



OFFER LETTER

Ottawa, 31 January 2022
SOPF File: 120-900-C1
CCG File:

BY EMAIL

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

**RE: MV *Red Fir No. 9* — English Bay, Vancouver, British Columbia
Incident date: 2019-10-25**

SUMMARY AND OFFER

[1] This letter responds to a submission from the Canadian Coast Guard (the “CCG”) with respect to the motor vessel *Red Fir No. 9* (the “Vessel”). The Vessel partially sank on 25 October 2019 at English Bay in Vancouver, British Columbia (the “Incident”).

[2] On 6 October 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”). The claim totals \$37,526.55 and arises from 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 \$15,058.52 (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. The reasons for the Offer are set forth below.

THE SUBMISSION RECEIVED

[5] 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. Where relevant to the offer, they are reviewed below.

Narrative

[6] According to the narrative, on 25 October 2019 the CCG was alerted that the Vessel was sinking in English Bay. Three CCG officers were dispatched to dewater the Vessel and keep it afloat. They observed oil floating in the Vessel's engine space and instructed the owner to remove it. The amount and types of oil onboard the Vessel were unknown.

[7] On 27 October 2019, CCG officers observed the owner pumping the contents of the Vessel's bilge and provided him with sorbent materials to use.

[8] On 30 October 2019, the CCG again requested that the owner clean all remaining oil from the Vessel and provide proof of completion. The owner did not provide proof and moved the Vessel to False Creek, an inlet adjacent to downtown Vancouver. The CCG unsuccessfully attempted to contact him.

[9] On 9 November 2019, CCG officers observed the Vessel in False Creek while responding to an unrelated incident. Upon investigating, they discovered an oily sheen in the water around the Vessel and additional oil in the engine room bilge. When contacted by the CCG, the owner stated that he was away and would clean the Vessel upon his return on 11 November.

Figure 1 – Oily sheen in the water surrounding the Vessel

[10] On 10 November 2019, the CCG informed the owner that it would take charge of the response if he did not comply. He responded that a representative of his was en route to the Vessel. The following day, the owner advised the CCG that the Vessel's bilge had been cleaned of oil but failed to provide evidence when requested.

[11] On 15 November 2019, CCG officers arrived at the scene to assess the Vessel. As the owner was apparently in court at the time, he sent a representative on his behalf. The following excerpt from page 3 of the narrative details the state of the Vessel on that day:

Obvious recoverable product that was over 2" thick was observed in the bilge. Water egress from the prop shaft was packing at a rate of 1-2 liters every 10 minutes. The bilge pump was connected and was discharging water and hydrocarbons out of the engine space and into the marine environment [...] The water being discharged had a slight silver sheen and was not recoverable.

[12] The CCG determined that the owner had failed to comply with its directions and took charge of the operation. Seeking to have the Vessel towed to Shelter Island Marina & Boatyard ("Shelter Island") in Richmond, BC, the CCG solicited estimates from three contractors and eventually hired Blue Flasher Marine Towing & Salvage Work ("Blue Flasher").

[13] On 19 November 2019, CCG officers again attended at the Vessel and found its state unchanged, with approximately the same rate of water ingress that was observed four days earlier. The sorbent materials provided to the owner's representative had not been used. Using these materials, the CCG recovered oil from the Vessel's engine room. Blue Flasher then towed the Vessel to Shelter Island, where it was removed from the water.

[14] From 21-27 November 2019, a marine surveyor assessed the Vessel. On 4 December 2019, he provided his report, in which he noted signs of aging and deterioration in the Vessel and estimated that the Vessel had no realistic market value. However, he estimated a residual value of \$3,000 for its equipment and machinery.

Figure 2 – The Vessel in storage at the Shelter Island marina in Richmond, BC, taken between 21 and 27 November 2019

[15] On 20 December 2019, Transport Canada placed a detention order on the Vessel. The order prohibited the Vessel from being moved without authorization and required that it be repaired to the satisfaction of a Transport Canada inspector.

