support of them sufficiently self-explanatory. Without any detail on how printing and lamination supported oil pollution mitigation efforts, the associated costs are rejected.

[64] Finally, the DYC costs are accepted in part, in the amount of \$782.00. The documentation provided shows that the DYC charged \$2,176.00 plus HST for 32 days of shore storage, dockage, and electrical fees. The MRC operation on Navy Island began on 16 July 2022 and concluded on 8 August, less than a month later, so it is not clear why the CCG required 32 days of storage at the DYC. In any event, associated costs are accepted from 17 July through 25 July, on a *pro rata* basis (\$68.00 daily), plus applicable HST.

[65] The below table summarizes the total amounts claimed and accepted with respect to each contractor engaged by the CCG.

Contractor	Work and/or Service Description	Amount Claimed	Amount Accepted
LOC	Vessel survey and draft report	\$13,616.58	\$8,280.00
CleanEarth	Vacuum removal and disposal of oily fluids	\$4,519.08	\$4,519.08
RMI	Dive inspection of vessel	\$4,080.20	\$4,080.20
GEMTEC	Site survey, safety guidance, and ordnance removal	\$344,140.12	\$344,140.12
ABL	Vessel disposal assessment	\$11,488.50	\$11,488.50
PWGSC	Translation of Statement of Work and associated materials	\$9,407.50	\$9,407.50
MRC	Removal, deconstruction, and disposal of vessel	\$1,997,665.00	\$898,949.25
Minuteman Press	Unspecified large format printing and lamination	\$43.49	\$0.00
DYC	32 days of storage, dockage, and electrical	\$2,502.40	\$782.00
Totals		\$2,387,462.87	\$1,281,646.65

Table 3 – Summary of claimed and accepted contract services costs

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

[66] In total, 14 different CCG personnel took part in a response operation that spanned nearly 18 months. Those personnel were on scene at Wright’s Cove for 50 days over that period. Claimed regular salary costs, totalling \$33,421.46, include a 27% markup on base rates of pay, representing employee benefits. Claimed overtime, totalling \$44,602.62, was paid at either a multiple of 1.5 or 2.0 times each employee’s base rate (i.e., less employee benefits). The claimed rates of pay, including benefits costs where applicable, as well as the overtime multiples, are considered reasonable.

[67] The majority of the CCG personnel who took part in the response operation were based in Dartmouth, very near the site of the Incident. The CCG incurred travel costs totalling \$13,157.53, however, with respect to five personnel. Three of those personnel were based in Port Hastings, Nova Scotia, approximately 260 kilometres from Dartmouth by road. The remaining two were based in St. John, New Brunswick, about 410 kilometres away by road. Claimed travel costs include hotel fees, meal allowances, tolls, and taxi fares. The evidence presented by the CCG does not expressly justify the choice to use personnel from outside the Halifax area, which naturally increased costs. That said, in some cases it can be inferred that the choice was made due to staffing constraints.

[68] The following generally applicable principles have been employed in assessing claimed salary, overtime, and travel costs in the context of this claim in the absence of an express justification or clearly available inference with respect to the scope of deployment:

- a. Travel costs and the wages of personnel on travel status are generally accepted where the scope of CCG personnel deployment was substantial (i.e., where it placed a significant burden on the Dartmouth base in this case) and also accepted as reasonable; where labour costs are subject to reductions, costs associated with personnel on travel status are the first to be rejected, in light of their higher cost;
- b. A minimum of two personnel is acceptable for all on-water operations, though generally three are accepted unless tasking is straightforward monitoring, perhaps of the work of a sophisticated and well-equipped contractor (such as MRC in this

case); more than three personnel may be acceptable for particularly involved on-water operations, such as dewatering;

- c. Where logs do not account for the presence or activities of a particular individual, associated costs are not accepted;
- d. Where logs from other days show a lower number of personnel completing essentially the same tasking, the lower number of personnel is substituted on days where that number is exceeded without explanation; and
- e. For some very straightforward activities, such as monitoring a contractor on shore, only a single CCG employee is accepted.

[69] The below table provides a summary of claimed and accepted regular salary, overtime, and travel costs. Given the long duration of the CCG's response operation, presenting the data in a digestible format is not easy. Here, the table is simply designed to serve as a quick visual reference, with minimal clutter and reductions clearly indicated by red text. As discussed in detail elsewhere in this Offer Letter, no CCG costs incurred after 25 July 2022 are accepted. As a result, the below table includes no entries after that date.

