



## **OFFER LETTER**

Ottawa, 28 October 2021  
*SOPF File: 120-895-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: FV *Western Chief* — Miners Bay, British Columbia**  
**Incident date: 2019-06-24**

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### **SUMMARY AND OFFER**

[1] This letter responds to a submission from the Canadian Coast Guard (the “CCG”) with respect to the fishing vessel *Western Chief*, which developed a heavy list on 24 June 2019 at Miners Bay, British Columbia (the “Incident”).

[2] On 14 June 2021, the office of the Administrator of the Ship-source Oil Pollution Fund (the “Fund”) received a submission from the CCG on behalf of the Administrator. The submission advanced claims under sections 101 and 103 of the *Marine Liability Act*, SC 2001, c 6 (the “MLA”) totaling \$22,528.61 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 \$16,498.07 (the “Offer”), plus statutory interest to be calculated at the time the Offer is paid, in accordance with section 116 of the MLA, is offered with respect to this claim.

[5] The reasons for the Offer are set forth below, along with a description of the submission.

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## THE SUBMISSION RECEIVED

[6] The submission includes a narrative that describes events relating to the Incident. It also includes a summary of the costs and expenses that the CCG claims and corroborating documents. To the extent that the narrative and corroborating documents are relevant to the determination, they are reviewed below.

### Narrative

[7] According to the narrative, on 24 June 2019,

At 1635LT Canadian Coast Guard Environmental Response (CCG ER) Duty Officer received a call from the Regional Operations Centre (ROC) Pollution Alerting desk that the 82ft seiner *Western Chief*, under tow from Sidney to Vancouver, was taking on water. The tow vessel had secured the *Western Chief* to a dock in Miners Bay, Mayne Island, and departed the location.

[...]

CCG ER Duty Officer contacted the owner. He advised there was no fuel on board and engine oil had been removed, however, there was still a large quantity of hydraulic oil (unspecified) on board (vessels of this size can have 400-500 litres of hydraulic oil). Owner was advised of his responsibility to mitigate any pollution threat and to make arrangements to have pumps placed on board and to arrange salvage operations. Owner was given a contact number for a salvage operator nearby (Eagle Eye Marine, Ganges). Owner advised he would call.

ROC Pollution Alerting advised CCG ER that Ganges Lifeboat (LB) Station was underway to provide an initial assessment for Environmental Response (ER) so that they could make an informed decision regarding response. The LB Station would remain on scene until arrival of ER crew. The primary duty of the LB station is search and rescue and they would possibly have to depart the incident should a search and rescue case arise.

An ER team was mobilized comprising of 4 personnel. Team would depart from Victoria Coast Guard Base for the Institute of Ocean Science (IOS) Sidney to board ER response vessel CGE705 and proceed to Miners Bay. A minimum of 3 personnel are required on board a response vessel. One to operate the vessel and two to handle lines and deploy/recover response equipment as required. In this case it was determined that a fourth was necessary due to the possibility of the of the *Western Chief* sinking and the extra pollution mitigation that may be involved. CGE705 was already in the water at IOS, which was in close proximity to the incident and would save time getting to the *Western Chief*.

Ganges LB Station had limited response equipment and would have to depart the *Western Chief* should a SAR incident arise, therefore, the CCG ER Duty Officer tasked Eagle Eye Marine to the incident. They were tasked based on the close proximity to the incident, availability and the

ability to provide pumps/assistance as required. Eagle Eye advised that the owner had called, however, he was not willing to pay for assistance.

1815LT Ganges LB Station arrived on scene and observed vessel at a 45-degree list to starboard. Further assessment also revealed a hole in the starboard side below the water line. Pumps were placed on board, however, they could not stay ahead of the water ingress. Eagle Eye arrived on scene and placed additional pumps. A short time later vessel was reported at 35 degrees. Divers would be required to repair the hole.

CCG ER Duty Officer called the owner of the *Western Chief* at 1831LT. No answer received and there had been no response from the owner other than the initial call. Based on the lack of response from the owner and the urgency of the situation, CCG ER tasked Cold Water Divers (CWD) to proceed to Miners Bay to repair hole on the *Western Chief*. CWD were hired due to close proximity (Sidney) and availability of crew.

1836LT Eagle Eye Marine advised CCG ER Duty Officer that the *Western Chief* was de-watered and secure at the dock in Miners Bay. Pumps were staying ahead of the ingress of water. ER team were preparing to get underway from IOS. Eta on scene 1 hour.

