



OFFER LETTER

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CCG File:

BY EMAIL

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

RE: MV *Rolano* — Gorge Harbour, Cortes Island, British Columbia
Incident date: 2019-02-10

SUMMARY AND OFFER

[1] This letter responds to a submission from the Canadian Coast Guard (the “CCG”) with respect to the motor vessel *Rolano*, which grounded on 10 February 2019, at Gorge Harbour, Cortes Island, British Columbia (the “Incident”).

[2] On 4 February 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 \$248,265.04 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 \$71,058.05 (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.

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 10 February 2019, CCG Environmental Response (“ER”) was notified that an approximately 70-foot wooden motor vessel, identified as the *Rolano*, was aground and listing at the western corner of Gorge Harbour, Cortes Island, British Columbia. The narrative indicates the vessel was in poor condition, with “several barrels and buckets of oil on deck, as well as an unknown quantity of fuel remaining in [its] tanks. The vessel was known to have fuel tank capacity in excess of 10,000 liters.”

[8] The CCG made efforts to contact the owner of the *Rolano*,¹ but it was discovered that he had passed away some time prior to the Incident. Attempts to get in contact with the estate were unsuccessful. As a result, the CCG began a response:

A sensitivities report from the National Environmental Emergencies Centre (NEEC) was immediately requested. The report indicated that a release of diesel fuel and engine oil within Gorge Harbour would pose a significant threat to First Nations’ clam beds and the significant aquaculture industry, as well impact a protected species of sea bird.

Due to the potential threat to pollute, location, and environmental sensitivities, [the CCG] deemed an immediate intervention was necessary to prevent pollution. CCG did not have the capacity to get on location quickly and therefore, tasked [the Western Canada] Marine Response Corporation [...], located at nearby Campbell River, to take appropriate action to mitigate the threat of pollution. [...] CCG also initiated efforts to obtain salvage to remove the *Rolano* off the beach and allow further assessment.

[9] On 11 February 2019, the Western Canada Marine Response Corporation (“WCMRC”) “arrived on scene [in the] early morning and placed boom around the vessel to contain any pollution treat that may result. WCMRC crew confirmed the presence of several barrels and buckets of oil on deck.”

[10] The CCG also dispatched resources to the scene:

¹ According to the vessel’s listing in the Canadian Register of Vessels, the registered owner of the *Rolano* was in fact (and remains, at the time of writing) a British Columbia corporation. References to the “owner” in the CCG narrative have therefore been interpreted as references to a director or other representative of the corporation. Further, it appears that the owner corporation had been dissolved prior to the incident, suggesting that the vessel’s owner at the relevant times was in fact the Province of British Columbia.

A CCG ER crew (4 personnel) departed Victoria by truck with workboat (PRV 1) in tow and arrived later in the day. Normally 3 personnel are required, however, because of the size of the vessel and the anticipated labour involved, it was decided that an extra person would be needed. Once in Campbell River, 2 CCG ER crew were transported to the *Rolano's* location by the Campbell River Lifeboat Station fast rescue craft for an initial assessment. The assistance of the Lifeboat Station allowed the ER crew to get on location quickly without having to launch the PRV 1. Initial assessment found the [*Rolano*] to be hard aground, listing heavily to starboard. Fuel tanks were found to contain fuel, estimated to be 2000+ liters. The presence of engine lube oil and hydraulic oil were also confirmed. Estimated total fuel and oil board was 3000+ liters. A contractor (Rilaur Enterprise Ltd) was organized to get to the *Rolano's* location at the next high tide, which would be the morning of February 12. This contractor was hired because of availability, local knowledge and location (Campbell River). It was calculated that the *Rolano* could be towed off at high tide without the need for divers or other assistance. The vessel would then be towed to Campbell River for further assessment.

[11] On 12 February 2019:

[The] ER crew launched the PRV 1, at Campbell River, and proceeded to the *Rolano*. On arrival, Rilaur Enterprise were already on scene, with their tow vessel *Night Drifter*, preparing the *Rolano* for tow. Shortly thereafter, the [*Rolano*] was successfully removed from the beach. WCMRC proceeded to remove the boom that had been placed around the vessel. On completion it was determined that the assistance of WCMRC was no longer required and they were stood down from the operation. For precautionary reasons, the *Rolano* was rigged with several de-watering pumps. 2 ER crew tended to the pumps and assessed the vessel throughout the tow to Campbell River (Discovery Harbour) while the 2 remaining ER personnel accompanied the tow using the PRV 1 as a Safety Boat and to transfer crew if required.

On arrival Campbell River, the PRV 1 was used to assist the tow vessel with placing the *Rolano* alongside. Once alongside, ER personnel dipped the fuel, oil and hydraulic tanks and decided that a vacuum truck would be the most efficient way to remove accessible hydrocarbons.

[12] On 13 February 2019:

Rilaur Enterprise towed the *Rolano* to a different section of Discovery Harbour, with the assistance of the PRV 1 and ER crew, to allow the vacuum truck (Walco Industries, Port Alberni) to get

close enough to pump the vessel fuel and oils. Once pumping was completed, it was confirmed that over 3000 liters of fuel and oil was removed. The vessel was towed back to [its] previous location in Discovery Harbour where it was monitored until the next steps were considered.

CCG ER were unable to attain a contractor in Campbell River that could tend to and monitor the *Rolano* and were also unable to secure a suitable dock space for an extended period of time. Therefore, another location was required. Several facilities within a reasonable distance were contacted, however, Saltair Marine was the only facility, at the time, to be able to secure a vessel of this size and have the personnel and means to tend to it. Rilaur Enterprise was readily available and would tow the *Rolano* from Campbell River to the Saltair Marine facility in Ladysmith. The tow departed Campbell River on February 14 and the *Rolano* was secured alongside at Saltair Marine, Ladysmith February 16.

