



OFFER LETTER

Ottawa, 5 November 2021
SOPF File: 120-890-C1
CCG File:

BY EMAIL

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

RE: FV *Miss Mall Bay* — Lunenburg Harbour, Nova Scotia
Incident date: 2019-04-03

SUMMARY AND OFFER

[1] This letter responds to a submission from the Canadian Coast Guard (the “CCG”) with respect to the fishing vessel *Miss Mall Bay*, which grounded on 3 April 2019, at Lunenburg Harbour, Nova Scotia (the “Incident”).

[2] On 1 April 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 \$183,859.32 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 \$35,824.08 (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, at 12:45 on 3 April 2019, CCG Environmental Response (“ER”) received a report that “the fishing vessel *Miss Mall Bay* (O.N. 348646) had gone aground in Lunenburg Harbour.” Two ER personnel were dispatched from Dartmouth at 13:15, arriving on scene at 14:55:

The vessel was aground in the water, roughly 60 feet from the waterline, listing to the starboard side and rocking slightly. ER personnel spoke with the Harbour Master who confirmed that the vessel dragged anchor and was now in very shallow water and aground.

At 15:15 hrs, ER personnel met with the vessel owner [...]. He advised that he had permission to tie up the vessel at the Picton Castle Wharf but did not have someone to tow it.

[8] At 16:20, the owner advised that he had found a local fisherman to assist with towing the *Miss Mall Bay* to Picton Castle Wharf, where its fuel would be removed. The attempt to tow the vessel was unsuccessful, as the stern of the vessel was too high out of the water. The owner reported that another attempt would be made the following day. The two ER personnel departed, arriving back in Dartmouth at 22:00.

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

[9] Two ER personnel returned to Lunenburg on 4 April 2019, arriving at 09:00. They determined that the *Miss Mall Bay*

presented a marine pollution threat as it was sitting aground with a list at a low tide and thus would very likely be flooded at higher tides instead of refloating, thus creating a high possibility of releasing pollutants into the marine environment from the vessel machinery and fuel tanks.

At 09:15 hrs, ER personnel met with the vessel owner [...] who explained he was unable to respond to the incident and signed a form stating “he is the owner and unable to respond to mitigate the threat of pollution release to the marine environment”

The ER Deputy Superintendent was informed and advised that he would work on an emergency contract. ER personnel remained in Lunenburg to monitor the situation.

At 11:00 hrs, ER met with Life Shipyard to discuss options for removing the vessel from the water to eliminate permanently the threat of pollution

from the marine environment. Removal was determined to be the most reasonable solution in the circumstances as the vessel was observed to be in disrepair and the owner stated he had no berthing arrangements nor the financial means to arrange them.

At 13:15 hrs, ER personnel returned and remained on-site until 15:10 hrs and were back at the Dartmouth Coast Guard base at 17:00 hrs.

[10] ER personnel arrived at Lunenburg at 09:45 on 5 April 2019:

At 10:00 hrs, RMI personnel commenced preparing for bulk pollutant removal operations (a small open boat was deployed and brought out a suction hose attached to a reservoir onshore).

At 10:45 hrs, pumping started from the vessel fuel tanks, hydraulic tanks and engine room bilge to remove approximately 950 litres of bulk pollutants.

At 14:00 hrs, ER personnel visited different wharves in Lunenburg to find a berth. ER spoke with Picton Castle wharf who originally accepted the *Miss Mall Bay* for berthing but declined when they were informed that the vessel was not insured.

At 15:28 hrs, ER personnel was back on-site along with the vacuum truck. Pumping operations commenced at 16:00 hrs and were completed at 17:20 hrs.

At 18:00 hrs, RMI was off the scene, ER personnel departed at 18:30 hrs and arrived at the Dartmouth Coast Guard base at 20:00 hrs.

[11] On 8 April 2019, ER personnel arrived at Lunenburg at 05:15 to observe salvage operations conducted by RMI Marine Ltd. (“RMI”). Air bags were used to raise the vessel with the tide. By 10:50, the *Miss Mall Bay* had been refloated, and it was secured at Lunenburg Industrial Foundry and Engineering Plant (“LIFE”) wharf at 11:15. “The vessel showed no signs of water ingress.” RMI demobilized and ER personnel departed Lunenburg at 12:15, reaching Dartmouth at 14:30.

[12] ER personnel returned to Lunenburg on 9 April 2019. The narrative entry for that date notes that “The vessel showed no visible signs of water ingress. The waterline on the hull was the same as previously observed and no additional water was in the bilge.”

[13] On 6 May 2019, ER personnel attempted unsuccessfully to contact the owner of the *Miss Mall Bay* to inquire about his plans for the vessel.

[14] Following the 9 April 2019 visit, with the *Miss Mall Bay* secure at the LIFE Plant 1 wharf, ER personnel did not return to the vessel until 17 May 2019. LIFE had reported concerns with the vessel’s draft. In response, the CCG engaged a vacuum truck that pumped 9,020 litres of oily bilge water from the vessel under the observation of ER personnel.

[15] From 25 May to 19 June 2019 the CCG made four unsuccessful attempts to establish contact with the owner of the *Miss Mall Bay* and his brother-in-law, who had been identified as a prospective purchaser of the vessel.

[16] ER personnel returned to Lunenburg on 25 June 2019, overseeing the removal by vacuum truck of approximately 9,000 litres of oily water.

[17] ER personnel returned on 9 and 25 July 2019, as well as 20 August 2019 to inspect the vessel. The narrative entry for 20 August 2019 reads in part as follows: “oily water mix [was observed] in the bilge [as well as] an increase in the vessel’s draft since the last inspection. As no water ingress was observed after refloating the vessel, the source of water ingress was unknown but potentially thought to be down flooding from rain due to the state of disrepair of the vessel.”

