



## OFFER LETTER

Ottawa, 18 February 2022  
*SOPF File: 120-906-C1*

### BY EMAIL

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

**RE: MV *Go-Getter* — Port Hardy, British Columbia**  
**Incident date: 2019-12-02**

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### SUMMARY AND OFFER

[1] This letter responds to a submission from the Canadian Coast Guard (the “CCG”) with respect to the fishing vessel *Go-Getter* (the “Vessel”). The Vessel took on water and listed while at a dock in Port Hardy, British Columbia, on 2 December 2019 (the “Incident”).

[2] On 24 November 2021, the office of the Administrator of the Ship-source Oil Pollution Fund (the “Fund”) received a partial electronic submission from the CCG on behalf of the Administrator. Physical documentation and photographs were received on 26 November. The submission advanced claims under sections 101 and 103 of the *Marine Liability Act*, SC 2001, c 6 (the “MLA”) totaling \$12,623.68 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 \$2,123.68 (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 these are relevant to the determination, they are discussed below.

### Narrative

[7] According to the narrative, on 2 December 2019, CCG personnel observed the Vessel at a dock. It was listing as a result of taking on water in its engine bilge area. A non-recoverable oily sheen was observed around the Vessel. The CCG deployed an electric pump in the Vessel's main cargo area to pump out enough water to stabilize the Vessel.

[8] The CCG officers at the scene checked the Vessel for hydrocarbons. They estimated that the Vessel contained approximately 50 liters of diesel fuel in the main tank, 20 liters of engine oil in the main engine area, and an unknown amount of oil-water mixture.

[9] The CCG officers considered that the Vessel was still at risk of sinking due to an ingress of water into its hull. Considering the oil that it contained, the CCG determined to have the Vessel removed to prevent discharges of oil into the marine environment.

[10] The CCG identified the owner of the Vessel, who was unable to respond to the Incident.

*Figure 1 – The Vessel docked in Port Hardy*

[11] On 3 December 2019, the CCG hired a contractor to pump water from the Vessel's engine compartment and remove the Vessel from the marine environment.

[12] On 4 December 2019, the contractor and his crew took down the Vessel's mast and exhaust pipe in preparation to tow the Vessel to a temporary storage site. They also removed debris from the deck area.

[13] After the contractor and his crew removed the Vessel from the water, the CCG assessed its hull, noting considerable damage and a missing plate on its starboard side which exposed the shaft tube. This was identified as one source of the ingress of water. The Vessel was also missing multiple hull plugs.

*Figure 2 – Missing plate exposing starboard side shaft tube*

[14] On 11 December 2019, the CCG issued a notice to the owner, requiring him to provide a payment plan for contractor and storage expenses totaling \$1,401.75, as well as a plan to transport the Vessel to a storage site.

[15] On 13 December 2019, the owner informed the CCG that he was unable to pay these costs and transport the Vessel to the storage site. The CCG commissioned a survey of the Vessel in order to determine its condition and potential pollution risk if it remained in the water.

[16] On 18 December 2019, the surveyor provided his report to the CCG. In the report, he noted that the Vessel would pose a high pollution risk and likely sink if returned to the marine environment.

[17] From 19 December 2019 to 26 January 2020, the Vessel remained in the contractor’s storage yard. During this time, the contractor cleaned and decontaminated the Vessel in preparation for deconstruction.

[18] By 27 January 2020, all fuel-saturated timbers and materials had been removed from the Vessel. The Vessel was delivered to a landfill for deconstruction.

Cost summary

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

COST SUMMARY POLLUTION INCIDENT			
INCIDENT:	GO GETTER	PROJECT CODE:	NA
INCIDENT DATE:	December 2, 2019	DATE PREPARED:	16-Nov-21
DEPARTMENT:	CANADIAN COAST GUARD	PREPARED BY:	[REDACTED]
			<u>SCH</u>
MATERIALS AND SUPPLIES	-		1
CONTRACT SERVICES	11,901.75		2
TRAVEL	-		3
SALARIES - FULL TIME PERSONNEL	411.76		4
OVERTIME - FULL TIME PERSONNEL	-		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)	166.67		11
VEHICLES	132.90		12
ADMINISTRATION	10.60		13
TOTAL CCG COST OF INCIDENT	<u>\$ 12,623.66</u>		

Figure 3 – Screen capture of the cost summary (personal information redacted)

CCG internal documentation

[20] The claimed salary costs are supported by a Schedule 4 cost form and two Personnel & Equipment Daily Log sheets dated 2 and 4 December 2019.

