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BY MAIL AND EMAIL

Director, Operational Business
Canadian Coast Guard
200 Kent Street (5N177)
Ottawa, Ontario K1A 0E6

RE: M/V SHIMOIGET – Cowichan Bay, B.C. – DOI: 22 October 2017

SUMMARY AND OFFER

This letter responds to a submission from the Canadian Coast Guard (the “CCG”) with respect to the vessel M/V SHIMOIGET. The vessel was involved in an incident on or about 22 October 2017, in Cowichan Bay, B.C. (the “Incident”).

On 14 September 2019, the Office of the Administrator of the Ship-source Oil Pollution Fund (the “Fund”) received the CCG’s submission that advanced a claim for costs and expenses related to the Incident. The Fund has reviewed the claim and reached a determination. This Offer Letter explains the determination and advances an offer of compensation pursuant to sections 105, 106 and 116 of the *Marine Liability Act* (the “MLA”).

The Fund has determined that the CCG’s claim should be allowed, in part. The amount of \$6,187.67 (the “Offer”) is offered with respect to this claim.

The Offer comprises the amount of \$5,730.96 for costs and expenses, plus the amount of \$456.71 for accrued interest.

The reasons for the Offer are set forth below.

THE SUBMISSION RECEIVED

The CCG submission includes a narrative that describes certain events relating to the incident involving the M/V SHIMOIGET. The submission also includes a summary of the costs and expenses claimed against the Fund, backup documents related to some of those claimed costs and expenses, documentation from documentation from contractors, and a marine survey report.

To the extent that those documents are relevant to the Fund's determination, those contents are reviewed below.

The narrative

The narrative provided by the CCG in the submission sets out a description of the incident involving the M/V SHIMOIGET.

According to that narrative, on 22 October 2017, the CCG was notified that a vessel moored at the Cowichan Bay marina was taking water and at risk of sinking. The initial report indicated that it was taking on approximately 6 inches of water per day. The vessel was reportedly not connected to shore power and was instead relying on an apparently unsatisfactory system of onboard bilge pumps.

CCG personnel attended and made observations of the M/V SHIMOIGET on the same day as the initial report was made.

By 31 October 2017, a contractor (Hetherington) retained by the CCG was removing oil pollution from the M/V SHIMOIGET. The narrative indicates that approximately 1,500 L of oil were removed from the vessel. The narrative also indicates that there was also pollution observed in inaccessible areas, confined spaces, in piping and saturated into the wooden hull of the vessel itself.

Further according to the narrative, the CCG removed the vessel to dry land on 17 November 2017. This removal was carried out by Pacific Industrial Marine, under contract with the CCG.

On 30 November 2017, a marine survey was carried out on the vessel by Building Sea Marine, a marine surveyor hired by the CCG. The marine surveyor issued a report dated 27 December 2017. The narrative indicates that the survey reported the vessel "to contain significant amounts of oil pollution remaining aboard", and the CCG made "the decision to destruct the vessel treating it as oil pollution waste".

The costs and expenses summary

The submission provided by the CCG includes the following summary of expenses incurred:

		<u>SCH</u>
MATERIALS AND SUPPLIES	-	1
CONTRACT SERVICES	40,566.23	2
TRAVEL	115.97	3
SALARIES - FULL TIME PERSONNEL	1,981.26	4
OVERTIME - FULL TIME PERSONNEL	360.20	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)	-	11
VEHICLES	-	12
ADMINISTRATION	54.60	13
	<hr/>	
TOTAL CCG COST OF INCIDENT	\$ 43,078.26	
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Figure 1 - Screen capture of CCG cost summary

The marine survey report

The CCG submission includes a “Survey for Condition & Salvage Value” prepared by Dave Trickett of Building Sea Marine.

The survey report notes that the survey was carried out on 30 November 2017, which is consistent with the CCG narrative. The date of the survey report itself is 27 December 2017.