[18] ER personnel returned to Lunenburg on 4 September 2019 to oversee the vacuum removal of 5,300 litres of oily bilge water from the vessel.

[19] Following Hurricane Dorian, ER personnel travelled to Lunenburg to inspect the vessel on 9 September 2019. They noted that the vessel was “intact and water level in the bilge [was] within acceptable limits.”

[20] On 18 October 2019, the CCG sent two registered letters to the last-known addresses of the owner of the *Miss Mall Bay*, with whom the CCG had not been in contact since April 2019, when his cellphone was disconnected.

[21] On 7 November 2019, the owner re-established contact with the CCG. When the CCG asked to be notified of his intentions, he stated that he had found two potential foreign buyers: one in Florida, the other in Haiti. The owner wished to complete work on the vessel *in situ* prior to arranging a tow. The CCG referred him to both LIFE and Transport Canada (“TC”).

[22] On 8 November 2019, the owner informed the CCG that he had located a third potential buyer, from Cape Sable Island. The CCG requested the contact information of this individual. The narrative entry for 8 November 2019 also notes:

[The owner] was concerned whether parts of the vessel (generator, reduction gear, etc.) would be serviceable and if the cost of towing would supersede the vessel value. ER informed [the owner] that the berthage charges to CCG continue to increase and resolution would be required i.e. the sale of the vessel or its destruction.

[23] On 12 November 2019, the owner reported that he had lost contact with the potential buyer from Haiti, and that there were no developments with the other potential buyers:

[The owner] stated potential buyers had reservations about being able to complete repairs alongside and about TC’s requirements for towing because these two (2) items may be more expensive than the value of the vessel. ER stated that if the cost of repairs or towing supersedes the value of the vessel, the vessel could be deconstructed to avoid continuous berthing fees. [The owner] stated he would follow up for more information from [LIFE] about completing works alongside and towing costs using a vessel certified to tow.

[24] On 13 November 2019, the owner informed the CCG that he had not been able to contact LIFE. Immediately thereafter, the CCG did so on his behalf. LIFE stated that works could be conducted on the vessel at its facility provided insurance was in place and a deposit was paid. The CCG then left a voicemail for the owner requesting the contact information for the potential buyer from Sable Island, which had not yet been provided. In addition, the CCG stated that it would take action to remove and destroy the *Miss Mall Bay* at the owner's expense if no progress was made.

[25] On 17 November 2019, the owner provided the CCG with contact information for the prospective buyer from Florida. The following day, the CCG left a voicemail for that individual.

[26] On 21 November 2019, the CCG spoke with LIFE, which stated that the cost of a certified tow for the *Miss Mall Bay* to Cape Sable Island would be approximately \$18,600.00. The manager of LIFE expressed concerns about winter ice in the harbour. Later the same day, the prospective buyer from Florida contacted the CCG and inquired whether the vessel could be removed from the water. The CCG referred him to LIFE and informed him of its requirements. He was also informed that, should he purchase the vessel, he would need to submit a written plan to the CCG.

[27] On 5 December 2019, two ER personnel travelled to Lunenburg to oversee the vacuum removal of 3,960 litres of oily bilge water from the vessel. The ER personnel also met with a contractor to discuss deconstruction costs, and whether the vessel had any residual value.

[28] On 27 December 2019, the owner informed the CCG that the Florida-based individual was no longer interested in the *Miss Mall Bay*, but that another potential buyer had been identified, this time in Bermuda. The CCG informed the owner that it would continue to move ahead with its plan to deconstruct the vessel unless a documented sale was completed. The owner said he would be in touch the following week.

[29] On 10 January 2020, two ER personnel travelled to Lunenburg to accompany a surveyor who had been engaged "to complete a survey of the vessel to determine if there is any residual value prior to disposal." The surveyor's report, received on 21 January 2020, "indicated little residual value of the vessel with some parts that could be salvaged to mitigate removal costs." The CCG produced a draft statement of work for the removal of the vessel.

[30] On 31 January 2020, LIFE informed the CCG that a potential buyer for the *Miss Mall Bay* was on site. The CCG allowed the potential buyer to view the vessel with an escort from LIFE. The buyer was informed of the CCG's conditions for purchasing the vessel.

[31] On 3 February 2020, LIFE informed the CCG that footprints indicated that someone had been on board the *Miss Mall Bay*, but that nothing appeared to have been stolen or otherwise disturbed. Two ER personnel visited Lunenburg on 6 February 2020 to view security camera footage but were unable to determine who might have boarded the vessel. Water in the bilge was noted to be one foot below the pumping threshold. The CCG

also contacted the potential buyer, who stated that he saw no value in the vessel. He also informed the CCG that the owner was at sea, possibly transporting another vessel to the Caribbean.

[32] On 11 March 2020, the CCG prepared a newspaper notice “with the purpose of informing potential parties with interest in the *Miss Mall Bay* of CCG’s intention to remove and deconstruct the vessel.”

[33] On 16 March 2020, all non-critical response activities involving the *Miss Mall Bay* were halted due to COVID-19.

[34] On 19 March 2020, two ER personnel travelled to Lunenburg to observe the vacuum removal of 7,500 litres of oily bilge water from the vessel. Sorbent pads were used to determine hydrocarbon presence in the bilge prior to pumping.

Figures 3 and 4 – Screen captures of uncaptioned photographs dated 19 March 2020

[35] On 26 June 2020, the CCG received a call from another potential buyer for the *Miss Mall Bay*. The CCG informed the potential buyer of its conditions and referred him to the owner. The CCG spoke with the owner on 29 June 2020, who indicated his willingness to part with the vessel for free. The owner also stated that “he knew the interested party and doubted his capability to take over the vessel.”