The CCG established contact with the executor of the estate [...] for the owner of the *Rolano*. [The executor] indicated the estate, including the children of the deceased, did not have sufficient funds, means or intention of taking any action with regard to the vessel. As a result, the vessel remained under control of the CCG.

[13] On 11 March 2019, Building Sea Marine (“BSM”), which had been engaged by the CCG “based on availability”, conducted an in-water survey of the *Rolano* at the Saltair Marine Services Ltd. (“Saltair”) facility in Ladysmith. The surveyor reported that the vessel would “remain an immediate risk to the environment and navigable waters of BC if allowed back into the public marketplace as is.” While the *Rolano* was considered a reasonable candidate for reconstruction, the surveyor noted that the costs associated with doing so would be significant, and that the vessel and its contents in their current condition had no value. The narrative notes the following:

[The *Rolano*] was in poor condition and not in a seaworthy state. The ship’s construction and the condition of the engine room indicated that while bulk fuel and oil removal had been successful, there were still residual fuel and oils remaining in tanks, piping and in the engine room. There were also oil soaked timbers in the engine room bilge. If the vessel were to go back into the marine environment, the vessel would be at risk of sinking and releasing pollution.

[14] On 19 June 2019, the CCG issued a Direction to the executor of the owner’s estate. No response was received.

[15] The narrative then reports as follows:

Due to the results of the marine survey, the lack of response from the estate and the significant cost to effect repairs to the *Rolano*, the CCG decided the most effective method to mitigate the threat of pollution was to have the vessel removed from the marine environment. To keep the vessel from going back into the water and being a future threat to pollute all remaining fuel and oils would be removed and the vessel would be deconstructed to dispose of the oil soaked timbers.

[16] Saltair began the deconstruction process on 26 August 2019. According to the narrative, “Saltair [was] hired because [it] had the means to properly dispose of remaining fuel and oil, had the proper facility required to remove the vessel from the marine environment to deconstruct and was the most cost effective.” The narrative continues:

Throughout the process several attempts were made to engage the estate, and the beneficiaries of the estate, into accepting responsibility for the *Rolano* and the costs involved in salvage and deconstruction. No one involved in the estate were willing or able to take responsibility for the vessel. This, along with the time required for contractors to submit quotes, were what contributed to the delay to the start of deconstruction. It should be noted that the *Rolano* was tended to and monitored throughout this time to ensure it did not sink and/or release pollution into the marine environment.

[17] The deconstruction of the *Rolano* concluded on 18 October 2019.

Cost summary

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

		<u>SCH</u>
MATERIALS AND SUPPLIES	-	1
CONTRACT SERVICES	230,769.20	2
TRAVEL	3,163.59	3
SALARIES - FULL TIME PERSONNEL	5,564.10	4
OVERTIME - FULL TIME PERSONNEL	3,361.68	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)	4,776.00	11
VEHICLES	389.44	12
ADMINISTRATION	241.03	13
TOTAL CCG COST OF INCIDENT	\$ 248,265.04	

Figure 1 – Screen capture of the cost summary

CCG internal documentation

[19] 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 all overtime costs are billed at 1.5x regular salary rates, exclusive of employee benefits costs. The documentation shows that the four responding ER personnel worked long days, including overtime, on 11 through 13 February 2019. Only regular hours were worked on 14 February 2019.

[20] The submission includes four “Personnel & Equipment Daily Logs”, dated 11 through 14 February 2019. Generally, these align with the documentation already described in this letter. They do, however, provide some additional information:

- The entry for 11 February 2019 contains the following note: “3x205L barrels of oil were located on deck. 20+ 5 gallon pails of oil in the engine room and elsewhere on board. Integral tanks contained over 1000L of diesel, hydraulic oil, engine oil and other hydrocarbons.”
- The entry for 12 February 2019 contains the following note: “1330LT *Rolano* successfully towed off the beach with no water ingress and no pollution released from the vessel. WCMRC has been stood down. Vessel is secure alongside Campbell River (Discovery Harbour). Internal tanks are confirmed to have at least 3500L of fuel and oil. Loose hydrocarbons in barrels and buckets confirmed to be at least 1000L. [...] Vessel will be monitored overnight. Pumps are in place for emergency de-watering.”
- The entry for 13 February 2019 contains the following note: “No water ingress overnight. [...] Contractor will monitor the vessel until weather window opens (likely Friday February 15) for tow south to Saltair Marine where further investigation into vessel condition will take place. Vessel will require tending until its fate is decided due to remaining sludge and residue in all built in tankage as well as bilge. Bilge remains oil soaked despite being pumped out today. Vac truck operator estimated 3000+litres of oil and fuel was removed. Closer inspection of the hull today revealed significant damage due to rot and lack of maintenance. Hull framing (iron) is heavily corroded. Hull (wood) planking shows significant damage near fastenings above the waterline.”