Year	Date	Claimed				Accepted			
		Personnel	Regular	Overtime	Travel	Personnel	Regular	Overtime	Travel
2021	01-17	2	\$0.00	\$774.80	\$0.00	2	\$0.00	\$774.80	\$0.00
	01-18	2	\$124.68	\$0.00	\$0.00	2	\$124.68	\$0.00	\$0.00
	01-30	6	\$0.00	\$4,690.72	\$418.66	6	\$0.00	\$4,690.72	\$418.66
	01-31	5	\$0.00	\$3,985.54	\$418.66	4	\$0.00	\$3,638.02	\$418.66
	02-01	6	\$1,673.74	\$1,654.42	\$639.00	6	\$1,673.74	\$1,654.42	\$424.17
	02-03	6	\$2,307.62	\$518.78	\$427.22	6	\$2,307.62	\$518.78	\$59.15
	02-04	7	\$2,652.05	\$588.90	\$268.48	6	\$2,307.63	\$507.54	\$209.33
	02-05	7	\$2,652.05	\$0.00	\$209.33	6	\$2,307.63	\$0.00	\$209.33
	02-06	3	\$0.00	\$1,471.65	\$93.50	3	\$0.00	\$1,037.25	\$41.85
	02-10	3	\$214.46	\$0.00	\$0.00	3	\$214.46	\$0.00	\$0.00
	02-12	4	\$850.05	\$0.00	\$0.00	3	\$643.43	\$0.00	\$0.00
	03-25	4	\$850.05	\$0.00	\$0.00	3	\$643.43	\$0.00	\$0.00
	03-26	3	\$71.49	\$0.00	\$0.00	1	\$27.58	\$0.00	\$0.00
	04-07	3	\$571.91	\$0.00	\$0.00	3	\$571.91	\$0.00	\$0.00
	04-08	3	\$35.74	\$0.00	\$0.00	1	\$13.79	\$0.00	\$0.00
	05-28	4	\$627.23	\$0.00	\$0.00	3	\$534.91	\$0.00	\$0.00
	06-25	3	\$133.73	\$0.00	\$0.00	2	\$90.49	\$0.00	\$0.00
	07-08	2	\$91.85	\$0.00	\$0.00	2	\$91.85	\$0.00	\$0.00
	07-29	4	\$179.65	\$0.00	\$0.00	2	\$89.16	\$0.00	\$0.00
	08-30	2	\$101.09	\$0.00	\$0.00	2	\$101.09	\$0.00	\$0.00
2022	10-15	3	\$649.45	\$0.00	\$0.00	2	\$442.85	\$0.00	\$0.00
	11-16	3	\$335.98	\$0.00	\$0.00	3	\$335.96	\$0.00	\$0.00
	11-30	2	\$606.55	\$0.00	\$0.00	2	\$606.55	\$0.00	\$0.00
	12-06	3	\$929.35	\$0.00	\$0.00	2	\$639.60	\$0.00	\$0.00
	12-08	2	\$442.80	\$0.00	\$0.00	2	\$442.80	\$0.00	\$0.00
	07-16	3	\$0.00	\$2,662.48	\$0.00	2	\$0.00	\$1,850.72	\$0.00
	07-17	3	\$0.00	\$2,430.96	\$0.00	3	\$0.00	\$2,249.28	\$0.00
	07-18	3	\$1,102.61	\$564.33	\$0.00	2	\$758.19	\$388.06	\$0.00
	07-19	3	\$1,102.61	\$651.15	\$0.00	2	\$758.19	\$447.75	\$0.00
	07-20	3	\$1,102.61	\$651.15	\$0.00	2	\$758.19	447.75	\$0.00
	07-21	4	\$1,402.69	\$682.47	\$350.74	2	\$758.19	\$388.05	\$0.00
	07-22	5	\$1,703.89	\$670.07	\$716.15	2	\$758.19	\$295.77	\$0.00

