



## REVISED CORRECTED OFFER LETTER

Ottawa, 4 July 2023  
*SOPF File:* 120-884-C1  
*CCG File:*

### VIA EMAIL

Acting Senior Director of Incident Management  
Canadian Coast Guard  
200 Kent Street  
Ottawa, Ontario K1A 0E6

**RE: F/V Primo — Lunenburg, Nova Scotia**  
**Incident date: 2021-02-08**

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### SUMMARY AND OFFER

[1] This letter responds to a submission from the Canadian Coast Guard (the “CCG”) with respect to a 36.9-meter, steel-hulled fishing vessel known as the *Primo*. The CCG received a report on 8 February 2021 that the vessel had partially sunk at its berth at Lunenburg, Nova Scotia (the “Incident”). The CCG monitored the response carried out by the vessel’s owner.

[2] On 11 January 2023, 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 \$38,067.07 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 \$17,577.12 (the “Offer”) is offered with respect to this claim. If the Offer is accepted, accrued interest will be calculated in accordance with section 116 of the MLA to the date of payment. The reasons for the Offer are set forth below, along with a description of the submission.

## THE SUBMISSION RECEIVED

[5] The submission includes a narrative that describes events relating to the Incident. It also contains documents in support of the CCG's claimed costs, including notes and reports from several rounds of inspections of the *Primo*.

[6] The CCG has summarized its expense as follows:

			<u>SCH</u>
MATERIALS AND SUPPLIES	\$	35.00	<a href="#">1</a>
CONTRACT SERVICES	\$	-	<a href="#">2</a>
TRAVEL	\$	7,757.02	<a href="#">3</a>
SALARIES - FULL TIME PERSONNEL	\$	11,406.95	<a href="#">4</a>
OVERTIME - FULL TIME PERSONNEL	\$	13,962.42	<a href="#">5</a>
OTHER ALLOWANCES	\$	-	<a href="#">6</a>
SALARIES - CASUAL PERSONNEL	\$	-	<a href="#">7</a>
SHIPS' COSTS (EXCL. FUEL & O/T)	\$	-	<a href="#">8</a>
SHIPS PROPULSION FUEL	\$	-	<a href="#">9</a>
AIRCRAFT	\$	-	<a href="#">10</a>
POLLUTION COUNTER-MEASURES EQUIPMENT (PCME)	\$	2,223.84	<a href="#">11</a>
VEHICLES	\$	2,003.02	<a href="#">12</a>
ADMINISTRATION	\$	678.82	<a href="#">13</a>
<b>TOTAL CCG COST OF INCIDENT</b>	<b>\$</b>	<b>38,067.07</b>	

*Figure 1 - CCG cost summary*

## DETERMINATIONS AND FINDINGS

### The submission is admissible

[7] The CCG is an eligible claimant and its claim was submitted within the applicable limitation period. The Incident occurred within the territorial sea or internal waters of Canada for the purposes of section 103 of the MLA and involved an identified risk of oil pollution from a ship.

[8] The claims submitted by the CCG are for monitoring a response to a ship-source oil pollution incident. Such claims may be eligible for compensation.

[9] Therefore, the claim is admissible, subject to a reasonableness assessment.

The CCG monitored a pollution response by the vessel's owner

[10] Before the Incident, the fishing vessel *Primo* had sat at its berth for approximately 14 years. Ships left stationary for long periods of time are frequently the subjects of claims to the Fund. This case is unusual in that the owner of the long-stationary ship took responsibility for the Incident and mounted a response. The CCG response was in a monitoring role.

[11] The owner and his insurer proposed a response plan to the CCG, including the retention of an established salvage company (RMI Marine, which is well known to the CCG). The CCG accepted this plan, and it was successfully carried out. A boom placed to contain the sheen was effective in that no sheen was observed outside the boom. The vessel's tanks were sealed before it was raised to prevent a discharge of oil during raising operations: the sealing was effective. The raising operation succeeded, and the ship was removed from the marine environment.

[12] The CCG monitored the owner's successful operation under its statutory mandate. It is entitled to be compensated for such monitoring costs, provided they are reasonable.