Contractor documentation

[21] Claimed contractor costs are summarized as follows:

CONTRACT SERVICES	AMOUNT	GST	TOTAL	REFERENCE
WALCO INDUSTRIES LTD	4,210.82	210.54	4,421.36	INV 36752
RILAUER ENTERPRISES LTD	2,637.50	131.88	2,769.38	INV 022619-1 Paid by GAC
RILAUER ENTERPRISES LTD	9,187.50	459.38	9,646.88	INV 021719-1 Paid April 26/19
WESTERN CANADA MARINE RESP CORP	29,940.07	1497	31,437.07	INV 190106 Paid April 24/19
TERRAPURE	1,690.00	84.50	1,774.50	INV 92916574 Paid Mar 29/19
BUILDING SEA MARINE	4,737.50	236.88	4,974.38	INV 771 Paid by GAC
SALTAIR MARINE	167,376.79	8,368.84	175,745.63	INV 6639 Paid Jun 21/19

Figure 2 – Screen capture of contractor costs summary

[22] The contract services costs summarized at Figure 2 are supported by a large number of invoices from both primary contractors and subcontractors, as well as receipts. The relevant items are discussed below, in the rough order in which the associated services were rendered.

WCMRC

[23] The WCMRC costs are supported by a primary invoice dated 19 March 2019 containing the following list of costs and services rendered, which total \$29,940.07 plus \$1,497.00 in GST:

S-19-0005 - CCG-GORGE HARBOUR - FEB.10,2019				
LOGISTICS	1	525.00	525.00	
FINANCE FEE	1	80.00	80.00	
OPERATIONS	1	4,226.25	4,226.25	
WCMRC EQUIPMENT	1	2,130.00	2,130.00	
MILEAGE	1	130.65	130.65	
BOOM RENTAL	1	1,716.00	1,716.00	
CONTRACTORS	1	17,166.75	17,166.75	}
DISBURSEMENT	1	896.23	896.23	
MEALS	1	312.82	312.82	
HANDLING FEE	1	2,756.37	2,756.37	-15%

Figure 3 – Screen capture of WCMRC primary invoice dated 19 March 2019

[24] Additional documentation from WCMRC breaks down labour costs, which comprise 41.25 hours worked on 10 through 12 February 2019 by four different personnel at the following hourly rates: five hours at \$105.00 for logistics; one hour at \$80.00 for administrative support (finance); 27.75 hours at \$105.00 for off-water operations; and 7.5 hours at \$175.00 for on-water operations. WCMRC internal labour costs total \$4,831.25, covering the first three items at Figure 3.

[25] While daily logs are provided in support of the work done, the detail provided is minimal. The log entry for 10 February 2019 notes “Mobilize to Heriot Bay [on Quadra Island] and store equipment for next day.” The entry for 11 February 2019 notes the deployment of 650 feet of boom. The entry for 12 February 2019 notes the deployment of an extra 300 feet of boom and “Demobilization”. The documentation shows that only one WCMRC employee was on scene, logging a total of 7.5 on-water hours and 22.5 off-water hours. The remaining 5.25 hours of off-water operations time billed to the CCG appear to

have been worked by a WCMRC employee who was never on scene and whose specific tasking is not identified.

[26] WCMRC equipment costs include three days’ use and mileage for a single vehicle (\$910.65), three days’ use of an equipment trailer (\$750.00), and two days’ use of a benzene gas detector (\$600.00). In addition, containment boom rental was priced at \$0.08 per hour-foot.

[27] The WCMRC documentation shows that it subcontracted Strategic Natural Resource Consultants Inc. (“Strategic”) to assist with its field operations. Supporting documentation shows that Strategic deployed three personnel, a truck, and a landing craft vessel from 10 through 12 February 2019. The Strategic team evidently took BC Ferries sailings from Campbell River to Cortes Island on 11 February 2019. Strategic costs are summarized as follows:

Ref # S-19-005	Hours	Rate	Amount
Spill Response			
Crewman	22.00	85.00	1,870.00
Crewman - OT	7.50	128.00	960.00
Crewman	22.00	85.00	1,870.00
Crewman - OT	7.50	128.00	960.00
Vessel Operator	22.00	90.00	1,980.00
Vessel Operator - OT	7.50	135.00	1,012.50
Hydra - Running	29.50	175.00	5,162.50
BC Ferries	1.00	23.95	23.95
BC Ferries	1.00	132.80	132.80
Truck Day Rate	3.00	140.00	420.00
Sat Phone	3.00	125.00	375.00
		Block subtotal	14,766.75
		Ref #S-19-005 subtotal	14,766.75

Figure 4 – Screen capture of Strategic costs summary (names of Strategic personnel redacted)

[28] WCMRC documentation also shows that it subcontracted Az-Tec Freight (2018) Inc. (“Az-Tec”) at a cost of \$2,400.00, plus GST. No description of the work done is provided, but the Az-Tec invoice notes a “Freight Charge” from Duncan Bay Barge Terminal on Campbell River to Gorge Harbour, Cortes Island on 10 February 2019.

[29] Invoices and receipts are provided in support of meals (\$312.82) and accommodations (\$892.40). With respect to the former, invoices show that five rooms (three Strategic personnel, one WCMRC employee, and one Az-Tec employee) were rented at the Heriot Bay Inn on the night of 10 February 2019, at a rate of \$74.52. On the night of 11 February 2019, four rooms (Strategic and WCMRC personnel only) were rented at the Gorge Harbour Marina Resort, at rate of \$129.95.

[30] Finally, WCMRC charged the CCG a 15% “handling fee” on subcontractor costs, accommodation costs, and meal costs.

Rilaur Enterprises Ltd.