[36] On 23 July 2020, the CCG unsuccessfully attempted to contact the owner of the *Miss Mall Bay*. The CCG also spoke with LIFE, requesting “a reduction in visual monitoring to twice weekly due to less precipitation during the summer months and historical data on down flooding during the previous months.”

[37] On 21 September 2020, two ER personnel travelled to Lunenburg to oversee the vacuum removal of 6,000 litres of oily bilge water. As had been done previously, sorbent materials were deployed prior to pumping. The narrative entry for 21 September 2020 states that “there [was] pollution in the bilge/ engine space as well as oil soaked into the timbers of the vessel.”

[38] On 7 December 2020, a request for quotes for the removal and disposal of the *Miss Mall Bay* based on a statement of work prepared by the CCG was sent to three companies. The owner was notified.

[39] On 8 January 2021, two ER personnel travelled to Lunenburg to oversee the vacuum removal of 5,000 litres of oily bilge water. Sorbent materials were used prior to pumping.

[40] On 2 March 2021, the CCG awarded the removal, deconstruction, and disposal contract to Trident Marine Services (“Trident”). Lightering work began on 6 March 2021, and the vessel was towed and removed from the water on 8 March 2021. Trident then proceeded with dismantlement and disposal, completing its work on 11 March 2021.

Cost summary

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

		<u>SCH</u>
MATERIALS AND SUPPLIES	\$ -	1
CONTRACT SERVICES	\$ 174,543.44	2
TRAVEL	\$ 354.90	3
SALARIES - FULL TIME PERSONNEL	\$ 5,711.63	4
OVERTIME - FULL TIME PERSONNEL	\$ 1,524.38	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	\$ 1,535.31	12
ADMINISTRATION	\$ 189.65	13
	<hr/>	
TOTAL CCG COST OF INCIDENT	<u>\$ 183,859.32</u>	

Figure 5 – Screen capture of the cost summary

CCG internal documentation

[42] Various summaries and timesheets are provided in support of claimed salary and overtime costs. Because the CCG’s response to the Incident spanned nearly two years, a number of involved personnel saw their salaries increase over its course. These increases in salary are reflected in the supporting documentation.

[43] 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. In some cases, hourly rates and hours worked do not perfectly align with the claimed totals for each employee, presumably as a result of rounding. Claimed salary and overtime hours and associated costs are summarized in the two tables that follow, the first of which covers 2019, while the second covers both 2020 and 2021.

Name, Group, Level	Rates	Hours Claimed by Date and Day in 2019							Total Hours	Claimed Cost
		04-03 W	04-04 Th	04-05 F	04-08 M	04-09 T	09-04 W	12-05 Th		
AS	Reg: \$39.55	2.25	7.50	7.50	7.50	4.00	-	-	28.75	\$1,137.16
GT-04	1.5x: N/A	6.50	2.50	4.00	1.50	-	-	-	14.50	\$0.00 ¹
CP	Reg: \$43.62	1.75	-	-	-	-	-	-	1.75	\$76.34
GT-04	1.5x: \$54.53	7.00	-	-	-	-	-	-	7.00	\$381.68
BM1	Reg: \$43.06	-	7.50	7.50	-	-	-	6.25	21.25	\$915.07
GT-05	1.5x: \$53.84	-	2.50	4.00	-	-	-	-	6.50	\$349.88
BM2	Reg: \$54.61	-	-	-	7.50	-	-	-	7.50	\$409.58

¹ A note on the timesheets indicates “employee did not submit OT”.

Name, Group, Level	Rates	Hours Claimed by Date and Day in 2019							Total Hours	Claimed Cost
		04-03 W	04-04 Th	04-05 F	04-08 M	04-09 T	09-04 W	12-05 Th		
GT-07	1.5x: \$68.27	–	–	–	1.50	–	–	–	1.50	\$102.40
BH	Reg: \$47.08	–	–	–	–	4.00	–	–	4.00	\$188.32
GT-05	1.5x: N/A	–	–	–	–	–	–	–	0.00	\$0.00
CC	Reg: \$48.96	–	–	–	–	–	–	5.00	5.00	\$244.81
GT-05	1.5x: N/A	–	–	–	–	–	–	–	0.00	\$0.00
IF	Reg: \$38.37	–	–	–	–	–	–	5.00	5.00	\$191.83
GT-04	1.5x: N/A	–	–	–	–	–	–	–	0.00	\$0.00
KL	Reg: \$21.17	–	–	–	–	–	–	6.00	6.00	\$127.01
SS-U2	1.5x: N/A	–	–	–	–	–	–	–	0.00	\$0.00
Totals									108.75	\$4,124.08

Table 1 – Claimed salary and overtime hours, 2019 (full names of CCG personnel replaced with initials)