[13] The CCG has not published standards for its monitoring operations. The scope of resources to be deployed in a given case appears to be left to the discretion of whomever is in charge. In some cases, the CCG uses a single person to remotely monitor a response. In others, an entire CCG team attends the scene for the duration of the response. Both remote and on-scene monitoring can be reasonable, depending on the facts. With no clear CCG policy on objective standards in place, what is deemed appropriate on a given set of facts will be at least somewhat subjective.

[14] In this case, the CCG quickly approved the owner's salvage plan, and never intervened to take over his response. For the purposes of assessing reasonableness, this suggests that the involved CCG personnel had a level of comfort with the owner's operation.

[15] The response in this case went on for twenty-six days. For the bulk of the response, the CCG had multiple personnel on site for long days. Substantial overtime was paid over that period. The risk posed by the response was modest at the outset, and it only eased further as the response continued. A corresponding decrease in monitoring costs and expenses would be expected from the perspective of reasonableness, but this is not reflected in the CCG's claim documentation.

Some costs were not reasonably incurred

[16] The CCG claims for \$35.00 in materials costs for sorbent materials provided on the first day of the response. Although the documentation for this claim is minimal, it is accepted.

[17] Much of the travel costs portion of the claim covers overnight accommodations in Lunenburg during the period of 8 February through 5 March 2021. Lunenburg is

approximately a two-hour drive from the CCG’s base of operations in Dartmouth. In many cases, having CCG personnel stay overnight is prudent and leads to cost savings overall.

[18] In this case, the occasional need for personnel to stay overnight was driven by the decision to have CCG employees attend at the dock to watch all salvage activities, sometimes for 12-hour days. That decision is not accepted as reasonable, as the scope of monitoring in this case was excessive. The response operation was being carried out by a salvage company known to the CCG and in accordance with a plan that it had approved.

[19] The size of the *Primo* (and therefore the potential volume of pollutants aboard) as well as the location of the Incident justified having CCG personnel check in daily in person. Allowing for a one-hour daily check-in and two hours of travel each way, or five hours of personnel time daily, per attending officer. On this basis, meal expenses (\$736.75) and incidentals (\$553.60) are accepted, for a total of \$1,290.35.

[20] The same logic is applied to salary and overtime, with corresponding markdowns by date and by personnel. The details of what salary and overtime claims are accepted as reasonable are tabulated in the Appendix to this Offer Letter with some additional commentary.

[21] In summary, salary expenses are accepted in the amount of \$8,179.62 and overtime is accepted in the amount of \$3,910.76.

[22] The repositioning of extra gear to be accessed in the event of a release was reasonable, and so the pollution counter-measures equipment claim for a response trailer is allowed in its entirety, at \$2,223.84.

[23] A vehicle was necessary to transport personnel to the scene, and therefore the vehicles claim is allowed in its entirety, at \$2,003.02.

[24] The administration costs portion of the claim has been adjusted based on an administrative rate of 3.09% applied on top of material and supplies, travel and salary expenses, for a total of \$282.94.

**OFFER SUMMARY AND CLOSING**

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

Schedule	Claimed	Allowed
1 – Materials and Supplies	\$35.00	\$35.00
3 – Travel	\$7,757.02	\$1,290.35
4 – Salaries – Full Time Personnel	\$11,406.95	\$7,831.21
5 – Overtime – Full Time Personnel	\$13,962.42	\$3,910.76
11 – Pollution Counter-measures Equipment	\$2,223.84	\$2,223.84
12 – Vehicles	\$2,003.02	\$2,003.02
13 – Administration	\$678.82	\$282.94
<b>Total Claim</b>	<b>\$38,067.07</b>	<b>\$17,577.12</b>

*Table 1 – Summary of amounts claimed and allowed*

[26] Costs and expenses in the amount of \$17,577.12 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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[27] In considering this Offer, please observe the following options and time limits that arise from section 106 of the MLA.

[28] 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.

[29] 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.

[30] 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 be issued.

[31] 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.