The survey report describes the M/V SHIMOIGET as an ex-commercial fishing vessel that had apparently been in use as a pleasure vessel. It is listed as being 75’ long and 18’ at the beam. The vessel was noted to have been formerly registered in Canada, but the registration now indicated that the vessel was “No Longer Registered in Canada”.

The surveyor concluded that the vessel had been built with good materials but had received nothing more than cosmetic maintenance for a period of approximately ten years. The hull was in poor condition, with both the wooden planks and seam material decaying and being easily penetrated by a knife. The surveyor also noted that the vessel appeared to have been stripped of all usable items, and then abandoned.

The only discussion of possible oil pollution in the survey report is found at page 6 of the survey report. There, there is a description of light fouling of the machinery space bilge

and speculates (without confirming) that there may be hydrocarbons remaining in the main engine, marine gear and hydraulic system.

The main engine, marine gear and hydraulic system remain part or fully assembled so it is assumed they also remain with some of their internal lubricating & hydraulic oils in place in the sumps, as well as seawater.

The fuel tanks are open and empty.

The machinery space bilge is lightly fouled with diesel fuel and oil.

Figure 2 - Excerpt from Survey Report at Page 6

The survey report does not comment on the extraction of such materials that, according to the CCG narrative, was carried out prior to the survey. The survey report does not indicate whether the “light fouling” would, if it entered the water, pose a hazard to humans, animals or useful marine plants.

In the section of the survey report entitled “SURVEYOR’S COMMENTS and CONCLUSIONS” there is no mention of oil pollution or contamination. Rather, the report notes that the vessel could be rebuilt at considerable expense.

Nothing in the survey report suggests that the hull of the vessel was saturated with oil.

The photographs attached to the survey report do not suggest that the M/V SHIMOIGET continued to pose a pollution hazard to the environment.

FINDINGS OF THE FUND

Eligibility of the claimant

The Fund has determined that the Incident occurred in the territorial sea of Canada, and therefore could form the basis of a proper claim.

The Fund has determined that the CCG is an eligible claimant for the purposes of s. 103 of the MLA. It is further determined that some of the claims included in the CCG submission are eligible for compensation from the Fund. Those claims are allowed, in part, based on the findings set out below.

The incident

The M/V SHIMOIGET was in distress on 22 October 2017. The vessel derelict and was taking on water.

The initial inspection and observations carried out led the CCG to conclude that the M/V SHIMOIGET, in its present state, posed a risk to introducing oil pollution into the marine environment. CCG personnel noted that the water in the engine room was rising by approximately 4 inches per day. Further, it appears that a “disorganized series of pumps”

were in use to keep the M/V SHIMOIGET afloat by pumping it out manually. The Fund presumes that these pumps were emptying water over the side of the vessel, as there is no indication that special arrangements to receive contaminated water were in place.

While the Fund accepts as reasonable the CCG determination that the M/V SHIMOIGET posed an imminent danger of pollution due to the decayed state of its hull and the presence of diesel fuel and other unknown hydrocarbons on board, the Fund notes that the M/V SHIMOIGET's tanks were not pumped until 31 October 2017. In the interim, based on the submission from the CCG, it appears there was no observation of oil in the water from the continuing pump out efforts with respect to the M/V SHIMOIGET, nor were pollution counter measures (i.e., a boom, sorbent materials) deployed.

The threat of pollution was abated by the CCG's initial steps

It does not appear that there was any release of oil into the natural environment. The CCG response, and the submitted expenses, may still be compensable as monitoring and other measures taken in anticipation of a discharge of oil, as referred to at s. 77(1)(b) of the *MLA*.

On 31 October 2017, Hetherington removed 900 liters of diesel, 100 liters of gasoline, 100 liters of lube oil, 350 liters of hydraulic oil and miscellaneous paints, solvents and other chemicals from the vessel.