[21] The claimed pollution countermeasures equipment costs are supported by a Schedule 11 cost form, which covers the use of an electric pump for one day. The two Personnel & Equipment Daily Log sheets are also referenced in support of these costs.

[22] The claimed vehicle costs are supported by a Schedule 12 cost form and cover the use of a Ford F-350 truck for two days. These costs include a daily rate of \$67.57 and a per-kilometer fuel rate of \$0.22, charged on the eight kilometers that the vehicle was driven. The claim does not include a vehicle log.

[23] The claimed administration costs are supported by a Schedule 13 cost form. This form shows that these costs were calculated as a rate of 3.09% against the total claimed amounts for regular salaries, less employee benefit plans contributions.

Contractor documentation

[24] The claimed contractor costs are summarized as follows, with the first two invoices corresponding to the primary contractor who stabilized and removed the Vessel:

				SCHEDULE #2
INCIDENT:	GO GETTER	PROJECT CODE:	NA	
INCIDENT DATE:	December 2, 2019	DATE PREPARED:	November 16, 2021	
DEPARTMENT:	CANADIAN COAST GUARD	PREPARED BY:	[REDACTED]	
CONTRACT SERVICES	AMOUNT	GST	TOTAL	REFERENCE
[REDACTED]	9,500.00	475.00	9,975.00	INV 1008 Paid Jan 2020
[REDACTED]	1,335.00	66.75	1,401.75	INV 1005 Paid Jan 2020
[REDACTED] MARINE SURVEYOR	500.00	25	525.00	INV NA Paid Jan 2020
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TOTAL CONTRACT SERVICES			11,901.75	

*Figure 4 – Screen capture of contractor costs summary (personal information redacted)*

*Primary contractor*

[25] Invoice 1005, dated 7 December 2019, lists costs in the amount of \$1,401.75 (GST included) for the work performed on 4 December 2019, when the Vessel was stabilized and transported to the contractor’s storage yard.

[26] Invoice 1008, dated 27 January 2020, lists costs in the amount of \$9,975.00 (GST included) for the cleaning and deconstruction of the Vessel. This invoice covers the majority of the claimed contract services expenses.

### *Marine surveyor*

[27] The submission includes an invoice for the marine survey of the Vessel. This invoice, dated 23 December 2019, lists costs in the amount of \$525.00 (GST included).

[28] The submission also includes a copy of the two-page survey report, dated 18 December 2019. In the report, the surveyor noted scarring on the Vessel's starboard side, fiberglass fractures on its port side, a crack in the hull, water damage to the engine and gears, and dry rot in the cabin roof and main deck. He stated that the cost of the necessary repairs exceeded the residual value of the Vessel, although he did not provide an estimate of either amount.

[29] This brief report does not quantify any of the onboard pollutants and does not appear to be a comprehensive vessel survey. This diminishes the utility of the report for present purposes.

[30] The survey report also includes 12 pictures depicting the damaged areas of the Vessel and the oil and oily water that it contained.

### **DETERMINATIONS AND FINDINGS**

#### The CCG submission presents potentially eligible claims

[31] 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.

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

[33] The evidence suggests that a discharge of oil occurred, and the submission arrived prior to the limitation period set out under paragraph 103(2)(a) of the MLA, which applies where there has been oil pollution damage.

[34] 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.

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

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

[36] 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 accurate except as is noted below.

*The initial response to the Incident was reasonable*

[37] The narrative provided by the CCG indicates the presence of oil aboard the Vessel. However, the documentation of that oil and the risk it posed, within the actual evidence, is not what might be expected. The Personnel & Equipment Daily Log sheets for 2 and 4 December 2019 make no mention of pollutants. As well, although CCG personnel attended the scene, no photographs were provided with the submission to show it posed an oil pollution threat.

[38] That is not to say there is no evidence of the narrative's assertions respecting oil pollution. The Statement of Work provided to the contractor mentions the presence of oil. As well, the directive issued to the owner notes the oil pollution risk posed by specific hydrocarbons.

