



OFFER LETTER

Ottawa, 8 September 2021
SOPF File: 120-894-C1
CCG File: n/a

BY EMAIL

Manager, Response Services and Planning
Canadian Coast Guard
200 Kent Street (Stn 5N167)
Ottawa, Ontario K1A 0E6

**RE: F/V *Danielle and Mark*– Old Bonaventure, Newfoundland and Labrador
Incident date: 2020-02-10**

SUMMARY AND OFFER

- [1] This letter responds to a claim submitted by the Canadian Coast Guard (the “CCG”) with respect to an incident involving a 35-foot fishing vessel known as the *Danielle and Mark* (the “Vessel”), which sank in Old Bonaventure, Newfoundland and Labrador, on 10 February 2020 (the “Incident”).
- [2] On 3 June 2021, the Office of the Administrator of the Ship-source Oil Pollution Fund (the “Fund”) received the CCG’s claim for costs and expenses related to the Incident. The claimed costs and expenses total \$47,073.08. The claim has been reviewed and a determination has been reached. 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”).
- [3] The CCG’s claim is allowed. The amount of \$30,397.23, plus accrued interest, is offered with respect to this claim (the “Offer”). The reasons which explain the Offer are set forth below.

THE SUBMISSION RECEIVED

[4] The CCG submission includes a narrative which describes relevant events relating to the Incident. It also includes a summary of the costs and expenses claimed, backup documents related to some of those claimed costs and expenses, and photos. To the extent that these submitted documents are relevant to the Fund's determination, their contents are described below.

Narrative

[5] On 10 February 2020, the CCG was notified that the Vessel had sunk at a dock in Old Bonaventure, NL, during a storm that brought heavy winds. It was presumed to be submerged in about nine feet of water and surrounded by ice.

[6] The CCG contacted the owner of the Vessel, requesting his intentions for responding to the Incident. The owner advised that he was unable to respond and reported that the Vessel's bulk fuel had been removed prior to the Incident but that its tanks were unclean and likely to contain hydrocarbon oil residuals. He estimated that the Vessel contained a total of 10-15 gallons (approximately 37.85-56.78 liters) of oil.

[7] The following day, three CCG personnel travelled to the scene. They observed that the Vessel's hydraulic system appeared damaged by ice and detected engine base oil within the Vessel. While they detected no fuel odours at that time, the Vessel could not be fully assessed due to the dock and access road being covered in snow. Based on this information, the CCG made plans to raise the Vessel, remove its pollutants, and dispose of it.

[8] On 26 February 2020, the CCG retained a local contractor for the salvage operation. The work was delayed due to ongoing poor weather conditions in the area.

[9] On 28 February 2020, the contractor raised the Vessel and placed sorbent pads in its engine and fish holds to recover any residual pollution. The Vessel was then towed to a haul-up site, where a subcontractor used an excavator to remove it from the water. It was deconstructed the following day.

The costs and expenses summary

[10] The submission also included the following summary of the costs and expenses claimed by the CCG:

COST SUMMARY
POLLUTION INCIDENT

INCIDENT:	FV Danielle and Mark	PROJECT CODE:	2E186
INCIDENT DATE:	February 10, 2020	DATE PREPARED:	May 17, 2021
DEPARTMENT:	Canadian Coast Guard	PREPARED BY:	██████████

		<u>SCH</u>
MATERIALS AND SUPPLIES	\$ -	1
CONTRACT SERVICES	\$ 36,397.50	2
TRAVEL	\$ 1,628.80	3
SALARIES - FULL TIME PERSONNEL	\$ 5,242.10	4
OVERTIME - FULL TIME PERSONNEL	\$ 2,876.72	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	\$ 705.58	12
ADMINISTRATION	\$ 222.38	13
	<hr/>	
TOTAL CCG COST OF INCIDENT	<u>\$ 47,073.08</u>	

Figure 1 - Screen capture of CCG cost summary

FINDINGS AND DETERMINATIONS

Eligibility of the claimant

[11] The Administrator has determined that the CCG is an eligible claimant and that the Incident occurred within the territorial sea or internal waters of Canada for the purposes of s. 103 of the MLA. As the Vessel posed an identified risk of oil pollution, it is further determined that at least some of the claims submitted by the CCG are eligible for compensation from the Fund.