[31] The submission includes two invoices from Rilaur Enterprises Ltd. (“Rilaur”), dated 26 and 27 February 2019 respectively. The first invoice, totalling \$2,769.38 with

GST, covers the salvage operation and towage of the *Rolano* to Campbell River on 12 February 2019, plus repositioning of the vessel at Campbell River on 13 February 2019:

Feb.12, 2019	8.5 hrs	Left Campbell River, and ran to Gorge Harbour, arrived at vessel and then cleared the snow off our decks and got bridle ready while waiting for tide to come in a bit more. We hooked the bridle onto the <i>Rolano</i> , and then gently yarded her off the beach into a floating position in the water. Towed <i>Rolano</i> to Campbell River, and tied her to dock.	\$285.00	\$2,422.50
Feb.13, 2019	1 hr.	Started at 7:15 am, moved vessel <i>Rolano</i> over to the sheet wall at Discovery Harbour so fuel & oil could be pumped out. Tied her back up at South Harbour at 8:15 am.	\$250.00	\$250.00

Feb.13, 2019	1 hr.	Coast Guard men have fuel all pumped out. At 1:00 pm. we left the sheet wall dock towing the <i>Rolano</i> and took her over to the South Harbour dock and tied her up. Finished at 2:00pm.	\$250.00	\$250.00
		(A lot of help was received from Coast Guard Crew)	Discount on quote	-\$285.00

Figures 5 and 6 – Screen captures of Rilaur invoice dated 26 February 2019

[32] The second Rilaur invoice, totalling \$9,646.88 with GST, covers towage to Ladysmith:

Feb 14-16 2019	36.75 Hrs	Feb.14 th . Left Campbell River South Harbour at 3:45pm with <i>Rolano</i> in tow for Sultair. Ladysmith Harbour. We ran into 15-25 knots of S E at the bottom end of Hornby Island so we went into Baine Sound. made a few circles till the wind went down then carried on. Feb.15 th . Arrived in Ladysmith at 4:30 p.m. Tied the <i>Rolano</i> to the dock and removed our pumps and gear off her. Left Ladysmith at 5:00 p.m. heading back to Campbell River. stopped at New Castle Island and anchored for the night. At 7:15 pm Feb.16 th . At 6:15 am we carried on for Campbell River arriving at 3:30 pm	\$250.00	\$9,187.50
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Figure 7 – Screen capture of Rilaur invoice dated 27 February 2019

Walco Industries Ltd. and Terrapure Environmental

[33] The Walco Industries Ltd. (“Walco”) invoice, totalling \$4,421.36 with GST, is dated 20 February 2019. The work covered includes the vacuum removal of oils from the *Rolano*’s bilge, fuel tanks, and barrels on 13 February 2019. Also covered is transportation of the 3,530 litres of pollutants removed from the vessel to Terrapure Environmental (“Terrapure”), on 20 February 2019. The invoice suggests that Walco paid Terrapure \$1,495.57 plus GST for disposal.

[34] The CCG submission also includes a copy of a 15 February 2019 invoice from Terrapure totalling \$1,774.50 with GST (or \$1,690.00 before GST). Based on the date of that invoice, its dollar amount, the fact that it was paid directly by the CCG, and the description of the work done (which included disposal of fuel waste, oily wastewater, and oily solids), it appears to cover the disposal of additional waste that was not handled by Walco.

BSM

[35] The BSM invoice is dated 16 June 2019 and totals \$4,974.38 with GST. It includes a subcontracted dive survey undertaken by Sundown Diving that cost \$682.50 before GST. The BSM invoice contains the following description of work done: “Travel to [Saltair], Ladysmith, BC and survey the ex-commercial fishing vessel ‘ROLANO’ afloat at the government docks on March 11th. Return March 25th to attend with divers for survey of the underwater hull.”

[36] The BSM survey report, dated 12 April 2019, includes 55 captioned photographs of the vessel. According to the report, BSM was tasked with assessing the following: (1) The condition of the vessel; (2) Whether the vessel could be considered seaworthy and/or efficiently repaired; (3) Whether the vessel was a reasonable candidate for reconstruction; and (4) The residual value (if any) of the vessel if deconstructed. Throughout, the report contradicts the BSM invoice and the CCG narrative, indicating that the *Rolano* was first surveyed on 1 March 2019, not 11 March 2019.

[37] The report found that the *Rolano* was constructed of wood over a steel frame, and that the vessel had been modified “to support a ketch-rigged motor sailing set-up.” It concluded that the *Rolano* had zero residual value, whether in as-is condition or if dismantled. It also concluded that, without certain recommended repairs, “the vessel will remain an immediate risk to the environment and navigable waters of BC if allowed back into the public marketplace as is.” But the specific findings of the report on this point, summarized as follows, are mixed:

- The *Rolano* was floating “on an even keel with no appreciable list and the weedline indicates the vessel has been floating on normal lines for a long time.”
- Topside planks were generally sound, though they were soft in some areas and some seams were visibly open, likely allowing significant rainwater ingress into the hull.
- The vessel was generally structurally sound, with the underwater plank seams all tight: “The vessel does not appear to visibly leak from any particular area and the bilge pumps placed by Saltair never cycled in the course of the surveys.” However, some of the internal steel ribs showed heavy corrosion in places.
- The rudder shaft had been shifted approximately three inches upward, but the rudder was not out of alignment and steering connections remained in place and undamaged.
- A diver survey found damage to the keel shoe but confirmed that the underwater planking and seams were in visually good condition, as was the propeller.
- The vessel was “essentially complete, and likely fully operable after some diligent cleaning up, maintenance and necessary replacements.”
- The engine and marine gear were drained of oils, as were the fuel tanks. The hydraulics likely contained oils, and the “machinery space bilge [was] lightly fouled with diesel fuel and oil with the lower bilge areas below the floors heavily fouled with black oil.”