ER team later arrived on scene and assumed control of the incident. At this point only 1 pump was required to stay ahead of the ingress of water. Ganges LB Station returned to base to resume search and rescue standby. ER generator and electric pumps placed on board *Western Chief* to replace Eagle Eye Marine pump. Eagle Eye Marine stood down. ER team placed sorbent boom so that the discharge from the pump would capture any possible oily water that may be discharged and awaited arrival of CWD.

CCG ER Duty Officer had made several attempts to reach owner and at 2032LT contact was re-established. [...] Owner [...] advised his intention was to have vessel towed to Shelter Island (Richmond) to be removed from the water and repaired. Still working on arrangements.

CWD arrived on scene at 2120LT and commenced operations to patch hole on starboard side of vessel and assess the hull condition.

Owner later advised Westport Diving [...] would be towing the *Western Chief* to Shelter Island Shipyard. Arrangements would be made with Shelter Island in the morning. Owner was advised to email details of plan by 9am.

[8] The narrative goes on, with respect to 25 June 2019:

At 0052LT CWD completed temporary patch and hull assessment of the *Western Chief*. ER team and CWD departed location. ER team secured CGE705 at IOS and proceeded back to Victoria. An owner representative, who had been on the *Western Chief* during the tow, remained on board with ER pumps/generators to maintain a watch on vessel until salvage arrangements could be made. [...]

0900LT ER team (3 personnel) departed Coast Guard Base, Victoria, to proceed to IOS and board CGE705 for Miners Bay to re-assess the *Western Chief* and monitor the salvage/tow operation. An email detailing the plans of the salvage was not received from the owner.

CCG ER contacted owner of Westport Divers to verify the tow of *Western Chief* to Shelter Island would be going ahead. Owner of Westport divers confirmed tow vessel *Westport 1* to arrive at *Western Chief* location approximately 1330LT.

CCG ER contacted owner of the *Western Chief*. He advised he was heading to Shelter Island to make arrangements to have vessel removed from the water.

CCG ER contacted Shelter Island [...] to verify arrangements had been made. [Shelter Island] advised owner was known for being negligent on bill payments and did not carry insurance. Shelter Island would not remove the *Western Chief* from the water unless a down payment was received by the owner or payment could be guaranteed by Canadian Coast Guard.

ER team arrived Miners Bay and the owner representative advised that the *Western Chief* was stable with no ingress of water. In addition to hydraulics, a closer assessment of engine room showed an oily bilge and oil soaked timbers. The vessel would remain a threat to pollute until it could be removed from the water, the bilge cleaned and the temporary patch removed and replaced with a permanent fix.

*Figures 1 and 2 – Screen captures of uncaptioned photographs from the narrative*

CCG ER contacted owner and advised he had to provide a down payment to Shelter Island to have his vessel removed from the water or CCG ER would be taking over salvage. Owner advised he was trying to sort out situation with his Insurance Company.

Owner later advised CCG ER that arrangements had been changed and the *Western Chief* would now be towed to Arrow Shipyard for removal from the water and repair. Arrow Shipyard were contacted by CCG ER to confirm arrangement. Shipyard confirmed.

The owner hired tow vessel *Westport 1* which arrived on scene at 1337LT and commenced preparations for tow.

1420LT *Western Chief* taken under tow by *Westport 1*, escorted by CGE705. ETA Arrow Shipyard 2200LT.

Once it was determined the temporary patch was holding and there was no ingress of water, CGE705/ER team returned to Victoria via IOS.

2350LT CCG ER Duty Officer received a phone call from *Westport 1* indicating that the *Western Chief* was secured alongside. The *Westport 1* did not advise where the vessel was secured, however, it was assumed to be Arrow Shipyard since that was the pre-arranged destination.

[9] On 26 June 2019, the CCG learned that the *Western Chief* was in fact secured at Steveston. The tow had not reached the Arrow Marine Services (“Arrow”) facility on the North Arm of the Fraser River due to strong tides. Arrow advised that it required a retainer from the owner before proceeding with any work. The owner advised that he was arranging payment and would update the CCG when his plans were finalized. The CCG emphasized that the patch on the vessel’s hull was temporary, and that there was some urgency in having the vessel removed as a result.