[39] Given those contemporaneous documents and the age and type of vessel involved, it is accepted that, at least initially, the Vessel posed an oil pollution threat and that some measures were reasonably taken in response.

*The deconstruction and survey contractor costs were unreasonable*

[40] The survey report procured by the CCG is two pages long. It does not include the details typically found in a survey. The report does indicate that the vessel poses an oil pollution threat. The report includes the following passages:

*"If the boat was to take on water pumps would not keep up with the intake of water Boat would sink and cause marine pollution with diesel fuel and oil from engine and hydraulic oil. This would be an environmental catastrophe will all the oil in the bilge and oil in engine and fuel in the fuel tanks and another hydraulic tank full of hydraulic oil....*

*Boat has been under water..."*

[41] However, the report does not quantify the risk of oil pollution. Given its two conclusions that 1) a catastrophe would take place if the boat began to take on water and 2) the ship had already been underwater, the omission of quantification is problematic.

[42] While the Vessel was on dry land, the CCG discussed returning it to its owner. On 11 December 2019, the owner proposed to move the vessel to another site. This plan was not, apparently, objectionable, although the owner may not have been able to carry it out. Resolving those details, however, became irrelevant as the CCG insisted that the owner provide a plan for payment of past expenses and the owner could not pay.

[43] The CCG personnel handling this incident were willing to return the Vessel to its owner. Given that, it seems unlikely they considered a "catastrophe" was plausible, notwithstanding the conclusions in the survey report. The report's conclusions in this respect are therefore not accepted. The other evidence does not allow a conclusion that the

vessel remained a pollution risk. Therefore, measures after 11 December 2019 have not been established as reasonably taken.

[44] In light of the foregoing, it is considered that as of 11 December 2019, the vessel no longer posed an oil pollution threat and no further measures were appropriate.

### CLAIM AND OFFER DETAILS

[45] The CCG presented its costs and expenses across five 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: \$11,901.75

#### *Primary contractor*

[46] Most of the claimed contract services expenses arise from services rendered by the primary contractor, who stabilized the Vessel, removed it from the marine environment, stored it temporarily, and finally had it deconstructed. As detailed in the "Contractor documentation" section above, these costs are split between two invoices, each of which will be discussed individually.

[47] Invoice 1005, in the amount of \$1,401.75, is a bill for measures taken to prepare the Vessel for removal and transport to a storage yard on 4 December 2019. These measures included lowering the poles, lights, and mast; pumping out excess water; and towing the Vessel to a launch ramp. Labour costs are also included at a rate of \$55.00 per hour for two people at six hours each, and \$35.00 per hour for one person at five hours. While the invoice does not include storage costs, it does provide a breakdown of the individual measures and the costs incurred.

[48] Both the measures listed in this invoice and the resulting costs are accepted as reasonable, considering the pollution threat that the Vessel posed. The hourly labour rates and the total of 17 hours of labour are reasonable for the work that was performed. **These costs are accepted as reasonable in the amount of \$1,401.75.**

[49] Invoice 1008, in the amount of \$9,975.00, is a bill for the decontamination and deconstruction of the Vessel. As the invoice provides no details on the specific tasks that were performed and by whom they were performed, it does not closely correspond to the Statement of Work.

[50] On the grounds listed in the "Determinations and Findings" section above, the evidence is insufficient to conclude that deconstruction was a reasonable oil pollution response measure in the circumstances. As noted, it is not accepted that the Vessel constituted an oil pollution threat at the time it was deconstructed. **The invoiced costs in the amount of \$9,970.00 are therefore disallowed.**

*Marine surveyor*

[51] The CCG also claimed \$525.00 for the cost of a marine survey of the Vessel, which was conducted between 13 and 18 December 2019 in Port Hardy.

[52] As mentioned, the two-page survey report clearly does not represent a comprehensive vessel survey. While it does reference the oil that the Vessel contained, it does not quantify the amount of oil in any way.

[53] While the report offered conclusions about the risk of an oil pollution threat, the failure to quantify or otherwise document the observations which led to the conclusion eliminate the report's value for oil pollution purposes. **This expense is therefore disallowed.**

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[54] The table below provides an overview of the allowed and disallowed contract services expenses regarding the *Go-Getter*.