[32] This offer replaces and retracts the offer on this claim made on 30 May 2023, which itself replaced a prior offer. Both revisions were necessary to address the employee benefits plan ("EBP") mark up percentage used by the CCG, which was not indicated within the original claim materials. When claimed salaries were recalculated to account for reductions, no mark up for EBP was added. Subsequently, the CCG indicated that a figure of 27% had been applied to the original claim. This is accepted as accurate, and this offer recalculates salary claims using a 27% mark up, which is accepted as reasonable. Accepted administrative costs have been recalculated to match.

Yours sincerely,

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

**APPENDIX – Claimed and Allowed Wages for CCG Personnel (names abbreviated)**

<b>Date and Day (2021)</b>	<b>CC</b>	<b>KC</b>	<b>KSC</b>	<b>BM</b>	<b>NB</b>	<b>Comment</b>	<b>Allowed</b>
02-08 M	4.5 hours at 1.5x OT \$293.25	5.0 hours at 1.5x OT \$255.33	4.5 hours at 1.5x OT \$229.80	–	–	Owner took charge of response.	<b>OT \$778.38</b>
02-09 T	5.0 hours REG and 1 hour at 1.5x OT \$65.17 REG \$275.87	–	–	5.0 hours REG and 1 hour at 1.5x OT \$75.13 REG \$318.06	–	–	<b>OT \$140.30</b> <b>REG \$593.93</b>
02-10 W	4.5 hours REG \$248.29	–	4.5 hours REG \$194.56	–	–	–	<b>REG \$442.85</b>
02-11 Th	–	–	–	–	–	<i>CCGS Cape Light</i> in Lunenburg	–
02-12 F	–	–	–	–	–	–	–
02-13 Sa	–	–	–	–	–	RMI awarded salvage contract	–
02-14 Su	–	–	–	–	–	–	–
02-15 M	3.5 hours REG \$193.11	–	–	–	3.5 hours REG \$160.71	–	<b>REG \$353.82</b>
02-16 T	–	–	–	–	–	–	–
02-17 W	–	–	–	–	–	–	–
02-18 Th	7.5 hours REG and 4.0 hours at 1.5x REG \$413.81 OT \$260.67	–	–	7.5 hours REG and 4.0 hours at 1.5x REG \$477.10 OT \$300.53	–	CCG Response trailer to Lunenburg. RMI salvage operation	<b>REG \$467.65</b>
02-19 F	8.0 hours REG and 4.0 hours at 1.5x REG \$441.40 OT \$260.67	–	–	8.0 hours REG and 4.0 hours at 1.5x REG \$508.90 OT \$300.53	–	–	<b>REG \$467.65</b>
02-20 Sa	7.5 at 1.5 and 4.5 hours at 2.0x OT \$879.76	–	–	7.5 hours at 1.5x and 4.5 hours at 2.0x OT \$1,014.30	–	–	<b>OT \$701.48</b>
02-21 Su	12.5 hours at 2.0x OT \$1,086.12	–	–	12.5 hours at 2.0x OT \$1,252.22	–	–	<b>OT \$935.30</b>
02-22 M	7.5 hours REG and 4.0 hours at 1.5x	–	–	7.5 hours REG and 4.0 hours at 1.5x	–	–	<b>REG \$467.65</b>