[10] On 27 June 2019, the owner of the *Western Chief* called the CCG to advise that he had made arrangements for the vessel to be towed to the Arrow facility and removed from the water on 2 July 2019. Strong tides again caused delays, but the vessel was ultimately towed and removed on 8 July 2019. The CCG remained in contact with the owner throughout this process.

Cost summary

[11] The CCG submission summarizes its claimed costs as follows:

		<u>SCH</u>
MATERIALS AND SUPPLIES	-	1
CONTRACT SERVICES	9,476.26	2
TRAVEL	472.18	3
SALARIES - FULL TIME PERSONNEL	1,034.55	4
OVERTIME - FULL TIME PERSONNEL	2,893.16	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)	8,451.49	11
VEHICLES	159.74	12
ADMINISTRATION	41.23	13
	<hr/>	
TOTAL CCG COST OF INCIDENT	<u>\$ 22,528.61</u>	

Figure 3 – Screen capture of the cost summary

CCG internal documentation

[12] Various summaries and timesheets are provided in support of claimed salary and overtime costs. Claimed regular salary costs include a 20% markup for employee benefits costs, while overtime costs are billed at either 1.5x or 2.0x regular salary rates, exclusive of employee benefits costs. Claimed salary and overtime hours and associated costs are summarized as follows:

Name, Group, Level	Rates	Hours Claimed by Date and Day in 2019			Total Hours	Claimed Cost
		06-24 M	06-25 T	06-26 W		
CS GT-04	Reg: \$45.98	–	7.5	–	7.5	\$344.85
	1.5x: \$57.48	7.5	1.5	1.0	10.0	\$574.80
	2.0x: \$76.64	–	3.0	–	3.0	\$229.92
PH GT-04	Reg: \$45.98	–	7.5	–	7.5	\$344.85
	1.5x \$57.48	7.5	1.5	–	9.0	\$517.32
	2.0x \$76.64	–	3.0	–	3.0	\$229.92
AT GT-04	Reg: \$45.98	–	7.5	–	7.5	\$344.85
	1.5x: \$57.48	7.0	1.5	–	8.5	\$488.58
	2.0x: \$76.64	–	3.0	–	3.0	\$229.92
DR GT-04	Reg: N/A	–	–	–	0.0	\$0.00
	1.5x: \$57.48	7.5	–	–	7.5	\$431.10
	2.0x: \$76.64	2.5	–	–	2.5	\$191.60
<b>Totals</b>					<b>69.0</b>	<b>\$3,927.71</b>

Table 1 – Claimed salary and overtime hours (full names of CCG personnel replaced with initials)

[13] Internal expense report documentation is provided in support of claimed travel costs, which are limited to *per diem* claims by personnel involved in the response. The amounts claimed are summarized as follows:

TRAVEL		Amount	GST	Total	REFERENCE
	CS	135.14	0	135.14	June 24,25
	PH	134.14	0	134.14	June 24,25
	AT	135.14	0	135.14	June 24,25
	DR	67.76	0	67.76	24-Jun

Figure 4 – Claimed travel costs by employee and date (full names of CCG personnel redacted and replaced with initials)

[14] Claimed pollution counter-measures equipment costs are summarized as follows:

Description	Unit/ft	TIME (days)	RATE (per ft)	RATE (daily)	COST	REFERENCE
PRVIII CGE 705		2.00		4209.50	8,419.00	Ref Vessel Log
Fuel Transfer Pump		1.00		24.44	24.44	Ref Equip Log
Generator - 2000W		1.00		8.05	8.05	Ref Equip Log

Figure 5 – Claimed pollution counter-measures equipment costs

[15] Claimed vehicle costs are supported by mileage logs indicating that a Ford F-350 was used by CCG personnel on 24 and 25 June 2019. The logs indicate that that vehicle was driven a total of 130 kilometres over the course of the CCG's response. Claimed vehicle costs include a day rate of \$65.57 and a per kilometre rate of \$0.22 for fuel.