Saltair

[38] The Saltair invoice, dated 26 November 2019, totals \$175,745.63 with GST. The invoice contains a breakdown of costs associated with the storage, monitoring, deconstruction, and disposal of the *Rolano*. The Saltair work is supported by 41 pages of documentation, including work logs, subcontractor invoices, and receipts. No statement of work or contract is included in support of any of the Saltair costs, nor is any correspondence between the CCG and Saltair.

[39] The Saltair invoice divides the work done into three phases. Phase One ran 41 days, from 15 February through 27 March 2019. According to Saltair logs, the vessel was monitored daily by its employees during this period (uniform daily notes read “Day crew: pump as required” and “Change out absorbents as required”), which costs appear to be rolled into the daily “Monitor and Moorage” fee of \$148.30. There is also a \$24.00 daily pump rental fee. The only labour costs associated with Phase One were charged with respect to the arrival of the vessel on 15 February 2019: four hours at \$95.00 hourly, totalling \$380.00. The invoice indicates that Phase One costs were billed at emergency rates. The total pre-GST cost associated with Phase One was \$7,444.30.

[40] Phase Two ran from 28 March through 8 July 2019. Like Phase One, Phase Two involved only storage and monitoring of the *Rolano*, including pump rental and changing out absorbents “as required”, though the regular rates charged for these services were somewhat lower during Phase Two: \$114.98 for daily monitoring and moorage and \$430.00 for monthly pump rental. The total pre-GST cost associated with Phase Two was \$13,300.64.

[41] The deconstruction and disposal of the *Rolano* (and Phase Three) began on 26 August 2019. Much of the deconstruction was done while the vessel remained in the water. It was ultimately removed from the water on 23 September 2019, with the final disposal work completed on 18 October 2019. Throughout the deconstruction process, significant quantities of sorbent materials were used on oils and oiled materials in the vessel. These were disposed of through the appropriate waste streams, along with volumes of sludge, oil, and oily water.

FUND-CCG CORRESPONDENCE AND SUPPLEMENTARY SUBMISSIONS

[42] On 4 March 2021, the Fund reached out to the CCG requesting photographs of the response to the Incident as well as details on *CGE 734*. The CCG responded shortly thereafter.

Figure 8 – Photograph provided by the CCG

[43] On 10 June 2021, the Fund put three inquiries to the CCG. Those inquiries and the corresponding responses from the CCG (in green text), received on 24 June 2021, were as follows:

1. CCG, likely accompanied by Rilaur Enterprise, boarded the Rolano shortly after the vessel was refloated on 12th February 2019. Both CCG and Rilaur would have wanted to verify water ingress and CCG did establish pumping arrangements for the tow to Discovery Harbour (Campbell River). A copy of any notes made by either CCG and/or Rilaur as to what was observed would be appreciated.

CCG boarded the vessel once it was removed from the shore by Rilaur Enterprise. The vessel was inspected stern to bow. Starting with the aft compartment and stuffing box which had minimal amount of water ingress, the machinery space which had minimal water ingress, the fish hold which had minimal water ingress, and the focsle which had no water ingress.

2. It is highly likely that both CCG and Rilaur would have satisfied themselves as to the rate of water ingress into the hull prior to the tow from Campbell River to Ladysmith which started on February 14th. Similar to question 1, please provide a copy of any notes/observations that were made prior to the start of that tow as well as a brief description of any contingency pumping arrangements that may have been installed.

CCG was happy with the vessel condition prior to the tow, while under tow we did 20 minute rounds to check for water ingress in all spaces. 2" gas de-watering pumps were installed in all spaces but were unnecessary during the tow.

3. CCG engaged Saltair to monitor the Rolano on its behalf shortly after the vessel's arrival in Ladysmith on February 15th until the start of deconstruction on August 26th. Saltair invoicing notes that the vessel was pumped out and sorbents were changed as required during this period. Did Saltair provide CCG any indication/notes/reports as to how often pumping was required along with any estimated water volumes?

The Rolano File logs note 'Day Crew: pump as required' 'Change out absorbents as required'. We monitored the vessels once a day for ingress and had a 2" pump in position on the vessel and additional pumps on stand-by. There were no measurable volumes of water pumped out. The supplied reports are the reports corresponding to the Rolano.

Figure 9 – Screen capture of Fund-CCG correspondence dated 10 and 24 June 2021

[44] On the third item in Figure 9, the CCG reached out to Saltair, which provided the CCG with the supplied answer in an email that the CCG provided to the Fund on 23 June 2021. The primary evidence requested by the Fund was not received.

DETERMINATIONS AND FINDINGS

The CCG submission presents potentially eligible claims

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

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

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

[48] 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 “preventive measures” as

contemplated under the International Convention on Civil Liability for Bunker Oil Pollution Damage, and are therefore potentially eligible for compensation.

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

Identification, description, and ownership of the *Rolano*

[50] A search of Transport Canada records was carried out in order to correctly identify the *Rolano*. A vessel roughly matching the description provided by the CCG is registered in Canada under that name, under the official number 371083. The vessel is listed as a fishing vessel of 77.48 gross tons, 21.88 metres in length, 6.25 metres at the beam, and 2.56 metres in depth. Its construction is listed as steel, and power is noted as being provided by a single diesel engine of 200 horsepower. No information on the age of the vessel is present in Transport Canada records.

[51] While it is concluded that the subject vessel was in fact the *Rolano* described in the preceding paragraph, it is noted that the vessel's hull was in fact largely of wooden construction, reinforced with steel ribs, and that it was equipped with substantial rigging and sails. In addition, a brief investigation of the history of the *Rolano* has determined that the vessel was built for the German navy during the Second World War. The wooden hull with steel reinforcement suggests it was a minesweeper. This unusual hull configuration may explain the partially inaccurate biographical details filed with Transport Canada.