[16] On 24 December 2019, the CCG informed the owner that the Vessel would be dismantled if he failed to pay costs totaling \$10,016.45 by 6 January 2020. This amount was incorrect, and on 7 January the CCG sent a revised notice listing the correct total of \$6,785.45. The revised notice provided a time extension until 15 January.

[17] On 14 January 2020, the owner inquired to the CCG about the cause of the Vessel's oil leak and requested details on the costs listed in the dismantlement notice. The narrative does not include the CCG's response, if any.

[18] The next day, the CCG was served with a Statement of Claim on behalf of the owner, who initiated a small claims action against both the CCG and a CCG officer involved in the operation. This officer informed the owner that the CCG presumed that he was unwilling or unable to pay the required costs due to his lack of response. The owner then ordered the CCG not to dismantle the Vessel, claiming that he had not been informed of what was required of him.

[19] Dismantlement was postponed due to the lawsuit, resulting in additional storage costs at the Shelter Island marina. In the meantime, the CCG had the accessible oil removed from the Vessel. The cause of the fuel leak was still unknown.

[20] On 26 September 2020, the owner's lawsuit against the CCG was dismissed. The suit against the officer continued.

[21] On 19 November 2020, the CCG determined to dismantle the Vessel despite the ongoing proceedings. The CCG notified the owner, giving him until 17 December 2020 to pay the required costs. It appears that no further communication was received from the owner. On 15 January 2021, Shelter Island informed the CCG that the Vessel had been dismantled.

Cost summary

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

		<u>SCH</u>
MATERIALS AND SUPPLIES	-	1
CONTRACT SERVICES	33,612.71	2
TRAVEL	-	3
SALARIES - FULL TIME PERSONNEL	1,261.06	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)	2,504.46	11
VEHICLES	148.32	12
ADMINISTRATION	-	13
	<hr/>	
TOTAL CCG COST OF INCIDENT	<u>\$ 37,526.55</u>	

Figure 3 – Screen capture of the cost summary

[23] While the summary directly above does not list any claimed administration costs, the CCG claim includes a form which shows a claim for administrative costs in the amount of \$32.47. It is assumed the CCG intended to claim for that amount. That amount has been included as a claimed cost or expense in the assessment.

CCG internal documentation

[24] The claim does not include details on the claimed salary costs. The only information on these costs comes from two “Personnel & Equipment Daily Logs” dated 15 and 19 November 2019. The Logs indicate that two CCG officers each worked for 13 hours over the course of both days, for a total of 26 hours. Generally, these documents align with the narrative.

[25] Based on the CCG’s response to inquiries from the Office of the Administrator regarding the salary costs, an hourly rate aligning with the GT-04 federal pay level was calculated and applied. These amounts include the standard 20% contribution to employee benefit plans.

Blue Flasher Marine Towing & Salvage Work

[32] The Blue Flasher invoice, dated 22 November 2019, provides a short breakdown of the towing performed on 19 November. The relevant portion of this invoice is reproduced below.

REGARDING converted ex tug RED FIR removal from False Creek.

Tuesday Nov. 19 2019
11:00 after rigging vessel for towing depart False Creek for Shelter Island.

16:00 arrive Shelter Island place vessel in lift pocket, depart for False Creek

19:30 arrive back at dock False creek

OUR FEE	\$1800 :00
TAX	90:00
TOTAL OWING	\$ 1890:00

Figure 5 – Screen capture from Blue Flasher invoice

Chris Small Marine Surveyors Ltd.

[33] The invoice for the marine survey of the Vessel indicates that the survey was performed between 21 and 27 November 2019. A portion of this invoice is reproduced below.

INVOICE

GST #: R120325899

FILE #10614 **Date:** November 27, 2019

TO: Fisheries and Oceans Canada (DFO)
200 - 401 Burrard Street
Vancouver, BC, V6C 3S4

ATTENTION: [REDACTED]
VIA EMAIL: [REDACTED]

RE: Inspection and reporting on M/V "Red Fir No 9"; our activities between the 21st and 27th of November 2019

PRINCIPAL: See attached activity log

FEE:	Survey		\$675.00
		GST:	33.75
		TOTAL AMOUNT DUE:	\$708.75

Please quote our file #10614 with your payment

Figure 6 – Screen capture from Chris Small Marine Surveyor invoice (name and email address of CCG employee redacted)

[34] A copy of the survey report accompanies the invoice. The portion of the report providing an estimated residual value of the Vessel is reproduced below.