The pollution threat posed

[12] The submissions suggests that, prior to the incident, the owner had applied for funding from the Department of Fisheries & Oceans Small Craft Harbours Abandoned and Wrecked Vessel Removal Program to deconstruct the Vessel. As such, the amount of oil onboard the Vessel at the time of sinking appears to have been limited to hydraulic oil, engine lube oil, and fuel tank residual oil, for a combined total of approximately 90 liters.

[13] While this level of pollution threat is relatively minimal, the evidence provided in the CCG submission, namely photos that clearly depict oil being pumped from the Vessel, nonetheless establishes that the Vessel did pose a hydrocarbon oil pollution threat. Accordingly, it was reasonable for the CCG to take measures to respond to the Incident to minimize this threat.

[14] In this respect, raising the Vessel and removing it from the water was a reasonable response measure. However, the evidence does not establish that the Vessel remained an oil pollution threat after it was removed from the marine environment and beached. Therefore, measures taken after that time are not accepted as measures taken with respect to a reasonably anticipated discharge of oil.

CLAIM AND OFFER DETAILS

[15] 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 the claimed costs and expenses have been allowed or disallowed.

Schedule Two – Contract Service

\$36,397.50

[16] These costs arise from work performed by one contractor – MDI Contracting – and two subcontractors – Crotty Diving Services and Bulldog Contracting Ltd. – during the response to the Incident. These contractors were responsible for refloating the Vessel, removing it from the water, removing its pollutants, and deconstructing it afterward.

[17] This portion of the claim is amply substantiated by clear contractor invoices; a copy of the work contract between MDI Contracting and Public Works and Government Services Canada, which includes a Statement of Work and an itemized expense list; and copies of the bid evaluations on the original Public Works and Government Services Canada work tender.

[18] The contract awarded to MDI Contracting was not a non-competitive emergency contract, as is sometimes the case in urgent oil pollution response operations. In the Atlantic region, the CCG has established a Service Arrangement for diving and environmental services involving a pre-qualified pool of contractors. In this way, Public Works and Government Services Canada can submit a Statement of Work and

obtain a competitive contract offer in about 15 days. This process ensures that contract services are priced at the best possible value for the cost and gives the CCG authority to monitor contractors' work. This is what occurred in the present case and is accepted as a reasonable measure for arranging the services of a contractor.

[19] The Schedule 2 costs are listed in the MDI Contracting invoice and are supported with invoices for the rental of a boat, operator, and air compressor. The on-site labour costs for 28-29 February 2020, in the amount of \$7,200.00, are substantiated by the CCG Personnel & Equipment Daily Logs for these days. All prices listed in the MDI Contracting invoice match those listed in the other invoices and Logs.

[20] Considering the mandate of the Fund, the salvage and raising of the Vessel were reasonable and necessary measures to address the oil pollution threat that the Vessel posed. However, the \$12,750.00 attributed to the "disposal of the vessel and contaminates", as listed in the MDI Contracting invoice and billed in the Bulldog Contracting Ltd. invoice is challenging. The evidence falls short of establishing that the Vessel itself was oil saturated to the point that deconstructing it could be considered a measure taken with respect to oil pollution. This is particularly so in light of the narrative and Personnel & Equipment Daily Log for 10 February 2020 which indicate that the owner was already planning to dispose of the Vessel through the Small Craft Harbours Abandoned and Wrecked Vessels Removal Program prior to the Incident. Finally, while some portion of the deconstruction may have involved disposal of oil, for which compensation could be awarded, the lack of any breakdown in the invoice, or other evidence on the point, does not permit portioning of the invoice.

[21] On these grounds, the costs associated with the disposal of the Vessel (\$14,662.50, including taxes) are disallowed. The remaining contract services costs are accepted as reasonable.

This portion of the claim is allowed in part in the amount of \$21,735.00.

Schedule Three – Travel \$1,628.80

[22] The CCG claimed travel expenses for five personnel, substantiated by a Travel Charges sheet, Expense Report Statements for each person, hotel invoices, and guidelines from the National Joint Council of the Public Service of Canada listing travel allowances for government travel. The travel costs as submitted meet these guidelines and match the total claimed amount of \$1,628.80.