Findings on the evidence submitted by the CCG

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

[52] The CCG included with its submission a narrative and other supporting documents which set out the facts of the Incident in some detail. The CCG also responded to inquiries from the Fund. The descriptions of material events contained in the CCG's documentation and responses to the Fund's inquiries are accepted as generally accurate. There are, however, some important evidentiary shortcomings and discrepancies, which are detailed below.

The initial response to the Incident was broadly reasonable

[53] It is accepted that the *Rolano* posed an oil pollution threat as a result of its grounding, though the specifics of that threat were not fully understood immediately by the CCG. The precise timeline of events on both 10 and 11 February 2019 is unclear, but the available evidence leads to a conclusion that the initial response to the Incident was generally reasonable.

[54] When the Incident was first reported to the CCG on 10 February 2019, the few details that were then known supported a larger-scale response than might be undertaken when a smaller vessel goes aground. At roughly 70 feet in length, the *Rolano* was relatively large, with significant capacity for oils in its tanks and machinery. The CCG had also received a report that there were possible hydrocarbons in containers on its deck, so it was reasonable to assume that some oil might already have entered the water. The vessel was

thought to be in poor condition, it was hard aground and listing, and Gorge Harbour was identified as a particularly sensitive area. Had the *Rolano* broken up or sunk beyond its gunnels, a significant discharge of oil may have resulted. Finally, it appeared very unlikely that a responsible owner would emerge.

[55] Because the CCG was not able to deploy resources to Gorge Harbour quickly, it engaged WCMRC to ensure that any discharge of oils from the *Rolano* could be contained and recovered to the extent possible. Though the evidence does not show that any discharge occurred, it was reasonable for the CCG to assume that one was likely, and it is accepted that ensuring competent and prompt readiness to respond was also reasonable, even if that readiness came at the considerable dollar cost of contracting WCMRC. For these reasons, the WCMRC costs are generally accepted, albeit with a few exceptions that are discussed in the next section of this letter.

[56] It is noted that the findings of the preceding paragraphs are based solely on the information presented in the CCG's narrative, a document that was likely prepared long after the Incident. While the relevant factual assertions of the narrative are accepted in this instance, claimants should make all efforts to preserve, compile, and submit contemporaneous evidence, which in this case might have included the original incident reports and any notes or correspondence relating to mobilization and contracting. Crucial to assessing the reasonableness of oil pollution mitigation measures is a record of what was known at the relevant times during a response operation. Ideally, this record would describe the decision-making process and show what measures were approved, why, when, and by whom.

[57] WCMRC and Strategic personnel arrived on scene early on the morning of 11 February 2019 and began deploying containment boom around the *Rolano*. Some hours later, CCG ER personnel arrived to assess the situation. Given the size of the *Rolano* and the probable complexity of its internal spaces, and noting that WCMRC does not board stricken vessels, it is accepted that sending four CCG personnel and a PRV was a reasonable allocation of resources.

[58] The CCG personnel who boarded the *Rolano* and conducted an assessment were satisfied that the vessel could be refloated at high tide on 12 February 2019 without the aid of divers, so the decision was taken to engage Rilaur to do so. That decision, the Rilaur salvage operation, the tow to Campbell River, and all associated costs are considered reasonable. The vessel's anchorage at Gorge Harbour had failed, and without a responsible owner in the picture it was necessary to ensure that the *Rolano* could be safely secured and properly assessed dockside.

[59] The precautionary decision to remove the accessible oils from the *Rolano* on its arrival at Campbell River is also accepted as reasonable, as are all costs related to the pump-out, including those associated with Rilaur, Walco, and Terrapure.

The steps taken after the pumping operation of 13 February 2019 are accepted in part

[60] A vessel that contains oils only poses an oil pollution threat if it is at risk of discharging those oils. Even if there is a risk of a discharge, any measures taken in response

thereto must be reasonable, which is to say proportionate to the threat. On the available facts, the CCG ought to have recognized at some point after 13 February 2019 that the *Rolano* was not at risk of sinking.

[61] The Personnel and Equipment Daily Log entries of 12 and 13 February 2019, record that there was “no water ingress” into the Vessel. The later Saltair and BSM observations likewise indicate there was no water ingress. The CCG’s reply to the Fund’s inquiry of 10 June 2021 indicates “minimal water ingress” was observed. It follows that a determination should be made that the *Rolano* took on no meaningful quantities of water during or subsequent to the Incident.

[62] According to the Personnel and Equipment Daily Logs, CCG personnel conducted a second assessment of the *Rolano* at Campbell River on 13 February 2019. They noted the presence of residual oils in the vessel’s bilge and machinery and expressed concerns about its condition: “Closer inspection of the hull today revealed significant damage due to rot and lack of maintenance. Hull framing (iron) is heavily corroded. Hull (wood) planking shows significant damage near fastenings above the waterline.”

[63] Evidently, the CCG recognized that it lacked sufficient knowledge of the condition of the *Rolano* on 13 February 2019 to allow it to determine whether the vessel was at risk of taking on water and sinking, though it flagged some reasonable concerns and noted the presence of residual oils. Had the *Rolano* sunk at this stage in the response, a discharge of some quantity of oil would have been likely. Considering the size, complexity, and age of the vessel, the decision to arrange for a professional condition survey is accepted.