Name, Group, Level	Rates	Hours Claimed by Date and Day in 2020 and 2021						Total Hours	Claimed Cost
		2020		2021					
		03-19 Th	09-21 M	01-08 F	03-08 M	03-09 T	03-10 W		
AS	Reg: \$45.85	–	–	–	5.50	–	5.00	10.50	\$481.45
GT-05	1.5x: \$57.32	–	–	–	2.75	–	–	2.75	\$157.62
CC	Reg: \$52.13	–	–	4.50	–	5.00	–	9.50	\$495.27
GT-05	1.5x: N/A	–	–	–	–	–	–	0.00	\$0.00
CS	Reg: \$46.92	6.00	–	–	–	–	–	6.00	\$281.52
SO-MAL-04	1.5x: N/A	–	–	–	–	–	–	0.00	\$0.00
KC	Reg: \$38.37	–	1.00	–	–	–	–	1.00	\$38.37
GT-04	1.5x: \$47.96	–	4.00	–	–	–	–	4.00	\$191.83
NB	Reg: \$43.39	–	–	–	5.50	5.00	5.00	15.50	\$672.50
GT-04	1.5x: \$54.24	–	–	–	2.75	–	–	2.75	\$149.14
SC	Reg: \$40.85	–	–	4.50	–	–	–	4.50	\$183.84
GT-04	1.5x: N/A	–	–	–	–	–	–	0.00	\$0.00
SF	Reg: \$38.37	6.00	1.00	–	–	–	–	7.00	\$268.56
GT-04	1.5x: \$47.96	–	4.00	–	–	–	–	4.00	\$191.83
Totals								67.50	\$3,111.93

Table 2 – Claimed salary and overtime hours, 2020 through 2021 (full names of CCG personnel replaced with initials)

[44] Internal expense report documentation is provided in support of claimed travel costs, which are limited to *per diem* claims by personnel who travelled to Lunenburg. The amounts claimed are broken down as follows (26 April 2019 does not accord with other documentation):

Name	Employee Travel Costs Claimed by Date									Claimed Cost
	2019							2020	2021	
	04-03	04-04	04-05	04-08	04-09	04-26	09-04	09-21	03-08	
AS	\$50.65	\$20.10	\$70.75	40.60	\$20.10	–	–	–	–	\$202.20
BM1	–	\$20.10	\$20.10	–	–	\$20.10	–	–	–	\$60.30
CC	–	–	–	–	–	–	\$20.10	–	–	\$20.10
SC	–	–	–	–	–	–	–	\$51.25	–	\$51.25
NB	–	–	–	–	–	–	–	–	\$21.05	\$21.05
Total										\$354.90

Table 3 – Claimed travel costs by employee and date (full names of CCG personnel replaced with initials)

[45] Claimed vehicle costs are supported by mileage logs indicating that three separate vehicles were used by CCG personnel on 13 days from 3 April 2019 through 10 March 2021. The logs indicate that those vehicles were driven a total of 2,987 kilometres in the

course of the CCG’s response. Claimed vehicle costs include a day rate of \$67.56 and a per kilometre rate of \$0.22 for fuel. Vehicle logs show the following usage breakdown, though two of the dates (5 September and 9 December 2019) do not accord with other documentation:

	CCG Vehicle Kilometres by Date													Total
	2019							2020		2021				
	04-03	04-04	04-05	04-08	04-09	09-05	12-09	03-19	09-21	01-08	03-08	03-09	03-10	
KM	234	258	237	221	208	208	351	237	200	201	224	203	205	2,987

Table 4 – CCG vehicle mileage by date

[46] A summary provided in support of the claim for administration costs shows that they were calculated as a rate of 3.09% against the total claimed amounts for travel costs and regular salaries, less employee benefits.

[47] Finally, the submission includes six “Daily Field Supervisor’s Reports”, dated 3 April 2019 through 4 September 2019, and seven “Personnel & Equipment Daily Logs”, dated 5 September 2019 through 10 March 2021. Generally, these documents align with the narrative.

Contractor documentation

[48] Claimed contractor costs are summarized as follows:

CONTRACT SERVICES	AMOUNT	GST	TOTAL	REFERENCE
LIFE Lunenburg Industrial Foundry & Engineering <i>Storage of vessel April 8, 2019 -</i>	\$ 61,500.00	\$ 9,225.00	\$ 70,725.00	2-1 - 2-50
RMI Marine Limited <i>Services of crew and equipment for the removal of pollutants from the Miss Mall Bay, Lunenburg, NS</i>	\$ 20,961.70	\$ 3,144.26	\$ 24,105.96	2-51
CLEANEARTH TECHNOLOGIE - <i>Pump out bilges and remove waste for disposal</i>	\$ 7,340.88	\$ 1,183.03	\$ 8,523.91	2-52 - 2-56
TERRAPURE <i>Pump out bilges and remove waste for disposal</i>	\$ 4,479.12		\$ 4,479.12	2-57 - 2-60
UNIVERSAL MARINE CONSULTANTS <i>Condition and valuation survey on January 10, 2020</i>	\$ 943.00	\$ 141.45	\$ 1,084.45	2-61
TRIDENT MARINE SERVICES <i>Disposal of Vessel</i>	57,000.00	8,625.00	65,625.00	2-62

Figure 6 – Screen capture of contractor costs summary

[49] The contract services costs summarized at Figure 6 are supported by a large number of invoices and other documentation. The relevant items are discussed below, in the rough order in which the associated services were rendered.

RMI

[50] The CCG’s original submission did not include the first page of the RMI invoice, dated 9 April 2019, but this was provided on request from the Fund. The RMI invoice came to a subtotal of \$20,961.70, and the CCG paid \$24,105.96 including HST.