[23] This evidence indicates that there were two distinct trips in respect of this Incident.

[24] The first occurred on 11 February 2020, when three CCG personnel assessed the Incident. On this day, only meal expenses are claimed, as the personnel made a round-trip visit that day. These costs are accepted as reasonable, considering that an initial assessment of the Vessel was required.

[25] The second occurred from 27-29 February, when three personnel oversaw the work of the contractor and subcontractors. While it is accepted that this oversight work was reasonable in the circumstances, the need for a third person must be established with evidence. The submission attributes the presence of a third person to the use of the response trailer that the CCG used on these days. However, pollution response costs were already included in the aforementioned Statement of Work provided by the contractor. As the need for a third person has not been established, the costs associated with travel for that person are disallowed.

[26] The 27-29 February travel costs associated with the lowest ranking CCG Environmental Response officer, which total \$529.20 according to his Expense Report Statement, are therefore disallowed on these grounds. The remaining travel costs are accepted as claimed.

This portion of the claim is allowed in part in the amount of \$1,099.60.

Schedule Four – Salaries for Full Time Personnel _____ \$5,242.10

[27] The salary costs are attributed to seven Environmental Response personnel at pay levels ranging from GT-04 to GT-07. Some of these personnel travelled to the site of the Incident, and others performed contractual and oversight tasks from a distance.

[28] These costs are substantiated by a Personnel Log that lists work hours, pay level, and start and end times for each relevant day from 10-29 February 2020, as well as Personnel & Equipment Daily Logs for each of these days except 21 February. The Personnel Log gives a total claimed salary cost of \$5,242.27, a 17-cent increase from the claimed cost of \$5,242.10 listed on the Cost Summary sheet (Figure 1). Nonetheless, \$.17 is considered negligible in this matter, and the Personnel Log was accepted as valid documentation.

[29] The salary costs for 10-11 February 2020, total \$1,618.62 for 35.5 hours of work between three personnel. The work conducted on these days involved verifying the identity of the owner and confirming his response intentions, as well as gathering information and performing an initial assessment of the Vessel. This work was complicated by severe winter weather and uncertainty regarding legal ownership of the Vessel in light of the owner's intent to have it deconstructed through the Small Craft Harbours Abandoned and Wrecked Vessel Removal Program. These costs are accepted as reasonable.

[30] The salary costs claimed for 12, 20-21, and 25 February total \$1,847.37 and cover work performed by three personnel, namely creating a Statement of Work for the eventual contract, assessing local contractors, evaluating bids on a Supply Arrangement Call-up tender, issuing a second tender when the received bids were found technically non-compliant, and subsequently contracting with MDI Contracting. This work was necessary for the oil pollution response portion of the operation and the resulting salary costs are therefore accepted as reasonable with the following exception.

[31] Based on the Personnel & Equipment Daily Logs, it appears that a majority of the work on 12 February was performed by two officers at the GT-05 level, with unspecified contributions from a Deputy Superintendent at the GT-07 level. The evidence does not establish how the Deputy Superintendent's efforts contributed to the measures taken with respect to oil pollution. For that reason, the claim for \$109.22 for that work on this day is disallowed.

[32] The final portion of the claimed salary costs arises from work performed on 27-28 February and totals \$1,776.29. Because 29 February 2020 was a Saturday, hours worked on that day were charged as overtime and will be detailed in the following section.

[33] On the grounds listed above regarding travel costs (Schedule 3), salary expenses for the lowest ranking CCG officer, who responded at the scene on 27-29 February 2020 and whose salary costs for those days total \$533.87, are disallowed.

[34] Specifically, while the response trailer and equipment that the CCG personnel brought to the scene on these days would have been reasonable for the initial assessment, at this late stage of the response, the scope of the pollution threat posed by the Vessel was known to the CCG. The threat had been determined to be minimal, and if sorbent boom had been necessary, an adequate amount of it could have been transported in a pickup truck, rather than a response trailer.

[35] Additionally, as mentioned in the previous section with regard to the claimed travel costs, pollution removal was already covered by the Statement of Work, which formed part of the contract between Fisheries and Oceans Canada and MDI Contracting. The narrative and contractor invoices indicate that the contractor, and not the CCG, deployed boom during the salvage operation. The full suite of CCG equipment contained in a response trailer was therefore unnecessary in this matter.