After the oil removal carried out by Hetherington, the only evidence of oil pollution remaining onboard the M/V SHIMOIGET is the reference to "light fouling" of the machinery space bilge at page 6 of the marine survey report. The Fund notes that the narrative asserts that the vessel "was found to contain significant amounts of oil pollution", but that assertion is not supported by evidence included in the submission. The Fund further notes that a decision was made to first remove the vessel from the marine, and then destruct the vessel while treating it as an oily waste. The Fund cannot conclude that these measures were taken to mitigate an oil pollution threat. The submission does not include sufficient evidence to support such a finding.

For example, while the Fund notes the reference to "light fouling" of the machinery bilge space in survey report, the Fund also notes that the M/V SHIMOIGET was found to be taking on 6 inches of water a day on the first day it was inspected, 22 October 2017. The vessel was not removed from the water until 17 November 2017. No measures were apparently taken to stabilize or prevent the vessel from sinking, other than the disorganized pump system that was in place.

Given that there is no reference to a boom or sorbent materials being deployed or otherwise in place to contain oil emanating from the vessel, the Fund concludes that the water being pumped overboard from the M/V SHIMOIGET, at the time of the incident, did not constitute "oil" within the meaning of Part VI of the *MLA*. Whatever the extent of the "light fouling" onboard the vessel was, it was not, apparently, sufficient to cause oil to enter the water even while the vessel was taking on significant quantities of water each day.

Given the lack of observations of oil in the water in the several weeks it took to remove the M/V SHIMOIGET from the marine environment, it appears that the water entering the

vessel was not becoming contaminated. Therefore, the Fund concludes that after Hetherington removed oil from the vessel on 31 October 2017, the M/V SHIMOIGET ceased to pose risk of pollution from oil for the purposes of Part VI of the *MLA*. While the Fund accepts that the M/V SHIMOIGET remained at risk of sinking, the submission does not allow a conclusion that a sinking would pose an oil pollution hazard.

In light of the above finding, the measures taken by the CCG after 31 October 2017 must be disallowed as not being reasonably taken in response to the threat of oil pollution.

Further, the Fund notes that while the narrative indicates that the survey report was relied upon in making the decision to deconstruct the vessel as “oil pollution”, the survey report does not support that conclusion. First, it appears that the deconstruction began on 16 November 2017, when Pacific Industrial and Marine Limited began removing masts from the vessel. Deconstruction was complete by 13 December 2017, before the date the survey report was issued on 27 December 2017. If the conclusions of the survey report were known to the CCG prior to the issuance of the report, that knowledge has not been documented anywhere in the submission. The Fund concludes that the survey report was not a factor in the decision to deconstruct the vessel, contrary to the submission in the narrative.

CLAIM AND OFFER DETAILS

The CCG submission broke its claim down into several categories. This section of the offer letter reviews each of those categories of claim in detail and provides reasons as to why certain portions of the claim have been allowed or disallowed.

Schedule Two – Contract Services

Claim: \$40,566.33

The CCG claims for contract services provided by three contractors: Pacific Industrial Marine Ltd., who towed the vessel, removed the vessel from the water and deconstructed it (\$35,264.35); Building Sea Marine, who surveyed the vessel and prepared a report (\$1,668.98) and Hetherington Industries, who removed oil pollution from the vessel while it was moored in Cowichan Bay (\$3,633.00).

Pacific Industrial Marine Ltd.

Pacific Industrial Marine Ltd. submitted an invoice to the CCG that was paid. The invoice did not include details to support the amounts of the expenditures. After receiving the submission, the Fund followed up with the CCG for details about the work of Pacific Industrial Marine’s work, and on 13 November 2019, the CCG responded:

*In complete transparency, we had an extremely hard time getting appropriate documentation from Pacific Industrial Marine. We were quite clear with what our expectations were as far as documenting actions taken and receipts. **We had contacted them more than 10 times for details but the contractor still failed to provide all the necessary information.** As a result, we held off payment for more than one year until they could provide us with more details. This is why the invoice was dated July 29, 2019*

but the work was actually done in 2017. The invoice that we submitted was already a vast improvement than the original. CCG ER has decided not to utilize this company for future incidents. We will ensure that any contractors that we hire in the future is able to provide us with detailed daily work activities on their invoices.