Vessel Valuation

The various items of equipment noted aboard and listed on page 2 of this report would have some degree of salvage value, however all of the items combined in that list would realistically not fetch more than approx. \$1,000.00 on the used market, in consideration of the labour required to remove and market those items.

Therefore, in summary it is the undersigned's opinion that the vessel currently has a potential salvage value including equipment, main engine and structure at approx. \$3,000.00. However, the costs to realize that salvage value would exceed the reasonable salvage recovery costs. It is the undersigned's opinion that due to the costs of salvage and disposal; the vessel currently represents a significant net financial loss.

As there is an extremely limited market for an older wood vessel of this type, it would not make practical sense to incur the significant cost to repair the "Red Fir" as the costs of the required repairs would not be represented in her market value upon their completion.

Figure 7 – Screen capture from Chris Small Marine Surveyor report

[35] Importantly, the survey noted that the maximum value of the Vessel, in its current state, was approximately \$3,000.00.

Shelter Island Marina & Boatyard

[36] The submission includes six invoices from Shelter Island for the storage and deconstruction of the Vessel, as well as the cleaning and disposal of recoverable oil. Those invoices are summarized below. The total paid to Shelter Island is \$31,013.96.

Invoice Number	Invoice Date	Work Performed	Cost
5363-122319	2019-12-23	Remove Vessel from water, storage	\$1,431.99
5363-111820-2	2020-01-15	Cleaning and disposal of oil and waste	\$7,931.49
5363-062220	2020-06-22	Storage	\$6,106.59
5363-111820-1	2020-11-18	Storage	\$3,502.59
5363-033121-1	2021-03-31	Storage	\$1,751.30
5363-033121-2	2021-03-31	Deconstruction and disposal	\$10,290.00
			\$31,013.96

Table 1 – Summary of Shelter Island invoices

[37] Subcontractor invoices from Sumas Environmental Services Inc. are also included. These invoices are dated 23 March and 2 April 2020 and cover cleaning and oily waste removal. Portions are reproduced below.

Type	Description	QTY	Unit	Price	Amount
Waste	Catch Basin (<3% Oil)	9000	Kilogram	\$0.18	\$1,620.00
Service	Vac Truck and Operator	5.5		\$165	\$907.50
Red fir #9:					
	Catch Basin (<3% Oil)			\$1,350.00	
	Vac Truck Operator	-		\$907.50	
				SUBTOTAL	\$2,257.50
BOAT YARD				3323	
OK					
[REDACTED]					

Comments:

Subtotal	\$2,527.50
GST	\$126.38
PST	\$0.00
INVOICE TOTAL	\$2,653.88

Due and payable upon receipt. A finance charge of 2% per month will be charged on overdue accounts.

GST# 898458452RT PST# 1002-1283

Figures 8 & 9 – Screen captures from Sumas Environmental Services Inc. subcontractor invoices (employee names redacted)

Type	Description	QTY	Unit	Price	Amount
Waste	Bilge Water	6000	Litre	\$0.28	\$1,680.00
Waste	Oil Filters	1	Pail	\$35	\$35.00
Waste	Oily Solids (Rags, Filter)	4	Drum	\$150	\$600.00
Waste	Antifreeze/Oil mix	1	Drum	\$100	\$100.00
Waste	Gunwash/Gasoline	1	Drum	\$185	\$185.00
Service	Drum Truck and Operator	2.25		\$115	\$258.75
Material	Documentation and Labels	1		\$25	\$25.00
Red fir #9:					
	Bilge Water -			\$1,204.00	
				SUBTOTAL	\$1,204.00
BOAT YARD				3329	
[REDACTED]					

Comments:

Subtotal	\$2,883.75
GST	\$144.19
PST	\$1.75
INVOICE TOTAL	\$3,029.69

Due and payable upon receipt. A finance charge of 2% per month will be charged on overdue accounts.

