



## OFFER LETTER

Ottawa, 19 May 2023  
*SOPF File:* 120-949-C1  
*CCG File:*

### VIA EMAIL

Snuneymuxw First Nation  
668 Center Street, Nanaimo, BC  
V9R 4Z4

**RE: Unknown Name (Mark Bay, sailboat) — Mark Bay, British Columbia  
Incident date: 2022-12-01**

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### SUMMARY AND OFFER

[1] This letter responds to a submission from the Snuneymuxw First Nation (“SFN”) with respect to a sailing vessel with no known name or registration. That vessel sank in Mark Bay, British Columbia, and discharged oil pollution (the “Incident”).

[2] On 27 February 2023, the office of the Administrator of the Ship-source Oil Pollution Fund (the “Fund”) received a submission from the SFN on behalf of the Administrator. The submission advanced claims under section 103 of the *Marine Liability Act*, SC 2001, c 6 (the “MLA”) totaling \$3,494.92 for costs and expenses arising from measures taken by the SFN while responding 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 pursuant to sections 105 and 106 of the MLA.

[4] The amount of \$3,058.08 (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. The reasons for the Offer are set forth below, along with a description of the submission.

## **THE SUBMISSION RECEIVED**

[5] The claimant's submission includes a narrative that describes events relating to the Incident. It also contains documents in support of the claimed costs. With minor exceptions, those documents corroborate the claim and warrant no comment.

[6] The office of the Administrator sought further clarification on the facts of the Incident from the SFN. The SFN responded with additional documentation and information.

## **DETERMINATIONS AND FINDINGS**

### The SFN's factual account of the Incident is accepted

[7] The narrative provided by the SFN described the Incident. The narrative is accepted as a substantially accurate account of the events surrounding the Incident.

[8] In December of 2022, the SNF identified that a sailboat had sunk in Mark Bay. This led to concerns about consequential environmental damage.

[9] On 3 January 2023, a crew from the SFN took a boat out in Mark Bay to investigate. The crew brought a drone equipped with a camera with them to conduct an overhead inspection, and a licensed operator.

[10] The drone inspection itself was a success. The drone took footage showing a small sheen emanating from the sunken sailboat.

[11] Unfortunately, while the inspection was ongoing, the drone suffered a power failure. The drone plunged into the waters of Mark Bay.

[12] The drone was retrieved by divers retained by the SFN. Unfortunately, the drone could not be repaired.

[13] SFN claims for the cost of replacing the drone.

### The submission is admissible

[14] The Incident resulted in oil pollution damage within the territorial seas or internal waters of Canada, as well as in costs and expenses to carry out measures to address that oil pollution damage and mitigate further damage. Those items are not, in this case, the subject of a claim.

[15] In this case, the claim is focussed on damages which were sustained as a result of measures taken by the SFN. Specifically, in carrying out response measures to assess the risk to the environment, they suffered property damage as a result of a power failure of their drone. This is potentially a basis for compensation under the MLA.

[16] The SFN is an eligible claimant for the purposes of section 103 of the MLA.

[17] The submission was received within the limitation periods set out under subsection 103(2) of the MLA.

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

[19] Determinations are required with respect to the extent to which the measures taken by the CCG were reasonable.

#### The costs and expenses claimed

[20] The SFN provided an invoice for the drone which was lost. It was purchased for \$3,494.92, plus tax, in May of 2022 (i.e. approximately 7 months before the loss).

#### Findings on reasonability

[21] The sailboat posed a modest threat of oil pollution. The measures taken by the SFN were commensurately modest in that, before a significant response was initiated, the SFN first investigated. The claim pertains entirely to initial investigative steps.

[22] The initial investigation showed oil pollution emanating from the sunken sailboat, but in quantities which may not have warranted further efforts.

[23] The SFN does not claim for costs of this initial response.

[24] The SFN does claim for damage which resulted when, during the operation to assess the risk posed by the sailboat, the drone suffered a power failure and dropped into Mark Bay. While the drone was recovered, it could not be repaired and was effectively destroyed.

[25] The MLA, at paragraph 77(1)(b), makes the owners of ships responsible:

*...the costs and expenses incurred by the Minister of Fisheries and Oceans, a response organization within the meaning of section 165 of the Canada Shipping Act, 2001 or any other person in Canada in respect of measures taken to prevent, repair, remedy or minimize oil pollution damage from the ship, including measures taken in anticipation of a discharge of oil from it, to the extent that the measures taken and the costs and expenses are reasonable, and for any loss or damage caused by those measures;*

[26] In this case, it is accepted the loss of the drone constitutes “damage caused by” measures taken to “prevent, repair, remedy or minimize oil pollution damage” from a ship.

[27] The use of a drone to inspect the wreck was appropriate to gauge the extent of oil pollution damage and whether further measures should be taken. Not taking further measures was an appropriate choice given the limited pollution documented. This decision could be made through the measure of deploying a drone to inspect the sunken ship.

[28] At the time of its loss, the drone was approximately 8 months old. Drones have limited service lives. The CRA allows them to be depreciated at 25% per annum. It is

considered to depreciate the drone by one half-year at the CRA rate. That leads to an assessment of SFN's damage as being \$3,058.08.

[29] It is noted as well that the cost of replacing equipment lost during a response will not always be compensable, even when it was lost while taking measures which were otherwise reasonable. Here, the total cost claimed by the SFN for a pollution investigation is reasonable. The claim is only for the cost of a lost drone, and no claim is made for salary, the use of other equipment, fuel or administrative expenses. The claim for loss of the drone is reasonable in this specific context.

### **OFFER SUMMARY AND CLOSING**

[30] Costs and expenses in the amount of \$3,058.08 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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[31] In considering this Offer, please observe the following options and time limits that arise from section 106 of the MLA.

[32] 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.

[33] 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 in 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.

[34] 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.

[35] 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.  
Administrator, Ship-source Oil Pollution Fund