Year	Date	Claimed				Accepted			
		Personnel	Regular	Overtime	Travel	Personnel	Regular	Overtime	Travel
	07-23	2	\$0.00	\$1,375.39	\$734.05	2	\$0.00	\$1,375.39	\$0.00
	07-24	3	\$0.00	\$1,933.75	\$734.05	2	\$0.00	\$1,319.05	\$0.00
	07-25	3	\$1,083.47	\$597.19	\$734.05	2	\$739.04	\$407.35	\$0.00
Totals		–	\$23,599.40	\$25,903.75	\$5,743.89	–	\$18,741.15	\$21,990.70	\$1,781.15

Table 4 – Summary of claimed and accepted costs for regular salaries, overtime, and travel (reductions flagged with red text)

[70] As shown in Table 4, above, the following amounts are accepted with respect to Schedules 3 through 5: \$1,781.15 for travel costs, \$18,741.15 for regular salaries, and \$21,990.70 for overtime.

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

[71] Under Schedule 11, the CCG seeks a total of \$61,827.59. This amount comprises \$105.00 for the use of sorbent pads; \$1,769.80 for the use of hoses and pumps; \$3,611.14 for the use of a response / command post trailer; and \$56,341.65 for the use of CCG vessels.

[72] The usage of sorbent materials and hoses and pumps is documented and justified, and the associated costs are considered reasonable. Accordingly, both amounts are accepted in full.

[73] For the reasons detailed above, no costs arising after 25 July 2022 are accepted. Accordingly, adjustments are required for the claimed costs with respect to the CCG’s trailer and vessels. The deployment of a trailer up to and including 25 July was reasonable. Accordingly, ten days’ usage of the trailer are accepted at \$138.89 per day, for a total of \$1,389.00.

[74] CCG logs show the use of two different vessels, a PRV II, charged daily at \$1,194.23 over 47 days, and a smaller “PRV I”, charged daily at \$53.21 over four days. The below table summarizes CCG vessel use and the corresponding amounts claimed, as well as the amounts ultimately accepted, the reasons for which are provided further below.

Usage Period	Work Description	Vessel Type	Usage Days	Amount Claimed	Amount Accepted
2021-01-18	90-minute usage to inspect vessel	PRV II	1	\$1,194.23	\$597.12
2021-01-30 through 2021-01-31	Full-day usage to conduct detailed inspections and pumping operations	PRV II	2	\$2,388.46	\$2,388.46
2021-02-01 through 2021-01-05	Full-day usage to pump oily fluids from vessel	PRV II	4	\$4,776.92	\$4,776.92
2021-02-01 through 2021-02-05	Full-day usage to pump oily fluids from vessel	PRV I	4	\$212.84	\$212.84
2021-02-06 through 2021-02-10	Assess vessel and change out sorbents	PRV II	2	\$2,388.46	\$106.42
2021-02-12 through 2021-05-28	Half-day usage to pump oily fluids from vessel	PRV II	4	\$4,776.92	\$2,388.46
2021-06-25 through 2021-11-16	Assess vessel and change out sorbents	PRV II	6	\$7,165.38	\$319.26
2021-11-30 through 2021-12-08	Monitoring of GEMTEC survey and ordnance removal operations	PRV II	3	\$3,582.69	\$159.63
2022-07-16 through 2022-08-09	Monitoring of MRC operations	PRV II	25	\$29,855.75	\$532.10
Totals				\$56,341.65	\$11,481.21

Table 5 – Summary of claimed and accepted amounts for CCG vessel usage

[75] Three broad themes explain the amounts accepted and rejected with respect to CCG vessel usage, as summarized above in Table 5:

- a. In the absence of evidence that a PRV I was not available, usage of a much more costly PRV II must be justifiable on the evidence or by straightforward inference;
- b. Half the applicable daily usage rate is accepted in place of the full rate where it is clear that a vessel was deployed for four hours or less; and
- c. While it is generally accepted that the CCG's decision to deploy one or two of its vessels at any given time was reasonable, as with the other items in this claim, no costs are accepted after 25 July 2022.

The second and third themes are explained sufficiently at Table 5 and by the rest of the reasoning in this Offer Letter. The second is discussed in more detail below.