<b>Contractor</b>	<b>Work Description</b>	<b>Invoice Dates</b>	<b>Claimed</b>	<b>Allowed</b>
Primary contractor	Removal and deconstruction of the Vessel	2019-12-07 2020-01-27	\$11,376.75	\$1,401.75
Marine surveyor	Marine survey of the Vessel	2019-11-22	\$525.00	\$0
<b>Totals</b>			<b>\$11,901.75</b>	<b>\$1,401.75</b>

*Table 1 – Summary of contract services amounts claimed and allowed*

**The contract services portion of the submission is allowed in the amount of \$1,401.75.**

Schedule 4 – Salaries – Full Time Personnel Claimed: \$411.76

[55] The claimed salary costs are attributed to two CCG Response Officers, one at the GT-05 pay level (an hourly rate of \$54.44) and one at the GT-04 pay level (an hourly rate of \$48.50).

[56] According to the submitted Personnel & Equipment Daily Log sheets, both Response Officers were present at the scene on 2 and 4 December 2019. Each worked for one hour and 45 minutes on 2 December and four hours on 4 December, for a total of five hours and 45 minutes per person. However, the CCG only claimed for four hours of work for each Response Officer.

[57] On 2 December, they deployed an electric pump to dewater the Vessel's main fish hold and thereby stabilize the Vessel. On 4 December, they assessed the Vessel's hull. This work was necessary in the circumstances, and the associated salary costs are accepted as reasonable.

**The salaries portion of the submission is allowed in the amount of \$411.76.**



Schedule 11 – Pollution Countermeasures Equipment

Claimed: \$166.67

[58] The CCG's claim for pollution countermeasures equipment covers the use of the electric pump that was deployed on 2 December 2019. It was charged at a daily rate of \$166.67. This information is documented in the Personnel & Equipment Daily Log sheet for 2 December.

[59] Considering that the Vessel was listing and at risk of sinking on 2 December, this work was necessary to stabilize it. The associated cost is accepted as reasonable for one electric pump.

**The pollution countermeasures equipment portion of the submission is allowed in the amount of \$166.67.**

Schedule 12 – Vehicles

Claimed: \$132.90

[60] The CCG's claim for vehicle costs covers the use of an F-350 truck for two days, when two CCG Response Officers travelled to the scene, presumably from the Port Hardy CCG base.

[61] While no vehicle logs are included in the claim, it is reasonable to conclude that a truck would have been used on 2 and 4 December 2019, when the Response Officers dewatered the Vessel's fish hold with a pump, conducted a hull assessment, and monitored the contractor's removal operation.

[62] The daily vehicle rate of \$67.56 conforms to the CCG Charge Out Manual. Additionally, while no fuel receipts are included in the claim, the claimed per-kilometer rate of \$.22 has been accepted as generally reasonable in past CCG claims and is accepted here. The eight kilometers that the truck was driven over the course of two days, as listed in the Schedule 12 cost form, are also reasonable.

**The vehicles portion of the submission is allowed in the amount of \$132.90.**

Schedule 13 – Administration

Claimed: \$10.60

[63] This portion of the CCG's claim represents 3.09% of the claimed amounts for regular salary costs excluding the markup associated with employee benefit plan costs. This method of calculating administration costs has been generally accepted as reasonable. As the claimed salary costs are accepted in full, so too are the claimed administration costs.

**The administration portion of the submission is allowed in the amount of \$10.60.**

## OFFER SUMMARY AND CLOSING

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

Schedule	Claimed	Allowed
2 – Contract Services	\$11,901.75	\$1,401.75
4 – Salaries – Full Time Personnel	\$411.76	\$411.76
11 – Pollution Countermeasures Equipment	\$166.67	\$166.67
12 – Vehicles	\$132.90	\$132.90
13 – Administration	\$10.60	\$10.60
<b>Totals</b>	<b>\$12,623.68</b>	<b>\$2,123.68</b>

*Table 2 – Summary of amounts claimed and allowed*

[65] Costs and expenses in the amount of \$2,123.68 are accepted and will be paid together with statutory interest calculated at the date of payment if the Offer is accepted.

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

[67] 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.

[68] 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.

[69] 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.

[70] 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