[64] According to the narrative, keeping the *Rolano* at Campbell River with regular monitoring was not possible, and other nearby facilities lacked immediate capacity for the vessel. The result was a lengthy and correspondingly expensive towing operation (see Figure 7) to Ladysmith, the location of Saltair’s vessel deconstruction facilities. As with the early stages of the response operation, no primary evidence is supplied in support of the CCG’s decision-making on this front. Though the lack of direct evidence is problematic, the justifications for the towing operation put forward in the narrative are compelling given the large size of the vessel. The Rilaur tow from Campbell River to Ladysmith is accepted, as are all associated costs. It is noted, however, that the CCG’s willingness to have the vessel towed a significant distance suggests that it did not have significant concerns about the integrity of its hull.

[65] On arrival in Ladysmith, Saltair personnel spent four hours securing the *Rolano* at a government dock and presumably familiarizing themselves with the vessel and deploying pumps as a precaution. The costs associated with this labour are accepted. Without a statement of work or a contract, however, and without any explanation of the emergency rates that were charged for moorage, monitoring, and pump rentals, these rates are not accepted. Instead, the regular rates charged during Phase Two of Saltair operations have been substituted.

[66] BSM attended the *Rolano* twice. While the CCG narrative and the BSM invoice indicate that the first survey occurred on 11 March 2019, the survey report, prepared earlier than the other two documents, states that it occurred on 1 March 2019. The earlier date is

accepted as accurate. In any case, it was over two weeks following the vessel's arrival at Ladysmith before the vessel was first surveyed. A second survey, involving divers, occurred on 25 March 2019. All this while storage costs were mounting. With no reasonable explanation for the delays, they are not accepted. Instead, an assessment period of 21 days is allowed.

[67] The BSM survey report shows that the *Rolano* was at or approaching the end of its useful life at the time of the Incident. It also confirms that unquantified residual oils were present in the vessel's bilge spaces and some of its machinery. That said, neither the survey report nor any of the observations made by CCG or Saltair personnel depict a vessel that was observed to be taking on meaningful volumes of water, let alone in quantities or at a rate sufficient to put the vessel at risk of sinking. The only water ingress risk identified in the BSM report was that posed by rainwater entering the hull through the upper decks, but there is no evidence that any such ingress was observed over a six-month period that would have seen considerable precipitation. The CCG's position that the *Rolano* was at risk of sinking and discharging oil is not accepted.

[68] It is determined based on the information available that the *Rolano* should not have been considered an oil pollution threat beyond the aforementioned 21-day assessment period. All costs incurred after that period are therefore rejected.

CLAIM AND OFFER DETAILS

[69] 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: \$230,769.20

[70] For the reasons already set out in this letter, the amounts claimed with respect to both Rilaur invoices are accepted in full, as are the amounts associated with the Walco, Terrapure, and BSM invoices. The remaining invoices are discussed in the following paragraphs.

WCMRC

[71] As has been noted, the bulk of claimed WCMRC costs are accepted. Though these costs are high relative to other contractors and the CCG's own operating costs, WCMRC rates are public and inflexible, and the early circumstances of the Incident (a relatively large and dated wooden-hulled ship with a large capacity for oils had grounded on a hard shore) justified a rapid precautionary response, which WCMRC was equipped to deliver. The only reductions made with respect to claimed WCMRC costs result from the limited documentation in support thereof.

[72] First, with no records on the tasking of off-site WCMRC personnel, it is not accepted that a remote operations specialist was necessary in addition to a logistics

specialist and an administrative support person. Accordingly, the 5.25 hours worked by the remote operations specialist, totalling \$551.25, are not accepted.

[73] Second, without an explanation of the rationale for deploying the additional 300 feet of containment boom on 12 February 2019 (650 feet were already deployed), the associated cost of \$156.00 is rejected.

[74] Third, without an explanation for the use of a benzene gas detector, the associated cost of \$600.00 is rejected. Though dangerous in enclosed spaces, benzene gas dissipates rapidly in open air, and there is no indication that either WCMRC or Strategic personnel would have boarded the *Rolano* or entered its enclosed spaces. As such, there is no justification for the associated charge.

[75] Fourth, the WCMRC documentation offers no explanation for the hiring of Az-Tec. While it appears that Az-Tec delivered a WCMRC equipment trailer to Gorge Harbour, it is not clear why that trailer could not have been towed by the WCMRC or Strategic vehicles that were already in use. Accordingly, the costs associated with Az-Tec are not accepted. The rejected amounts associated with Az-Tec total \$2,474.52, including a hotel room for one of its personnel.

[76] Because subcontractor and accommodations costs totalling \$2,474.52 have been rejected, an adjustment to WCMRC's 15% handling fee is necessary. The result is a reduction of \$371.18. Pre-GST reductions to the WCMRC invoice total \$4,152.95, yielding an accepted subtotal of \$25,787.12. Including GST, the accepted amount for claimed WCMRC costs comes to \$27,076.48.

Saltair

[77] For the reasons set out above, only the initial Saltair labour charge of \$380.00 and the first 21 days of storage, monitoring, and pump rental costs are accepted, at the regular rates billed for Phase Two (i.e., not the Phase One emergency rates). Including GST, the total amount allowed with respect to claimed Saltair costs comes to \$3,272.93.