Contractor documentation

[16] Claimed contractor costs, which are supported by two invoices, are summarized as follows:

CONTRACT SERVICES	AMOUNT	GST	TOTAL	REFERENCE
EAGLE EYE MARINE	1,312.50	65.63	1,378.13	INV 1077
			-	Paid July 12/19
COLD WATER DIVERS	7,712.50	385.63	8,098.13	INV 7001
			-	Paid July 11/19

Figure 6 – Screen capture of contractor costs summary

*Eagle Eye Marine Services*

[17] The Eagle Eye Marine Services (“Eagle Eye”) invoice is dated 25 June 2019. It includes the following breakdown of costs:

DATE	DESCRIPTION	AMOUNT
24/06/2019	Boat & Captain, 4.25 @ \$250.00	1,062.50
24/06/2019	Pumps & additional crew person, 1 @ \$250.00	250.00
25/06/2019	Case #0437 - Wesrern Chieftain sinking in Active Pass/Minor's Bay	

Figure 7 – Screen capture from Eagle Eye invoice

*Cold Water Divers Inc.*

[18] The Cold Water Divers Inc. (“CWD”) invoice is also dated 25 June 2019. It includes the following breakdown of costs:

Description	Qty	Rate	Amount	Tax
24JUN 1815 - Call comes in 1830 - Mobilization to shop 2025 - Boat is launched with all salvage equipment on board				
25JUN 0052 - Team departs Miners Bay 0230 - Dive team departs CWD shop				
Labour - Emergency Rate	8.25	650.00	5,362.50	G
Decontamination	4	325.00	1,300.00	G
Consumables	1	200.00	200.00	G
Boat Fee	1	850.00	850.00	G

Figure 7 – Screen capture from Cold Water Divers Inc. invoice

## DETERMINATIONS AND FINDINGS

### The CCG submission presents potentially eligible claims

[19] The Incident resulted in oil pollution damage or the threat thereof within the territorial seas or internal waters of Canada, as well as in costs and expenses to carry out measures to prevent such damage. As a result, claims arising from the Incident are potentially eligible for compensation.

[20] The CCG is an eligible claimant for the purposes of section 103 of the MLA.

[21] The submission arrived within the limitation periods set out under subsection 103(2) of the MLA.

[22] Some of the claimed costs and expenses arise from what appear to be reasonable measures taken to “prevent, repair, remedy or minimize” oil pollution damage from a ship, as contemplated under Part 6, Division 2 of the MLA, or under the International Convention on Civil Liability for Bunker Oil Pollution Damage, and are therefore potentially eligible for compensation.

[23] Accordingly, the submission presents claims that are potentially eligible for compensation under section 103 of the MLA.

### Identification and description of the *Western Chief*

[24] A search of TC (Transport Canada) records was carried out in order to correctly identify the *Western Chief*. A vessel roughly matching the description provided by the CCG is registered in Canada under that name and the official number 178835. The vessel is listed as a fishing vessel of 97.37 gross tons, 24.20 metres in length, 6.13 metres at the beam, and 2.53 metres in depth. Its construction is listed as wood, and power is listed as having been provided by a single diesel engine of 410 brake horsepower. According to TC records, the vessel was built in 1947.

### Findings on the evidence submitted by the CCG

#### *The facts of the Incident as set out by the CCG are generally accepted*

[25] The CCG included with its submission a narrative and other supporting documents which set out the facts of the Incident and the response thereto in some detail. The descriptions of material events contained in the CCG’s documentation are accepted as generally accurate.

#### *The CCG’s response to the Incident was reasonable*

[26] The *Western Chief* represented an oil pollution threat when the Incident was first reported to the CCG. Though the owner stated that the vessel did not contain any fuel, the presence of hydraulic oils and residuals in the machinery spaces is accepted. If the vessel had sunk, a discharge of these oils would have been very likely. Furthermore, CCG Search



and Rescue personnel reported that the vessel had developed a severe list, suggesting that it had taken on significant quantities of water by the time they arrived on scene.

[27] Given the size of the vessel and the oil pollution threat noted above, the decision to engage Eagle Eye to begin a pumping operation is accepted as a reasonable measure taken to mitigate a demonstrated oil pollution threat. Furthermore, the decision to send four Environmental Response personnel to the scene on 24 June 2019 rather than three is accepted. While three crew might have proved sufficient, at this early stage the situation was still developing and the vessel had not yet been fully stabilized. The extra crew member increased the flexibility of the oil pollution response in a way that is considered reasonable in the circumstances. Notably, the CCG later scaled back its response on 25 June 2019, by which time the oil pollution threat was reduced.

