



OFFER LETTER

Ottawa, 27 March 2024
SOPF File: 120-954-C1

VIA EMAIL

Manager, Operational Support
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Via email to **DFO.CCGERCostRecoveryRSP-
RecouvrementdescoutsIESIPGCC.MPO@df-mpo.gc.ca**

**RE: M/V *Rnooknoo* – Cooper Cove, Sooke, British Columbia
Incident date: 2021-11-18**

SUMMARY AND OFFER

- [1] This is a revised offer. After the original offer, dated 31 January 2024 was received by the claimant, the claimant clarified the rate applicable to two aspects of the claim. It was agreed it was appropriate to issue this revised offer to correct the rate.
- [2] This letter responds to a submission from the Canadian Coast Guard (“CCG”) with respect to a 75-foot former naval vessel named *Rnooknoo*, which released hydrocarbons in Cooper Cove, Sooke, British Columbia, on 18 November 2021 (“Incident”).
- [3] On 12 June 2023, the office of the Administrator of the Ship-source Oil Pollution Fund (“Fund”) received the claim submission from the CCG on behalf of the Minister of Fisheries and Oceans. The submission advanced a claim pursuant to sections 101 and 103 of the *Marine Liability Act*, SC 2001, c 6 (“MLA”), seeking compensation for costs and expenses arising from measures taken in response to the Incident, totaling \$260,696.94.
- [4] 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.
- [5] The amount of **\$31,221.45**, plus statutory interest calculated at the time the Offer is paid, in accordance with section 116 of the MLA (“Offer”), 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

- [6] The submission includes a narrative that describes events relating to the Incident. It also includes a summary of the costs and expenses for which the CCG seeks reimbursement as well as corroborating documents.

Narrative Summary

- [7] On 29 June 2021, the CCG received a report from the T'Sou-ke First Nation concerning three separate vessels in Cooper Cove which were described as derelict. An initial assessment deemed one of those vessels, the *Rnooknoo*, a low pollution threat. That vessel was not actively polluting and the owner was regularly restoring and inhabiting it. The report recommended an assessment under the Vessels of Concern program under the *Wrecked, Abandoned or Hazardous Vessels Act* ("WAHVA").
- [8] On 18 November 2021 at 0851, the CCG was notified by a member of the T'Sou-ke First Nation that the *Rnooknoo* was aground and partially flooded. There was also an observable sheening, indicating a release of oil. The vessel had likely broken loose overnight due to a storm and gone adrift into shore.
- [9] At 0855, the CCG contacted the owner of the *Rnooknoo*, who at that point was unaware of the Incident. He informed them that the vessel contained an estimated 600 liters of diesel onboard in addition to hydraulic and engine fuels. The CCG directed the owner on his responsibilities under the MLA and the *Canada Shipping Act, 2001* ("CSA").
- [10] The owner contracted with Cold Water Divers ("CWD") who informed the CCG that they would be conducting the refloat operation.
- [11] The CCG deployed containment boom around the vessel due to the observed sheening and because neither the owner nor CWD had the capacity to effectively contain the pollution. Four CCG response officers—including the regional Duty Officer ("DO") and three additional officers—deployed to the Incident site with the F350 19-840 towing the CCGER 734 to install the boom. They arrived on site at approximately 1230 and deployed 400 feet of containment boom.
- [12] The DO informed the owner that the vessel, should it be successfully refloated, would need to be removed from the marine environment and surveyed by a reputable marine surveyor. The CCG officers departed the site at 1730.
- [13] The owner and CWD prepared the vessel for refloating with the tide at approximately 2030. At 2046, CWD called the CCG DO to report that the refloat had been unsuccessful and the *Rnooknoo* remained semi-submerged. They also reported a missing plank from the deck, exposing the vessel interior to the water, and a hole on the starboard side above the normal waterline.