[emphasis added]

The Pacific Industrial and Marine Ltd. invoice also included work of subcontractors, and broke down as follows:

Principal Contractor	Invoice Amount	Comment	Established
Pacific Industrial and Marine Ltd	\$35,264.25	Despite repeated requests, the contractor refused to provide Coast Guard with the detailed evidence to support their invoice.	\$00.00
Sub-Contractors			
Falt Towing	\$890.57	Tow <i>Shimoiget</i> from Cow Bay Marina to West Can Dock (16 November)	
Coast Environmental	\$385.90	Wood Waste January 02	
Northwest Wire Rope	\$1,067.65	Twelve 17 ton shackles	
Advantage Crane Rental	\$4,731.25	Two Hundred and seventy ton Crane to hoist vessel	
Armtec LP	\$484.25	Non-woven Geo Armtec 200	
Coast Environmental	\$8,842.35	Demolition Waste (December 11-13)	
Pacific Water Sports	\$750.00	Dive Service, assist in removal of vessel	

Figure 3 - Pacific Industrial and Marine subcontractor amounts

The invoice and subsequent information from the CCG are insufficient to allow the Fund to determine the reasonableness of the deconstruction measures taken. In any event, it appears that all measures taken by Pacific Industrial and Marine Ltd. and its subcontractors were taken after 31 October 2017, and therefore the Fund concludes they should be disallowed as not being reasonable measures taken with respect to the threat of oil pollution.

This portion of the claim is disallowed in its entirety.

Building Sea Marine

Building Sea Marine submitted an invoice dated 18 January 2018 to the CCG in the amount of \$1,668.98, for services performed between 30 November 2017 and 27 December 2017.

The survey report appears to be addressed to the condition and value of the vessel, rather than the presence of oil pollution. According to the survey report, four tasks were contracted: determination of the current condition of the vessel (*poor*), determination if the vessel was seaworthy or whether it could be efficiently repaired (*could be repaired but costly*), determination if the vessel was a reasonable candidate for reconstruction (*comment not provided*) and finally, determination of the residual value of the vessel if deconstructed (*zero*).

The survey report includes only a single mention of oil pollution observed. By contrast, it includes fifty-two photographs documenting the physical condition of the vessel.

The survey report's author assumed that pollution was present on the basis that engine and hydraulic system oil were intact. However, by the time of the survey report Hetherington had removed oil from those locations. The survey report's author did not check.

The Fund considers that in light of the above, the submission does not establish that the survey report was a measure reasonably taken with respect to a threat of oil pollution and would disallow the claim for the expense of the survey report.

In addition to this finding, the Fund notes that the survey was carried out several weeks after 31 October 2017 when the Fund concluded the vessel ceased to be an oil pollution threat.

This portion of the claim is disallowed in its entirety.

Hetherington

Hetherington was contracted to pump oil from the M/V SHIMOIGET. They pumped out 840 L of oil/diesel mix and two drums of sludge. They were paid \$3,633.00 on 2 November 2017.

The Fund concludes that Hetherington's work constituted a reasonable measure taken with respect to the threat of oil pollution.

This portion of the claim is allowed in its entirety.

Schedule 3 Travel

\$115.97

The CCG sent two officers to attend the scene of the Incident on 22 and 23 October 2017. The officers made observations and assessed the Incident. The Fund finds that expense was necessarily incurred to respond to a risk of oil pollution.

The CCG sent one officer to attend while Hetherington removed oil from the M/V SHIMOIGET on 31 October 2017. The Fund finds that expense was necessarily incurred to respond to a risk of oil pollution.

The CCG attended the vessel after Hetherington's work (it is not clear if it was 20 November 2017 or 7 November 2017) While the Fund has concluded that the vessel ceased to be a pollution threat on 31 October 2017, the Fund accepts that it would have

been reasonable to do a final inspection of the vessel on this day. The Fund finds that expense was reasonably incurred to respond to a risk of oil pollution.