[38] The latter invoice, dated 2 April 2020, indicates that the oily waste removed from the Vessel included 6,000 liters of bilge water, one drum of antifreeze-oil mix, one drum of gunwash-gasoline mix, four drums of oil-soaked solid materials, and one pail of soiled oil filters. The former notes that 9,000 liters of oily waste water were also removed.

[39] Finally, a subcontractor invoice from Jim Galbraith Trucking Ltd. covers the deconstruction and disposal of the Vessel. The relevant portion of this invoice is reproduced below.

		P.O. No.	Terms	Project
Qty	Description	Rate	Amount	
	RE: Shelter Island Marina			
2	Machinery Moves.	500.00	1,000.00	
90.34	Dump Fee. (90.34 Tons @ \$150.00)	150.00	13,551.00	
5	Dump Fee. (Transaction Fees)	5.00	25.00	
5	Trucking Of The 5 Loads Of Demolition.	350.00	1,750.00	
19	Hrs. 225 Excavator Rental.	150.00	2,850.00	
	GST On Sales	5.00%	958.80	
	<u>Red fir #9</u>			
	Trucking \$833.33			
	Dumping \$4,583.33			
	Excavating \$1,333.33			
			POSTED 5216	
		Total	\$20,134.80	
GST/HST No. 895722544				

Figure 10 – Screen captures from Jim Galbraith Trucking Ltd. subcontractor invoice (employee name redacted)

DETERMINATIONS AND FINDINGS

The CCG submission presents potentially eligible claims

[40] 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.

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

[42] 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.

[43] 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.

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

Identification and description of the *Red Fir No. 9*

[45] The Vessel was a 44-foot wooden-hull tugboat. It was powered by a 225-horsepower diesel engine and had a gross registered tonnage of 13.94. A search of Transport Canada vessel registration records indicates that the Vessel was built in Michigan in 1943.

[46] Records in the database Nauticapedia partially corroborate the Transport Canada records concerning the builder of the Vessel and the year of construction. These records also indicate that, from its construction until 2005, when its Transport Canada registration was closed, the Vessel had up to twelve owners.

[47] It appears that “*Red Fir No. 9*” was the Vessel’s former name. The Transport Canada registration for the Vessel indicates that its name was changed to “*Tomram*” in 1973.

[48] While some aspects of the Vessel’s registration and ownership can be cross-referenced between Transport Canada records and Nauticapedia records, the information is incomplete. There is no record of ownership information after 2005, and the strongest identification of the Vessel provided in the claim is a picture depicting the name *Red Fir No. 9* on the Vessel’s side.

[49] Searches of US public vessel registration databases yield no results for either name of the Vessel. While the Vessel was apparently sold to a US resident in 2005 or later, there is no identifiable record of the Vessel leaving Canada.

[50] Despite these discrepancies, the evidence reasonably establishes that the names *Red Fir No. 9* and *Tomram* refer to the Vessel, with the latter being its more recent name.

Findings on the evidence submitted by the CCG

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

[51] The narrative which the CCG included is accepted as generally accurate. There are, however, some evidentiary shortcomings and discrepancies, which are detailed below.

The initial response to the Incident was reasonable

[52] It is accepted that the Vessel posed an oil pollution threat due to its partial sinking on 25 October 2019. The Vessel contained an unknown amount of hydrocarbon oil, which is substantiated by pictures included in the claim and mentions in the narrative of CCG officers observing oil in the Vessel’s bilge and engine space.

[53] The amount of oil onboard the Vessel is not specified; however, it is reasonable to presume that a vessel of the Vessel’s size and type would have contained at least 500 liters of diesel, engine lube oil, stove oil, and hydraulic oils.

[54] Consideration should also be given to the location of the Incident. The City of Vancouver has suspended industrial activity in False Creek for decades to facilitate the return of various animal species. The area also has significant tourism value, supports a recreational boating industry, and is home to First Nations cultural and service organizations. It was reasonable for the CCG to minimize the pollution risk posed by the Vessel to prevent damage to these sectors.