Description	Cost Code	Hrs/Qty	Rate	Amount
Ref: [REDACTED]				
Services of crew and equipment for removal of pollutants from Miss Mall Bay, Lunenburg, NS:				
Fri, April 5/19 -0730-1930				
Mobilize equipment			480.00	480.00
4 man crew @ \$365.00/hr x 12 hrs		12	365.00	4,380.00
O/T @ \$80.00/hr x 2 hrs		2	80.00	160.00
2 vehicles @ \$125.00/day/each		2	125.00	250.00
Dump trailer @ \$225.00/day			225.00	225.00
Transfer pump & 300' non conductive 3/4" hose @ \$425.00/day			425.00	425.00
650L double wall tank and barrels @ \$350.00/day			350.00	350.00
Hand tools/grinder/discs/120V generator @ \$225.00/day			225.00	225.00
Per Diem @ \$91.25/man x 4 men		4	91.25	365.00
Mileage @ \$0.51/km x 460 kms		460	0.51	234.60
Demobilize equipment			480.00	480.00
14' Aluminum boat - n/c			0.00	0.00
Clean Earth - Cost +10% (Vacuum truck/disposal)			3,447.50	3,447.50
Services of labour, vessel and equipment to refloat vessel Miss Mall Bay, Lunenburg, NS:				
Mon., April 8/19 - 0300-1500				
Mobilize equipment			545.00	545.00
4 man crew @ \$365.00/hr x 12 hrs		12	365.00	4,380.00
OT @ \$80.00/hr x 4 hrs O/T		4	80.00	320.00
2 Vehicles @ \$125.00/day/each		2	125.00	250.00
Tow vessel - Ocean Adventures - Cost +10%			1,100.00	1,100.00
Work boat @ \$1250.00/day			1,250.00	1,250.00
Dump trailer @ \$225.00/day			225.00	225.00
2 x 3 ton salvage pillow bags @ \$400.00/day			400.00	400.00
3" pumps/generator @ \$325.00/day			325.00	325.00
Per Diem @ \$91.25/man x 4 men		4	91.25	365.00
Mileage @ \$0.51/km x 460kms		460	0.51	234.60
14' Aluminum boat - N/C			0.00	0.00
Demob equipment			545.00	545.00
HST On Sales			15.00%	3,144.26

Figures 7, 8, and 9 – Screen captures from RMI invoice (name of CCG employee redacted)

[51] The RMI work is also supported by a statement of work and contract dated 5 April 2019 and titled “Salvage and Removal of Pollutants”. The only price cited within is \$8,135.00 (exclusive of HST), for the “Removal of pollutants from Vessel”. The document also contains a description of work to be performed by RMI:

<p>The vessel is to have the fuel removed and pending the damage assessment, the vessel may need to be removed from the water. The contractor will be responsible for the following tasks:</p> <ul style="list-style-type: none"> • Produce a timeline for the operation. • Supply a Tow Plan for review and proof of insurance. • Supply a safety plan to CG for review. • Removal fuel oil (diesel) – Fuel removal may have to be conducted prior to removing the vessel pending damage assessment. • Removal of all other pollutants where possible including, but not limited to, drums, pails, non-secure tanks, free floating oil, etc. • Remove the vessel from the water pending damage assessment.

Figure 10 – Screen capture from RMI statement of work and contract

[52] If RMI produced any of the documentation referred to in Figure 10, including any record of a “damage assessment”, the CCG has not provided that documentation to the Fund.

[53] Finally, the statement of work contains the following description of relevant events:

On March 22, 2019 CCG ER received a report regarding the FV “Miss Mall Bay” that had been dragging anchor in Lunenburg Harbour. The Owner of the vessel responded with additional anchors in attempt to secure the vessel which held until April 3rd. On April 3rd, CCG ER received another report that the vessel “Miss Mall Bay” had snapped its mooring lines and had went aground approximately 100m from the Fisheries Museum in Lunenburg, Nova Scotia.

LIFE

[54] The submission includes 50 biweekly invoices from LIFE, dated 26 April 2019 through 8 March 2021, for wharfage and monitoring of the *Miss Mall Bay* that began on 8 April 2019. Throughout that period, wharfage fees were \$50.00 daily. Until 14 July 2020, LIFE checked on the vessel daily, at an additional cost of \$50.00 per day. Thereafter, monitoring frequency was reduced to twice weekly at the CCG’s request. An unexplained charge of \$412.50 for “MOVING & RETURNING VESSEL TO LOCATION” appears on the invoice dated 8 October 2019.

CleanEarth Technologies Inc.

[55] The submission includes five invoices from CleanEarth Technologies Inc. (“CleanEarth”), for pumping and disposing of oily bilge water from the *Miss Mall Bay*. The details of those invoices are summarized in the table below. The total paid to CleanEarth based on the invoices is—without explanation—\$546.00 higher than the \$8,523.91 amount presented at Figure 6.

Date	Volume of Wastewater Removal and Disposal	Invoice Date	Cost
2019-05-17	9,020 litres	2019-05-23	\$2,239.21
2019-12-05	3,960 litres	2019-12-05	\$1,349.59
2020-03-19	7,029 litres	2020-03-27	\$2,350.76
2020-09-21	5,380 litres	2020-09-21	\$952.79
2021-01-08	3,980 litres	2021-01-08	\$2,177.56
Total			\$9,069.91

Table 5 – Summary of CleanEarth invoices

Terrapure Environmental

[56] Terrapure Environmental (“Terrapure”) costs are supported by a sales order including the work description “PUMP BILGES CCGS MISS MALE BAY” and a bill of lading noting 5,300 litres of oily water were shipped to “Arrow Hill”, in Dartmouth. Both documents are dated 4 September 2019.

[57] No Terrapure invoices are provided, but two email receipts accompany the other Terrapure documentation. Both have “ESI - East - Transaction Receipt” in their subject lines, and neither refers to Terrapure. The first receipt, indicating payment of \$2,908.81, is dated 2 July 2019; the second, indicating payment of \$2,242.18, is dated 27 September 2019. The two receipts total \$5,150.99, but the CCG claims only \$4,479.12 (see Figure 6) with respect to Terrapure services, an amount that appears to exclude HST.