Date and Day (2021)	CC	KC	KSC	BM	NB	Comment	Allowed
	REG \$413.81 OT \$260.67			REG \$477.10 OT \$300.53			
02-23 T	7.5 hours REG and 4.0 hours at 1.5x REG \$413.81 OT \$260.67	-	-	7.5 hours REG and 4.0 hours at 1.5x REG \$477.10 OT \$300.53	-	-	<b>REG \$467.65</b>
02-24 W	7.5 hours REG and 4.0 hours at 1.5x REG \$413.81 OT \$260.67	-	7.5 hours REG and 3.5 hours at 1.5x REG \$324.27 OT \$178.73	6.0 hours REG \$381.68	-	-	<b>REG \$467.65</b>  <b>(two personnel deemed sufficient)</b>
02-25 Th	7.5 hours REG and 4.0 hours at 1.5x REG \$413.81 OT \$260.67	-	7.5 hours REG and 4.0 hours at 1.5x REG \$324.27 OT \$204.26	-	-	-	<b>REG \$387.40</b>
02-26 F	7.5 hours REG and 4.0 hours at 1.5x REG \$413.81 OT \$260.67	-	7.5 hours REG and 4.0 hours at 1.5x REG \$324.27 OT \$204.26	-	-	-	<b>REG \$387.40</b>
02-27 Sa	7.5 hours at 1.5x and 4.5 hours at 2.0x OT \$879.76	-	7.5 hours at 1.5x and 4.5 hours at 2.0x OT \$689.39	-	-	-	<b>OT \$581.10</b>
02-28 Su	12.0 hours at 2.0x OT \$1,042.67	-	12.0 hours at 2.0x OT \$817.05	-	-	-	<b>OT \$774.80</b>
03-01 M	7.5 hours REG and 4.5 hours at 1.5x REG \$413.81 OT \$293.25	1.5 hours REG \$64.85	7.5 hours REG and 1.0 hour at 1.5x REG \$324.27 OT \$51.07	-	-	-	<b>REG \$387.40</b>
03-02 T	7.5 hours REG and 2.0 hours at 1.5x REG \$413.81 OT \$130.33	7.5 hours REG and 2.0 at 1.5x REG \$324.27 OT \$102.13	-	-	-	-	<b>REG \$387.40</b>
03-03 W	7.5 hours REG and 5.5 hours at 1.5x REG \$413.81 OT \$358.42	7.5 hours REG and 5.5 hours at 1.5x REG \$324.27 OT \$260.86	-	-	-	<i>Primo refloated</i>	<b>REG \$387.40</b>
03-04 Th	7.5 hours REG and 2.0 hours at 1.5x	7.5 hours REG and 2.0 hours at 1.5x	-	-	-	-	<b>REG \$387.40</b>

Date and Day (2021)	CC	KC	KSC	BM	NB	Comment	Allowed
	REG \$413.81 OT \$130.33	REG \$324.27 OT \$102.13					
03-05 F	7.5 hours REG and 2.0 hours at 1.5x REG \$413.81 OT \$130.33	7.5 hours REG and 2.0 hours at 1.5x REG \$413.81 OT \$130.33	-	-	-	CCG file closed	<b>REG \$387.40</b>
<b>Totals</b>							<b>OT \$3,910.76  REG \$6,440.65</b>

### Corrections to calculations to account for EBP

**Table One - Hourly Rates of Pay by Employee**

Employee	Source Submission CCG Without EBP	Claim from	Source CCG Cost Summary of June 2023 With EBP	Comments
BM		\$50.09	\$63.61	
CC		\$43.44	\$55.17	
KC		\$35.10	\$43.24****	****should be \$44.58
NB		\$36.16	\$45.92	
SC		\$34.04	\$43.24	

**Table Two - Hours Found to be Reasonable**

Employee	Hours to be Paid and Rate with EBP	Total Compensation
BM	30 hours @\$63.61	\$1908.30
CC	73 hours @\$55.17	\$4027.41
KC	20 hours @ \$44.58	\$891.60
NB	3.5 hours @ \$45.92	\$160.72
SC	19.5 hours @ \$43.24	\$843.18
Total Salary		\$7,831.21

**Table Three - Salary Hours Compensated**

Date	BM	CC	KC	NB	SC
February					
9	<u>5</u>	<u>5</u>			
10		<b>4.5</b>			<b>4.5</b>
15		<b>3.5</b>		<b>3.5</b>	
18	<b>5</b>	<b>5</b>			



<b>Date</b>	<b>BM</b>	<b>CC</b>	<b>KC</b>	<b>NB</b>	<b>SC</b>
19	5	5			
22	5	5			
23	5	5			
24		5			5
25		5			5
26		5			5
March					
01	5	5			
02		5	5		
03		5	5		
04		5	5		
05		5	5		
<b>Totals</b>	<b>30 hours</b>	<b>73 hours</b>	<b>20 hours</b>	<b>3.5 hours</b>	<b>19.5 hours</b>