[55] Finally, considering that the ostensible owner of the Vessel was identified early in the response operation, it was reasonable for the CCG to monitor his actions. The claim provides sufficient evidence to demonstrate that the CCG gave him opportunities to take action and gave him sorbent boom and pads.

The storage and deconstruction contractor costs were unreasonable

[56] Removing the Vessel from the water was reasonable considering the pollution threat that the Vessel posed. However, the evidence does not justify the costs arising from the long-term storage of the Vessel and its deconstruction and disposal. It is accepted that the owner's lawsuit against the CCG would delay the response operation. However, that does not render the costs of storing the Vessel, and later deconstructing it, reasonable.

[57] The CCG postponed the deconstruction pending the owner's lawsuit in January 2020. However, in November 2020 the CCG determined to proceed with deconstruction despite the ongoing lawsuit. The claim documents do not explain this reversal, or adequately explain why storage fees in excess of the Vessel's value were incurred.

[58] Neither does the evidence establish that deconstruction and disposal of the Vessel were reasonable measures. According to the contractor invoices, over 15,000 liters of oily waste were removed from the Vessel before it was deconstructed. With that removal, the documented oil pollution threat that the Vessel posed had been addressed. As well, it appears that the CCG was willing to return the Vessel to the owner – if he paid incurred expenses. Whether the owner paid those expenses or not should not influence whether the Vessel constituted an oil pollution threat that required deconstruction.

[59] On the whole, the evidence does not show that the Vessel remained an oil pollution threat after the oils were removed. The deconstruction expense is not accepted.

CLAIM AND OFFER DETAILS

[60] 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 each portion of the claim has been allowed or disallowed.

Schedule 2 – Contract Services

Claimed: \$33,612.71

Shelter Island Marina & Boatyard

[61] The Shelter Island invoices will be discussed individually, with the exception of the three invoices attributed to storage costs, which will be discussed jointly.

[62] Invoice 5363-1222319 charged \$1,431.99 for the removal of the Vessel from the water, a power wash of its hull, one month of storage, and hydro connection. The removal and wash, as well of one month of storage to allow for consideration as to disposition of the Vessel are reasonable and accepted. It was unnecessary to set up a hydro connection to an unused ship which was stored ashore, and that cost is therefore disallowed.

[63] The costs for the travel lift, one month of storage, and wash amount to \$1,303.80. Applying the 5% GST rate yields an accepted total of \$1,368.99.

[64] Invoice 5363-111820-2 charged \$7,931.49 for the removal and disposal of fuel and liquids.

[65] Shelter Island charged an hourly rate of \$85.00 for two people who worked a combined total of 20 hours. This yields a total labour cost of \$3,400.00, excluding taxes. This work is supported by what appears to be an internal Shelter Island form, which documents the work. The documents do not match the invoice in terms of the dates of work, but they nevertheless are accepted as accurate with respect to the work performed. The hourly labour rate and the time spent are also accepted as reasonable.

[66] The rest of the costs included in Invoice 5363-111820-2 total \$4,153.80 and arise from work performed by Sumas Environmental Services Ltd. Strangely, in addition to the typed costs, slightly lower costs are handwritten on both invoices (see Figures 8 and 9). It appears that the amount attributed to this subcontractor arises from the lower, handwritten amounts, rather than the amounts printed on the invoices.

[67] It appears that a rate of \$.15 per liter was used for the disposal of the Vessel's oily waste, rather than the \$.18 rate typed on the invoice. This yields a total of \$1,350.00 for the removal of 9,000 liters of oil. This cost, as well as the costs for the use of a vacuum truck and operator, are accepted as reasonable.

[68] Similarly, the charges listed in the other Sumas Environmental Services Ltd. invoice for oil removal and disposal are accepted as reasonable, aside from the unjustified tax of \$1.75. When this tax is removed, the total amounts to \$3,027.94.