Universal Marine Consultants (Atlantic) Limited

[58] The submission includes an invoice and a survey report with photographs from Universal Marine Consultants (Atlantic) Limited (“Universal”). The invoice indicates that the “condition and valuation survey” took place on 10 January 2020 at Lunenburg. The survey report, dated 21 January 2021, contains nine pages of text, most of which consist of an itemized list of the various specifications and components of the *Miss Mall Bay*. The survey report then notes the following:

If this vessel were to enter service again, it would require extensive repairs to the hull and machinery. Re-wiring of the engine compartment would be necessary. The engine, transmission and generator motor likely have been severely damaged by the repeated engine room flooding incidents and should be removed, completely rebuilt or replaced. Based on the age of the vessel and the hull being fibreglass over wood construction, which is not a desirable feature, we would not consider the vessel to be an economically viable purchase.

[...] The condition of the boat at the time of survey was very poor and it would require a very large investment to restore it to a seaworthy condition. It is the opinion of the undersigned surveyor that the vessel should be dismantled and disposed of or sold for salvage value, if possible.

[...]

We estimate that the current value of the salvageable components (i.e. electronics, scrap metal and machinery) of this vessel is CAN \$5,000-10,000.

Trident

[59] A single-page invoice from Trident, dated 13 March 2021, contains the following description: “Removal, demolition and disposal of the Miss Mall Bay located at Lunenburg Foundry, Lunenburg. Final Project completion date, March 10th, 2021.” The subtotal on the invoice is \$57,500, and the grand total (with HST) is \$66,125.00, though the CCG claims a lower amount, \$65,625.00, without explanation.

[60] Also provided in support of the Trident operation is a contract and statement of work dated 2 March 2021, and stipulating an all-in price of \$66,125.00. The contract also stipulates that disposal work will be completed by 8 March 2021, and that the work process will be documented by photographs, receipts, and an “organization chart”. If these items were in fact provided by Trident, the CCG has not provided them to the Fund.

DETERMINATIONS AND FINDINGS

The CCG submission presents potentially eligible claims

[61] The Incident resulted in the threat of oil pollution damage 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.

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

[63] The evidence does not suggest that a discharge of oil occurred, and the submission arrived prior to the limitation period set out under paragraph 103(2)(b) of the MLA, which applies where there has been no oil pollution damage.

[64] 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.

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

Identification and description of the *Miss Mall Bay*

[66] A search of TC (Transport Canada) records was carried out in order to correctly identify the *Miss Mall Bay*. A vessel roughly matching the description provided by the CCG was registered in Canada under that name until 29 June 2020, under the official number 348646. The vessel is listed as a fishing vessel of 47.86 gross tons, 13.5026 metres in length, 5.9131 metres at the beam, and 1.9812 metres in depth. Its construction is listed as wood, and power is listed as having been provided by a single diesel engine of 200 brake horsepower. According to TC records, the vessel was built in 1974.

Findings on the evidence submitted by the CCG

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

[67] 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. There are, however, some important evidentiary shortcomings and discrepancies, which are detailed below.

The evidence shows that the vessel in fact began dragging anchor on 22 March 2019

[68] Based on the RMI statement of work, the CCG first learned that the *Miss Mall Bay* had dragged anchor on 22 March 2019. Though the owner managed to secure the vessel

with additional anchors, these held only until 3 April 2019, when the vessel dragged anchor a second time and ultimately grounded. This is where the CCG narrative begins.

[69] It is concluded that even if the earlier anchor dragging incident was the first in a series of occurrences that culminated with the 3 April 2019 grounding, the CCG's submission was received within the applicable limitation period set out at paragraph 103(2)(b) of the MLA, which applies where no oil pollution damage occurs. As noted above, the evidence does not suggest that the *Miss Mall Bay* caused any discharge of oil whatsoever.

The initial response to the Incident was reasonable

[70] It is accepted that the *Miss Mall Bay* posed an oil pollution threat as a result of its grounding on 3 April 2019. The vessel contained unknown volumes of oil, it was listing and apparently unstable, and it is conceivable that the grounding may have caused damage to its hull. Had the vessel taken on water with a rising tide, it is likely that it would have discharged some volume of oils. When it became apparent that the owner lacked the resources to adequately remedy the situation, the CCG engaged RMI to remove oils from the vessel. This operation and its associated costs, including costs associated with the presence of CCG personnel, are accepted as reasonable.

[71] In all, 950 litres of oils were removed from the vessel's fuel tanks, hydraulic tanks, and the engine room bilge. If the vessel was inspected after those oils were removed, no documentation relating to that inspection have been provided. As a result, the precise reasons for refloating and moving the vessel are not entirely clear.

[72] Determining whether a salvage operation constitutes a reasonable measure taken to address an oil pollution threat—rather than some other hazard—requires evidence of the underlying decision-making process. Ideally, this evidence would clearly show the rationale for the decisions that were ultimately taken. In this case, the absence of such evidence is problematic.

[73] Given the overall circumstances of the Incident and the response, however, some degree of inference is appropriate. It is accepted based on later narrative entries that the pumping operation did not remove all of the oils from the vessel, and it is likely that the CCG would have known or at least reasonably suspected this at the time. Furthermore, the integrity of the hull may have been compromised as a result of the grounding. It is unclear whether the CCG fully understood the state of the vessel's condition at this point, as it is not known whether a comprehensive and safe inspection was reasonably possible. For these reasons, the refloating and towing operations are accepted as reasonable measures taken to counter any residual oil pollution threat that the vessel may have posed, whether fully ascertained at that stage in the response or not. Associated costs are also accepted, along with all CCG personnel-related costs up to and including 9 April 2019.

The remainder of the response was drawn out and not clearly directed at oil pollution mitigation

[74] The CCG has provided very limited documentation of its observations of the *Miss Mall Bay* throughout its 23-month response operation. The absence of such evidence is problematic.