The travel expenses submitted appear to comply with the relevant Treasury Board guidelines.

This portion of the claim is established in its entirety.

Schedule 4 Salaries - Full Time Personnel \$1,981.26

The CCG claims for six personnel responding to the Incident at various times. The hours claimed are supported by copies of the CCG ER daily Log for Personnel. The log extracts include a description of the work done each day. Those extracts have been tabulated by the Fund, with comments appended:

Date	Hours and dollars Claimed	# of People	Comment	Reasonable Effort Hours	Reasonable salary Costs
Oct 22	7.5	1	Day of incident, initial assessment	7.5	\$324.23
Oct 23	8.5	2	Assessment by ER, two officers	8.5	\$392.53
Oct 31	13	2	Pollutants removed from vessel	13	\$561.99
Nov 7	17.5	5	CCG check on condition of vessel. Five people not required. Two would be reasonable.	7.0	\$302.61
Nov 30	5.5	1	Survey of vessel, not required to have CCG in attendance. Deconstruction had commenced on November 16	0.0	\$000.00
Total	\$1,981.26				\$1,581.36

Figure 4 - CCG Personnel Time

The Fund allows all claims for hours spent up to and include 31 October 2017.

The Fund accepts that some hours could reasonably have been incurred for a final inspection subsequent to that, and that apparently occurred on 7 November 2017. On that day, the CCG sent five response officers. The Fund considers that sending two officers would be a reasonable response to questions about any remaining oil pollution threat, in all of the circumstances. The claim for three officers is rejected.

The Fund has determined that the time spent on 30 November 2017 was not a measure taken with respect to the threat of oil pollution. Those items have been disallowed.

This portion of the claim is allowed, in part, in the amount of \$1,581.36.

Schedule 5 Overtime – Full Time Personnel

\$360.20

Overtime was claimed for work done by one officer on 22 October 2017. This was to complete the initial assessment of the Incident. The Fund finds this constitutes a reasonable measure taken with respect to the threat of oil pollution.

This portion of the claim is allowed in its entirety.

Schedule 13 Administration

\$54.60

The submission included a claim for administrative expenses using a rate of 3.09%. The rate currently agreed to as between the Fund and the CCG is 2.53%, and that figure will be used until a final decision has been made on a rate change.

The CCG claim has been adjusted to take into account the reduced salary dollars and the 2.53% rate. Travel component is \$115.97 and the adjusted Salary amount is \$1482.22.

This part of the claim is allowed, in part, in the amount of \$54.60.

OFFER SUMMARY AND CLOSING

The following table is provided to summarize the claimed and allowed expenses with respect to the CCG claim for the M/V SHIMOIGET response.

Schedule		Claim	Offer
Contract Services	Pacific Industrial and Marine Ltd	\$35,264.25	\$00.00
	Building Sea Marine	\$1,668.98	\$00.00
	Hetherington Industries	\$3,633.00	\$3,633.00
Travel		\$115.97	\$115.97
Salaries Full time Personnel		\$1,981.26	\$1,581.36
Overtime Full Time Employees		\$360.20	\$360.20
Administration		\$54.60	\$40.43
Total		\$43,078.26	\$5,730.96

Figure 5 - Summary of claims made and allowed

The amount of the Offer is \$6,187.67.

The Offer comprises the amount of \$5,730.96 for costs and expenses, plus the amount of \$456.71 for accrued interest.

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.

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.

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 issue.

Finally, where a claimant accepts an offer of compensation from the Fund, the Fund becomes subrogated to the claimant's rights with respect to the subject matter of the claim. The claimant must thereafter cease any effort to recover for its claim, and further it must cooperate with the Fund in its subrogation efforts.

Yours sincerely,

Mark A.M. Gauthier, B.A., LL.B
Deputy Administrator, Ship-source Oil Pollution Fund