[69] It is accepted that the costs for this invoice are higher than those in the previous Sumas Environmental Services Ltd. invoice, as the recovered bilge water would have a relatively high oil concentration and thus a higher removal cost. The other waste items, such as antifreeze-oil mixture, are items that would reasonably be found in a vessel of similar size.

[70] The sum of the typed amounts listed on both invoices is \$5,411.25. However, it appears that Shelter Island used the lower, handwritten amounts (\$2,257.50 and \$1,204.00) to obtain a subtotal of \$3,461.50. A 20% markup was then applied, for a total of \$4,153.80. Even with the markup, the total is lower than the computer-generated total. The lower

amount is accepted as reasonable. On these grounds, the costs from Invoice 5363-111820-2 in the amount of \$7,931.49 are accepted as reasonable.

[71] Invoices 5363-062220, 5363-111820-1, and 5363-033121-1 cover storage and hydro expenses incurred while the Vessel was stored at Shelter Island and total \$11,360.48. Storage and hydro costs were being incurred at a monthly rate of approximately \$833.95. When these storage costs are considered in light of the residual value of the Vessel, and the CCG demand for payment by the owner to allow him to retake possession, they are considered unreasonable. This portion of the storage expenses is not accepted.

[72] The final Shelter Island invoice (#5363-033121-2) lists deconstruction and disposal costs in the amount of \$10,290.00. This invoice is supported by the Jim Galbraith Trucking Ltd. subcontractor invoice (Figure 10), which totals \$20,134.80. Again, this invoice contains irreconcilable typed and handwritten amounts.

[73] It is conceivable for an aged, wooden vessel to be contaminated by oil. The claim does not provide evidence establishing that was the case here. These costs are disallowed.

Chris Small Marine Surveyors Ltd.

[74] The CCG claimed \$708.75 for the cost of the marine survey. The survey report indicates that it was commissioned to assess the value of the Vessel. While this was a sensible precaution to be taken by the CCG, it was not a measure taken in response to the threat of oil pollution. This expense is therefore disallowed.

Blue Flasher Marine Towing & Salvage Work

[75] The CCG also claimed \$1,890.00 for the cost of towing services performed by Blue Flasher on 19 November 2019. The invoice does not indicate which towing vessels were used or how many crew members were involved. However, dividing the subtotal of \$1,800.00 by the listed work hours (11:00am to 7:30pm, a total of 8.5 hours) yields an approximate hourly rate of \$211.76.

[76] Given the inaction by the owner and his representative, towing the Vessel to a marina and removing it from the water were reasonable measures. In comparison to similar towing services in British Columbia, which can average up to \$250.00 per hour, the rate charged by Blue Flasher is competitive. On these grounds, the claimed costs attributed to Blue Flasher are accepted as reasonable.

[77] The table below provides an overview of the allowed and disallowed contract services expenses regarding the *Red Fir No. 9*.

Contractor	Work Description	Invoice Dates	Claimed	Allowed
Chris Small Marine Surveyor	Survey of the Vessel	2019-11-27	\$708.75	\$0

Contractor	Work Description	Invoice Dates	Claimed	Allowed
Blue Flasher	Tow the Vessel from False Creek to Shelter Island Marina	2019-11-22	\$1,890.00	\$1,890.00
Shelter Island Marina	Storage, cleaning, oil removal, and deconstruction of the Vessel	2019-12-23 2020-01-15 2020-06-22 2020-11-18 2021-03-31	\$31,013.96	\$9,300.48
Totals			\$33,612.71	\$11,190.48

Table 2 – Summary of contract services amounts claimed and allowed

The contract services portion of the submission is allowed in the amount of \$11,190.48.

Schedule 4 – Salaries – Full Time Personnel Claimed: \$1,261.06

[78] The Personnel & Equipment Daily Logs of 15 and 19 November 2019 note that two CCG officers worked a total of 26 hours on these days. Using the claimed salary costs and the number of hours worked, an hourly rate of \$48.50 (including 20% employee benefit plan contributions) was determined. This calculation assumes the same rate of pay for both officers.

[79] The Office of the Administrator requested information on the claimed salary costs from the CCG. In its response, the CCG provided the current salary rate for the involved officers but did not confirm whether this rate was applicable at the time of the response. However, the CCG confirmed that both officers are paid at the GT-04 level.