[75] The narrative states that, as of 4 April 2019, the CCG believed that the vessel should be removed from the water. The RMI statement of work also indicates that removal was considered at this early stage. Yet the *Miss Mall Bay* was not removed. The narrative goes on to state that no water ingress was observed on 8 April 2019, when the vessel was secured at the LIFE facility. CCG personnel returned to Lunenburg the following day to observe, according to the narrative, that the vessel was floating on normal lines with no water ingress. The Daily Field Supervisor's Report entries for those two days contain no additional information about the condition of the vessel's hull. None of the contemporaneous evidence mentions residual oils. It is therefore not clear that the CCG believed the *Miss Mall Bay* continued to pose an oil pollution threat as of 9 April 2019. Further, irrespective of what the CCG believed at that point, there is an absence of objective evidence in support of such a conclusion.

[76] Storage and monitoring of the *Miss Mall Bay* at the LIFE facility initially cost \$100.00 daily. Following the owner's failure to refloat the vessel on 4 April 2019, there is no indication that CCG personnel made any effort to contact him again until 6 May 2019. A voicemail was left for him on that date, but no response was received. By this time, pre-tax storage and monitoring costs were approaching \$3,000.00. Despite mounting costs, it appears that the vessel was not re-evaluated to determine whether it continued to pose an oil pollution risk.

[77] On 17 May 2019, LIFE informed the CCG that the vessel appeared to be taking on water. In response, two ER personnel visited Lunenburg to oversee the removal of just over 9,000 litres of oily bilge water. There is no evidence that LIFE reported what must have been gradual water ingress over the six-week period prior to 17 May 2019, despite its daily monitoring brief. After the vessel was pumped out, it does not appear that CCG personnel made any efforts to identify the source of water ingress, or the volume of residual oils remaining on board.

[78] Additional water ingress of roughly 9,000 litres was pumped from the *Miss Mall Bay* under CCG supervision on 25 June 2019. Again, no detailed inspection of the vessel appears to have been undertaken at this time. Two further site visits in July 2019 yielded no detailed observations.

[79] During a site visit on 20 August 2019, the CCG speculated that the ingress might be due to rainwater entering through the vessel's deck. This supposition seems plausible, but there is no indication that any measures were taken to identify, patch, or otherwise cover potentially problematic areas of the deck. The vessel was pumped out a third time on 4 September 2019.

[80] Following repeatedly unsuccessful attempts to establish telephone contact with the owner of the *Miss Mall Bay*, registered letters were sent to him in October 2018. He finally responded on 7 November 2019, stating that he was courting potential foreign buyers for the vessel. By this time, seven months after the CCG had become involved with the vessel,

pre-tax storage and monitoring costs alone had surpassed \$20,000.00. Apart from periodic pump-outs, there were no significant developments for three months thereafter. All the while, the owner attempted to sell the vessel, but prospective buyers invariably backed out due to concerns about rehabilitation and towage costs.

[81] On 10 January 2020, the CCG had the *Miss Mall Bay* surveyed, primarily to determine its market value, if any. The Universal survey report, which the CCG obtained on 21 January 2020, noted that the vessel was in poor condition and unlikely to sell on the open market. It did, however, suggest that there might have been \$5,000.00 to \$10,000.00 in residual value should the vessel be dismantled. The survey report does not speculate as to the source of the water ingress, nor does it make any mention of residual oils, whether in the vessel's bilge or timbers. The photographs provided with the report do not depict any clearly oiled spaces within the vessel.

[82] As COVID-19 began to take hold in Canada through March 2020 and into the spring and summer of that year, the CCG did not proceed with deconstruction, as recommend by Universal. Instead, it began to court prospective buyers for the vessel and continued to pump it out at regular intervals. The owner was largely absent during this period, having apparently purchased another vessel in the Caribbean. Uncaptioned photographs dated 19 March 2020 show what appears to be black oil in the bilge and/or machinery spaces of the *Miss Mall Bay* (see Figures 3 and 4), but the degree and scope of the oil-saturation alleged in the narrative is not clear therefrom. Ultimately, the vessel was removed from the water and deconstructed by Trident in March 2021.

Most of the claimed costs incurred after 9 April 2019 are rejected

[83] If the CCG conducted a thorough assessment of the *Miss Mall Bay* once the vessel was secured at the LIFE facility, its findings have not been provided to the Fund. With no evidence showing that the CCG believed the vessel may have posed an oil pollution threat once secured, only 30 days of storage and monitoring costs are accepted, totalling \$3,450.00 inclusive of tax. This period would have been sufficient for the CCG to properly assess the vessel, identify any residual oil pollution threat, and act accordingly.

[84] Instead, nothing was done with respect to the *Miss Mall Bay* until the middle of May 2019, when approximately 9,000 litres of water containing some unquantified volume of oils was found in the vessel. The cost of removing this ingress (\$2,239.21) is accepted, as are associated personnel and travel costs. Given the daily monitoring allegedly undertaken by LIFE, it is surprising that this water ingress was not discovered and reported to the CCG much earlier. In any event, the CCG took neither diagnostic nor preventive action following the first pumping operation. Costs continued to mount, and the owner of the vessel—who was not believed to be financially capable of taking any action whatsoever—had effectively disappeared.

[85] Though it is concluded that the vessel contained only a small volume of oils at this stage, the rate of water ingress was sufficient to cause concerns that the vessel might sink and perhaps discharge some of those oils. It ought to have been clear that the vessel would require regular pumping if left in the water. In addition, storage and monitoring costs were mounting rapidly.