Summary of contract services amounts claimed and allowed

Contractor	Work Description	Invoice Date	Claimed	Allowed
WCMRC	Initial response, containment boom deployment, monitoring	2019-03-19	\$31,437.07	\$27,076.48
Rilaur	Refloating, towage to Campbell River, repositioning	2019-02-26	\$2,769.38	\$2,769.38
Rilaur	Towage to Ladysmith	2019-02-27	\$9,646.88	\$9,646.88
Walco	Vacuum removal and disposal of oils	2019-02-20	\$4,421.36	\$4,421.36
Terrapure	Disposal of oily waste	2019-02-15	\$1,774.50	\$1,774.50
BSM	In-water survey, diver inspection, survey report	2019-06-16	\$4,974.38	\$4,974.38

Contractor	Work Description	Invoice Date	Claimed	Allowed
Saltair	In-water storage, monitoring, deconstruction, and disposal	2019-11-26	\$175,745.63	\$3,272.93
Totals			\$230,769.20	\$53,935.91

Table 1 – Summary of contract services amounts claimed and allowed

The contract services portion of the submission is allowed in the amount of \$53,935.91.

Schedule 3 – Travel Claimed: \$3,163.59

[78] Claimed travel costs for the four ER personnel involved in the response to the Incident include *per diem* allowances, accommodations, personal vehicle allowances, and a ferry ticket. With only a few exceptions, these costs are considered to have been reasonably incurred in support of an oil pollution response operation.

[79] The problematic costs are primarily associated with an employee who took a BC Ferry to Tsawwassen, near Vancouver, on the evening of 10 February 2019 at a cost of \$74.70. An invoice shows the employee then stayed the night at a Vancouver International Airport hotel at a cost of \$145.00. In addition, the CCG claims \$83.39 in *per diem* costs associated with the employee for 10 February 2019, who appears to have joined his colleagues in Campbell River the next day (though it is not clear how he got there). Furthermore, it is not clear how a trip to the Vancouver area on 10 February 2019 had anything to do with the *Rolano* response, especially considering that none of the ER personnel involved logged any hours with respect to the Incident on that date. Accordingly, the amounts detailed in this paragraph, which total \$303.09, are rejected.

[80] Finally, \$59.41 is sought with respect to personal vehicle allowances. According to the narrative and logs, all responding ER personnel departed Victoria, where they were presumably based, in a CCG vehicle. No information or evidence expressly states how a personal vehicle was used, nor can its use be reasonably inferred. As a result, this portion of the claim is not accepted.

The travel portion of the submission is allowed in the amount of \$2,801.09.

Schedule 4 – Salaries – Full Time Personnel Claimed: \$5,564.10

[81] The CCG seeks to recover salary costs associated with four ER personnel, one of whom was a Response Supervisor. Those personnel worked a total of 30 regular salaried hours each during the CCG’s response to the Incident, from 11 through 14 February 2019. For the reasons set out above, this is considered a reasonable allocation of resources. The associated regular salary costs, including 20% markup that represents the cost of the CCG’s employee benefits plan, are also considered reasonable.

The salaries portion of the submission is allowed in full.

Schedule 5 – Overtime – Full Time Personnel Claimed: \$3,361.68

[82] The CCG seeks to recover overtime costs associated with four ER personnel, who logged a total of 14.5 hours each at 1.5x their ordinary hourly rate, less employee benefits, from 11 through 13 February 2019. For the reasons set out above, this is considered a reasonable allocation of resources. Furthermore, the associated costs are also considered reasonable.

The overtime portion of the submission is allowed in full.

Schedule 11 – Pollution Counter-measures Equipment Claimed: \$4,776.00

[83] The CCG submission contains documentation in support of the four-day use of *CGE 734*, a workboat described as a PRV I but for which the CCG has claimed a day rate (\$1,194.00) usually associated with the use of a PRV II. At the request of the Fund, the CCG provided a photograph and specifications of that vessel which show that it is roughly equivalent to a PRV II in both size and capabilities. It is therefore accepted that the day rate of \$1,194.00 is the appropriate rate, and a reasonable rate, for the use of that vessel. It is further concluded that the deployment of *CGE 734* was reasonably necessary to aid the CCG's response operation.

The pollution counter-measures portion of the submission is allowed in full.

Schedule 12 – Vehicles Claimed: \$389.44

[84] Documentation shows that the CCG used one vehicle during its four-day response to the Incident, a Ford F-350 truck. The CCG claims a day rate of \$65.57 for the use of that vehicle, plus fuel costs of \$127.16, calculated at a rate of \$0.22 for each of the 578 kilometres logged.

[85] For the reasons set out above, it is accepted that sending CCG personnel to the site of the Incident was reasonable in the circumstances. Furthermore, the vehicle expenses sought are reasonable and in line with federal costing guidelines.

The vehicles portion of the submission is allowed in full.

Schedule 13 – Administration Claimed: \$241.03

[86] 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, with the only reductions made the claimed amount accounting for the reduced amount allowed with respect to travel costs.

The administration portion of the submission is allowed in the amount of \$229.83.

OFFER SUMMARY AND CLOSING

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

Schedule	Claimed	Allowed
2 – Contract Services	\$230,769.20	\$53,935.91
3 – Travel	\$3,163.59	\$2,801.09
4 – Salaries – Full Time Personnel	\$5,564.10	\$5,564.10
5 – Overtime – Full Time Personnel	\$3,361.68	\$3,361.68
11 – Pollution Counter-measures Equipment	\$4,776.00	\$4,776.00
12 – Vehicles	\$389.44	\$389.44
13 – Administration	\$241.03	\$229.83
Totals	\$248,265.04	\$71,058.05

Table 2 – Summary of amounts claimed and allowed

[88] Costs and expenses in the amount of \$71,058.05 are accepted and will be paid together with statutory interest calculated at the date of payment if the Offer is accepted.

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

[90] 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.

[91] 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.

[92] 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.

[93] 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