[80] For the purposes of the assessment of this Schedule, it was assumed that:

- a. both officers were paid at the GT-04 level in November 2019;
- b. the applicable annual pay rate at that time was \$74,724.00 (effective as of 22 June 2019, according to the Treasury Board Secretariat); and
- c. the work hours in the Personnel & Equipment Daily Logs are generally accurate.

[81] Despite a lack of CCG pay forms, it is accepted that the presence of two officers on 15 and 19 November 2019 was reasonably necessary. The annual GT-04 salary of \$74,724.00 was divided by 52.176 to obtain the weekly rate of \$1,432.15. This amount was divided by 37.5 to obtain the hourly rate of \$38.19, which excludes employee benefit plan contributions. A 20% markup was applied, yielding a total accepted hourly rate of \$45.83. Twenty-six hours at this rate yields a total of \$1,191.58.

The salaries portion of the submission is allowed in the amount of \$1,191.58.

Schedule 11 – Pollution Countermeasures Equipment

Claimed: \$2,504.46

[82] The CCG’s claim for pollution countermeasures equipment covers the use of a PRV 2 boat for two days, one bale of sorbent boom, and one bale of sorbent pads.

[83] The boat that the CCG used was a CGE 709, invoiced at the PRV 2 rate. The CCG did not include a vessel log. Nonetheless, the use of a vessel at the PRV 2 level is considered reasonable for the work performed on 15 November 2019. It was also reasonable for CCG officers to return on 19 November to verify whether they had acted.

[84] The PRV 2 daily rate of \$1,194.23 for the CGE 709 is the accurate rate, and on the grounds described above, its use for two days is accepted as reasonable. Similarly, the \$74.00 attributed to sorbent boom is accepted, as this amount is less than the price quoted in the CCG Charge Out Manual.

[85] Finally, the Manual lists a per-bundle cost of \$35.00 for sorbent pads, rather than the \$42.00 attributed to sorbent pads in the claim. Costs in the amount of \$35.00 are therefore accepted for the pads.

The pollution countermeasures equipment portion of the submission is allowed in the amount of \$2,497.46.

Schedule 12 – Vehicles

Claimed: \$148.32

[86] The claimed vehicle costs cover the use of an F-150 truck for two days to tow the CGE 709 from the CCG Sea Island base to the Vessel. It is reasonable to conclude that a truck would have been used for two days when CCG officers assessed the Vessel and monitored the response.

[87] The daily rate of \$67.56 conforms to the CCG Charge Out Manual, and the distance that the truck was driven aligns with the distance between the CCG base and the site of the Incident. While no fuel receipts were submitted, the claimed per-kilometer rate of \$.22 has been accepted as reasonable in past CCG claims and is accepted here.

The vehicles portion of the submission is allowed in the amount of \$148.32.

Schedule 13 – Administration

Claimed: \$32.47

[88] This portion of the claim represents 3.09% of the claimed salary costs without the 20% markup associated with employee benefit plan contributions. The accepted salary costs total \$1,191.58. Removing the 20% employee benefit plan contribution yields an eligible total of \$992.94. Applying the accepted 3.09% rate to this amount yields a total of \$30.68.

The administration portion of the submission is allowed in the amount of \$30.68.

OFFER SUMMARY AND CLOSING

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

Schedule	Claimed	Allowed
2 – Contract Services	\$33,612.71	\$11,190.48
4 – Salaries – Full Time Personnel	\$1,261.06	\$1,191.58
11 – Pollution Countermeasures Equipment	\$2,504.46	\$2,497.46
12 – Vehicles	\$148.32	\$148.32
13 – Administration	\$32.47	\$30.68
Totals	\$37,559.02	\$15,058.52

Table 3 – Summary of amounts claimed and allowed

[90] Costs and expenses in the amount of \$15,058.52 are accepted and will be paid together with statutory interest calculated at the date of payment if the Offer is accepted.

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

[92] 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.

[93] 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.

[94] 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.

[95] 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