[36] On these grounds, it is concluded that two personnel would have been sufficient to oversee the salvage operation on these days. Salary costs for the two higher ranking personnel are therefore allowed in the amount of \$1,242.32.

This portion of the claim is allowed in part in the amount of \$4,599.01

Schedule Five – Overtime for Full Time Personnel \$2,876.72

[37] The CCG also claims expenses arising from a total of 78.75 overtime hours worked by six personnel. This part of the claim is substantiated by Personnel & Equipment Daily Logs, which list the hours worked by each officer per day; screen captures from the online pay system; and handwritten notes on the ICS-214 form for the work performed on 28-29 February 2020. The online pay system amounts for five of the personnel match the claimed overtime costs. For the sixth, the paid overtime costs are \$68.09 lower than the claimed overtime costs. For the purposes of this Offer, reliance was placed primarily on the supporting documentation such as the Personnel &

Equipment Daily Logs, and the screen captures were accepted as evidence that the payments occurred.

[38] Overtime costs attributed to 10-12, 20-21, and 25 February 2020 are accepted as reasonable, considering the contracting, oversight, and assessment work that was performed on these days. However, as noted in the previous section regarding salary costs, overtime costs incurred by the Deputy Superintendent on 12 February are disallowed due to this work being removed from the oil pollution response operation.

[39] Similarly, overtime costs incurred by the lowest ranking officer are disallowed on the same grounds on which his salary costs are disallowed. Oversight of the contractor's salvage operation could have been conducted safely by two officers, and the inclusion of a third officer has not been demonstrated to be reasonable in the circumstances.

[40] The disallowed overtime costs amount to \$766.35, leaving a total of \$2,110.37.

This portion of the claim is allowed in part in the amount of \$2,110.37.

Schedule 12 – Vehicles

\$705.58

[41] Schedule 12 of the CCG submission identifies the response vehicle in question as a “medium duty hauler.” The included fuel receipts suggest, and one of the photos of the response operation confirms, that the vehicle was a diesel crew cab pickup truck. This vehicle was charged at a rate of \$67.56 per day, which is the standard rate for a pickup truck provided in the CCG Charge Out Manual.

[42] The vehicle log indicates a total distance of 1,481 kilometers for two round trips between St. John's, NL, and Old Bonaventure, NL, as well as two round trips between Clarendville, NL (where the CCG personnel stayed in a hotel), and Old Bonaventure. A map estimate of these distances yields a total of 1,412 kilometers. This is sufficiently close to the reported 1,481 kilometers that the distances as reported in the vehicle log are accepted as credible and accurate.

[43] Given the location of the Incident, these costs were unavoidable, as it was necessary for CCG personnel to drive to the site of the Incident. The rates as claimed are accepted as reasonable.

This portion of the claim is allowed in its entirety in the amount of \$705.58.

Schedule 13 – Administration

\$222.38

[44] The claimed administration costs were charged at a rate of 3.09%, the rate on which the CCG and the Administrator have agreed, and were applied to the claimed travel (Schedule 3) and salary (Schedule 4) costs.

[45] The sum of the allowed travel and salary costs, excluding Employee Benefit Program contributions, is \$4,778.81. Applying the 3.09% administration cost rate to this amount yields a total allowed administration cost of \$147.67.

This portion of the claim is allowed in part in the amount of \$147.67.

OFFER SUMMARY AND CLOSING

[46] The following table is provided to summarize the claimed and allowed expenses with respect to the CCG claim for the *Danielle and Mark*.

SCHEDULE	CLAIM	OFFER
2: Contract Services	\$36,397.50	\$21,735.00
3: Travel	\$1,628.80	\$1,099.60
4: Salaries	\$5,242.10	\$4,599.01
5: Overtime	\$2,876.72	\$2,110.37
12: Vehicles	\$705.58	\$705.58
13: Administration	\$222.38	\$147.67
Total	\$47,073.08	\$30,397.23

Table 1 – Claimed and allowed expenses (all schedules)

[47] The amount of the Offer is \$30,397.23, plus statutory interest accrued to the time payment is made.

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

[49] 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.

[50] 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.

[51] 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.

[52] 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 efforts to pursue subrogation.

Yours sincerely,

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