[28] Once the CCG located the source of water ingress into the vessel, CWD was hired on an emergency basis to temporarily remedy the situation with an underwater patch, and to inspect the hull more broadly. Though the rate of water ingress appears to have become manageable with the pumps deployed prior to the patching operation, the measures taken by CWD and associated costs are nonetheless accepted in full. The reliability of the owner of the *Western Chief* was in question, and his plan to have a large, holed wooden vessel towed across the Strait of Georgia would have caused the CCG wholly justifiable concerns. It is further considered that the deployment of three CCG personnel on 25 June 2019 to ensure that the vessel was secure for towage was reasonable.

[29] Finally, noting that follow-up was required with the owner of the *Western Chief* for several days after the vessel arrived in Richmond, the single hour of overtime claimed with respect to 26 June 2019 is accepted.

[30] For the reasons noted above, all the costs associated with CCG labour, travel, and contracting are accepted in full as having been reasonably incurred with respect to measures taken to prevent oil pollution damage.

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### **CLAIM AND OFFER DETAILS**

[31] The CCG presented its costs and expenses across seven schedules, each of which is outlined below. To the extent that reasons are not already set out in this letter, the below explains why certain portions of the CCG's claim have been allowed while others have been disallowed.

Schedule 2 – Contract Services

Claimed: \$9,476.26

[32] For the reasons outlined above, the amounts claimed with respect to both Eagle Eye and CWD are considered reasonable.

**The contract services portion of the submission is allowed in full.**

Schedule 3 – Travel Claimed: \$472.18

[33] For the reasons set out above, the claimed amounts are considered reasonable.

**The travel portion of the submission is allowed in full.**

Schedule 4 – Salaries – Full Time Personnel Claimed: \$1,034.55

[34] For the reasons noted above, all claimed regular salary costs are considered reasonable.

**The salaries portion of the submission is allowed in full.**

Schedule 5 – Overtime – Full Time Personnel Claimed: \$2,893.16

[35] For the reasons noted above, all claimed overtime costs are considered reasonable.

**The overtime portion of the submission is allowed in full.**

Schedule 11 – Pollution Counter-measures Equipment Claimed: \$8,451.49

[36] As detailed at Figure 5 CCG claims \$24.44 for one-day use of a pump and \$8.05 for one-day use of a generator, presumably to run that pump. Both of these costs are considered reasonable, and both are accepted in full.

[37] The CCG also claims \$8,419.00 for the use of one of its Environmental Response vessels, the *CGE 705*, for two days at a rate of \$4,209.50 per day. This rate, usually associated with vessels of the PRV III type, is not accepted. Though the *CGE 705* appears in some ways to be a unique craft, its specifications and capabilities are a closer match to those of a PRV II, rather than a PRV III. Accordingly, a day rate of \$1,194.23, that associated with a PRV II, is allowed for its use.

**The pollution counter-measures equipment portion of the submission is allowed in the amount of \$2,420.95.**

Schedule 12 – Vehicles Claimed: \$159.74

[38] For the reasons set out above, the use of a single vehicle to support the CCG's response is considered reasonable, as are all associated costs.

**The vehicles portion of the submission is allowed in full.**

[39] This portion of the CCG’s claim represents 3.09% of the claimed amounts for travel and regular salary costs, the latter exclusive of the 20% markup associated with employee benefits plan costs. This method of calculating administration costs has been generally accepted as reasonable, and the full amount sought is considered reasonable in this circumstance.

**The administration portion of the submission is allowed in full.**

### **OFFER SUMMARY AND CLOSING**

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

Schedule	Claimed	Allowed
2 – Contract Services	\$9,476.26	\$9,476.26
3 – Travel	\$472.18	\$472.18
4 – Salaries – Full Time Personnel	\$1,034.55	\$1,034.55
5 – Overtime – Full Time Personnel	\$2,893.16	\$2,893.16
11 – Pollution Counter-measures Equipment	\$8,451.49	\$2,420.95
12 – Vehicles	\$159.74	\$159.74
13 – Administration	\$41.23	\$41.23
<b>Totals</b>	<b>\$22,528.61</b>	<b>\$16,498.07</b>

*Table 2 – Summary of amounts claimed and allowed*

[41] Costs and expenses in the amount of \$16,498.07 are accepted and will be paid together with statutory interest calculated at the date of payment if the Offer is accepted.

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

[43] 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.

[44] 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.

[45] 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.

[46] 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 Fund in its subrogation efforts.

Yours sincerely,

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