[76] There is no evidence that a PRV I was not available to the CCG during its response operations. To the contrary, it is considered very likely that one or more were present and available at the Dartmouth base throughout the response operation. A PRV I is generally sufficient for conducting straightforward monitoring operations, basic assessments, and changing out sorbent materials, provided that dangerous conditions and long distances are not a factor. Neither factor was at play here, as Navy Island is sheltered and located very near to the CCG's Dartmouth base. Accordingly, in all cases where basic operations were conducted with a PRV II, the PRV I rate has been substituted. For more sophisticated operations involving pumping or the deployment or retrieval of boom, the use of a PRV II has been accepted. Finally, in light of the many unknowns at the time, the use of a PRV II is accepted with respect to the first day of the CCG's on-water response.

[77] With \$11,481.21 accepted with respect to the CCG's vessel usage, a total of \$14,745.01 is accepted with respect to Schedule 11.

[78] Under Schedule 12, the CCG seeks \$1,503.19 for the use of seven different government trucks over the course of its response operation. Typically, the CCG claims \$67.56 for each day of vehicle usage, an amount presumably intended to cover maintenance and depreciation. Here it seeks compensation for just nine days at that rate, totalling \$608.04. The documentation provided notes that day rate compensation is not sought for days on which vehicles were driven fewer than 50 kilometres. A roundtrip from the CCG's Dartmouth base to Wright's Cove is less than seven kilometres by road, which explains the disparity between the number of usage days and the amount claimed. The remaining portion of the vehicles claim, totalling \$895.15 is for fuel, which is claimed either via a \$0.22 standard kilometric rate or by way of receipts. The kilometric rate is considered reasonable, and fuel costs based on receipts are accepted where they appear to correspond with kilometres actually driven in support of the *Hydra Mariner* operation.

[79] As with the other portions of this claim, no vehicle usage costs after 25 July 2022 are accepted. Many of the vehicles used by the CCG were not based in the Halifax area. The usage of such vehicles is only accepted where it corresponds with work done by personnel on travel status whose wages and travel costs are also accepted as reasonable. Each vehicle used locally averaged 10 kilometres of travel per day, according to CCG logs.

[80] All claimed vehicle usage costs incurred during the portion of the CCG's response that took place in 2021, which total \$494.96, are accepted. This amount is comprised of \$202.68 in usage days and \$292.28 in fuel costs (\$140.00 supported by a single receipt and \$152.28 claimed at the kilometric rate). Substantial vehicle cost claim reductions are necessary with respect to 2022, however, in part because of the 25 July 2022 cut-off, but also because of significant travel and personnel markdowns that are also detailed above. For that period, just \$19.44 in local vehicle usage is accepted, based on the standard kilometric rate.

[81] A total of \$514.40 is accepted with respect to Schedule 12.

Schedule 13: Administration

[82] The CCG seeks \$1,827.90 in compensation for administrative costs. It purports to calculate these costs by applying a rate of 3.09%, applied against its claimed costs for travel and regular salaries, including employee benefits costs. It is not clear how the CCG reached the figure sought, as the Fund's calculations by the same parameters yield a lower amount.

[83] Historically, the Fund has accepted as reasonable CCG administrative costs applied against accepted travel and salary costs, excluding employee benefits. The CCG has not suggested that there is any reason to depart from that norm in the present case. Accordingly, no departure from it is taken. In applying the 3.09% administrative rate to allowed travel and salary costs, the latter less employee benefits, the amount of \$511.02 is accepted under Schedule 13.

OFFER SUMMARY AND CLOSING

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

Schedule	Claimed	Allowed
2 – Contract Services	\$2,387,462.87	\$1,281,646.65
3 – Travel	\$13,157.53	\$1,781.15
4 – Salaries – Full Time Personnel	\$33,421.46	\$18,741.15
5 – Overtime – Full Time Personnel	\$44,602.62	\$21,990.70
11 – Pollution Counter-measures Equipment	\$61,827.59	\$14,745.01
12 – Vehicles	\$1,503.19	\$514.40
13 – Administration	\$1,827.90	\$511.02
Totals	\$2,543,803.16	\$1,339,930.08

Table XX – Summary of amounts claimed and allowed

[85] Costs and expenses in the amount of \$1,339,930.08 are accepted and will be paid together with statutory interest calculated at the date of payment if the Offer is accepted.

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

[87] 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.

[88] 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 in 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.

[89] 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.

[90] 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 Ship Fund in its subrogation efforts.

Yours sincerely,

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