[86] The CCG’s decision to allow the *status quo* to continue beyond 17 May 2019 is not accepted as reasonable. In early April 2019, the CCG took the position that the *Miss Mall Bay* should be removed from the water. Why this was not done for many months thereafter is not clear. In light of these findings, reasonable removal costs are accepted. In the absence of any breakdown of Trident costs, the amount of \$1,250.00 is allowed based on removal costs for similar-sized vessels seen in past CCG claims.

[87] The Universal survey did not address the source of water ingress or make any mention of residual oils. For these reasons, it is not accepted that associated costs were reasonably incurred with respect to mitigating or quantifying any remaining oil pollution threat posed by the vessel.

[88] Finally, the CCG has provided insufficient evidence that the deconstruction of the *Miss Mall Bay* represented a reasonable measure taken to mitigate an oil pollution threat. As a result, the remaining amounts paid to Trident are rejected.

CLAIM AND OFFER DETAILS

[89] The CCG presented its costs and expenses across six 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: \$174,543.44

[90] The reasons for the various amounts accepted and rejected with respect to contract services are detailed in the preceding section of this letter of offer. To summarize, the amounts claimed with respect to RMI operation are accepted in full. LIFE costs are accepted in the amount of \$3,450.00, representing 30 days of storage and monitoring, including taxes. CleanEarth costs are accepted in the amount of \$2,239.21, covering the all-in cost of the first pump-out, which occurred on 17 May 2019. The claimed amounts associated with Terrapure and Universal are rejected in full. Finally, Trident costs are accepted in the amount of \$1,250.00, representing the likely reasonable cost of removing the *Miss Mall Bay* from the water.

Contractor	Work Description	Invoice Dates	Claimed	Allowed
RMI	Removal of oils, refloating, and towing	2019-04-09	\$24,105.96	\$24,105.96
LIFE	Wharfage and monitoring (billed biweekly x50)	2019-04-19 to 2021-03-08	\$70,725.00	\$3,450.00
CleanEarth	Pump and dispose of oily bilge water (x5)	2019-12-05 to 2021-01-08	\$8,523.91	\$2,239.21
Terrapure	Pump and dispose of 5,300 litres oily water	2019-09-04	\$4,479.12	\$0.00
Universal	Condition and valuation survey	2020-01-21	\$1,084.45	\$0.00
Trident	Removal, demolition, and disposal of vessel	2021-03-13	\$65,625.00	\$1,250.00
Totals			\$174,543.44	\$31,045.17

Table 6 – Summary of contract services amounts claimed and allowed

The contract services portion of the submission is allowed in the amount of \$31,045.17.

Schedule 3 – Travel

Claimed: \$354.90

[91] The CCG’s claim for travel costs is broken down at Table 3. For the reasons set out above, all travel costs up to and including 9 April 2019 are accepted. Because the travel costs allegedly incurred on 26 April 2019 are not supported by any other documentation submitted by the CCG, those are rejected. The CCG has not claimed travel costs with respect to the 17 May 2019 pumping operation, though it is likely that such costs were in fact incurred. As a result, the travel costs incurred on 4 September 2019 are granted in their place. For the reasons set out above, the remaining claimed travel costs are not accepted.

The travel portion of the submission is allowed in the amount of \$262.50.

Schedule 4 – Salaries – Full Time Personnel

Claimed: \$5,711.63

[92] Claimed regular salary costs are summarized at Tables 1 and 2. For the reasons set out above, only the personnel effort allocation up to and including the 17 May 2019 pumping operation is accepted as having been reasonably directed at mitigating a demonstrated oil pollution threat from the *Miss Mall Bay*. The associated regular salary costs, including 20% markup that represents the claimed cost of the CCG’s employee benefits plan, are also considered reasonable. Though the CCG does not specifically claim labour costs with respect to 17 May 2019, it is nonetheless acknowledged that such costs would have been incurred. As a result, the regular salary and benefits plan costs claimed with respect to 4 September 2019 are granted in their place.

The salaries portion of the submission is allowed in the amount of \$2,893.94.

Schedule 5 – Overtime – Full Time Personnel

Claimed: \$1,524.38

[93] The CCG’s claim for overtime costs has been treated in the same manner as its claim for regular salary costs, with the same methodology used to calculate the accepted amount.

The overtime portion of the submission is allowed in the amount of \$833.96.

Schedule 12 – Vehicles

Claimed: \$1,535.31

[94] The CCG’s claim for vehicle costs has been treated in the same manner as its claim for labour costs. Accordingly, the same methodology has been used to calculate the accepted amount, with the vehicle use claim for 5 September 2019 substituted in place of presumed (but unclaimed) usage on 17 May 2019.

The vehicles portion of the submission is allowed in the amount of \$705.88.

[95] 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. The only reductions made under this schedule therefore reflect the reductions made with respect to the claimed amounts for regular salary costs and travel costs.

The administration portion of the submission is allowed in the amount of \$82.63.

OFFER SUMMARY AND CLOSING

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

Schedule	Claimed	Allowed
2 – Contract Services	\$174,543.44	\$31,045.17
3 – Travel	\$354.90	\$262.50
4 – Salaries – Full Time Personnel	\$5,711.63	\$2,893.94
5 – Overtime – Full Time Personnel	\$1,524.38	\$833.96
12 – Vehicles	\$1,535.31	\$705.88
13 – Administration	\$189.65	\$82.63
Totals	\$183,859.31²	\$35,824.08

Table 7 – Summary of amounts claimed and allowed

[97] Costs and expenses in the amount of \$35,824.08 are accepted and will be paid together with statutory interest calculated at the date of payment if the Offer is accepted.

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

[99] 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.

[100] 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

² This amount is \$0.01 lower than the claimed amount shown in Figure 5, probably due to rounding.

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.

[101] 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.

[102] 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