- [14] On 19 November at 0800, the DO contacted the owner and directed him to provide a plan by 1200 that day to remove the *Rnooknoo* from the marine environment. At 0817, the DO contacted Saltair Marine to enquire about their capacity to respond to the Incident should the owner fail to. The narrative states that they were “chosen due to their capabilities, availability and as a ‘one stop shop’.” Saltair confirmed their capacity and began immediately mobilizing.
- [15] At 1300, the DO and three response officers returned to the site in the CCG 777 to reassess the vessel and adjust the boom.
- [16] At 1350, the owner contacted the DO stating that he could not gather the funds to continue the response. The DO advised the owner that as he was unable to carry out the response, the CCG would take over the operation. The CCG contracted with CWD as they were already responding to the Incident and better prepared for the refloat with the knowledge of the missing plank and holed side. Saltair was placed on standby. The narrative states that only one refloat per day could be attempted because of the tidal cycle.
- [17] The DO and three response officers mobilized to the site to lighter the vessel in place. They departed Victoria for Sooke at 1830 with the F350 19-840 and CCGER 734 in tow. The lightering operation occurred at low tide so the tanks would be accessible. They removed approximately 800 liters of oil and water from the tanks, though some residual oil was likely present as the vessel was at a list during the removal.
- [18] The second refloat attempt was successful. The narrative and evidence submitted do not specify the time it was refloated. CWD were able to create buoyancy on the vessel with no ingress. The CCG suspected that hydrocarbons were still present onboard as residual oil in the tanks and a “high likelihood” of being saturated in the wooden timbers.
- [19] The *Rnooknoo* was not actively taking on water, but because of the suspected ongoing pollution risk and unknown extent of the damage caused by the grounding, the CCG implemented an overnight watch. CWD agreed to stay until the next morning. A local from the T’sou-ke Nation was also contracted to assist the overnight watch. CCG officers departed the site at 0300 that morning.
- [20] On 20 November 2021, two CCG officers deployed to the site at 0800 in the CCG 777 to relieve CWD. At 1400 two other officers relieved the previous CCG officers and remained until midnight. The officers did not observe any signs of ingress or pollution. Saltair was contracted to tow the vessel to their facility in Ladysmith.
- [21] On 21 November, Saltair commenced the towing operation around 0700. Two CCG officers deployed to the site in the CCG 777 to advise and monitor Saltair until they departed the Incident site, to readjust the containment boom, and to collect debris. They departed the site at 1300.
- [22] The details of the tow are not described in the narrative or the evidence. Given the geography, the vessel must have been towed around the southern tip of Vancouver

Island, and then north to Ladysmith – a distance of over 100 km. The *Rnooknoo* arrived at the Saltair facility that evening and was moored alongside the wharf.

- [23] On 26 November, three CCG officers returned to the Incident site in the CCGER 734 to collect the containment boom.
- [24] On 17 January 2022, Saltair lifted the *Rnooknoo* from the water.
- [25] On 14 February, Transport Canada inspected the vessel and issued a notice prohibiting the owner from returning the vessel to the marine environment until it was seaworthy, citing the risk of pollution and hull damage. The owner did not provide a plan in response.
- [26] On 1 April, Frykas Marine was contracted to conduct a visual survey of the vessel. Their Condition and Valuation Report found that it was a total constructive loss. The interior was not inspected due to safety concerns. The report also made no determination as to the vessel’s stability characteristics, and no opinion was expressed in this regard.
- [27] On or around 27 May, the CCG determined to utilize the “newly formed supply arrangement for small vessel disposal.” The *Rnooknoo* was continuously stored at Saltair from January to July 2022 until the deconstruction procurement process was completed.
- [28] Deconstruction was carried out by Khowutzun Industrial and Marine Joint Ventures and completed on 17 August 2022.

Cost Summary

- [29] The CCG submits the amount of \$260,696.94 in claimed costs, summarized as follows:

		<u>SCH</u>
MATERIALS AND SUPPLIES	-	1
CONTRACT SERVICES	\$232,084.02	2
TRAVEL	\$447.60	3
SALARIES - FULL TIME PERSONNEL	\$2,507.99	4
OVERTIME - FULL TIME PERSONNEL	\$8,558.63	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)	\$16,679.25	11
VEHICLES	\$341.04	12
ADMINISTRATION	\$78.41	13
TOTAL CCG COST OF INCIDENT	\$ 260,696.94	

Figure 1 – Screen capture of the cost summary

DETERMINATIONS AND FINDINGS

The submission is admissible

- [30] 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. As a result, claims arising from the Incident are potentially eligible for compensation.
- [31] The CCG is an eligible claimant for the purposes of section 103 of the MLA.
- [32] The submission was received within the limitation periods set out under subsection 103(2) of the MLA.
- [33] 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. Alternatively, those costs and expenses arise from “preventive measures,” as contemplated under the International Convention on Civil Liability for Bunker Oil Pollution Damage. In either case, some of the claimed costs and expenses are potentially eligible for compensation.
- [34] Accordingly, the submission presents claims that are potentially eligible for compensation under section 103 of the MLA.
- [35] The extent to which the measures taken were reasonable must be evaluated.

The CCG’s response operation was somewhat reasonable

- [36] The description of the material events in the narrative is accepted as generally accurate.
- [37] The bulk of the claim is rejected on the basis that the oil pollution threat to the marine environment was substantially mitigated by 19 November 2021. Most of the costs claimed were for measures taken after that point, and those are rejected.
- [38] Even before the *Rnooknoo* was refloated, it had been identified that there was a plank missing from the deck and a hole in the vessel’s side, located above the waterline. These issues presumably caused the water ingress into a ship which had, in recent history, been assessed as being in reasonable condition and with an attentive and involved owner. Clearly these items needed to be repaired, but absent another inbound storm, it is not apparent that there was any likelihood that the vessel was in any danger or posed any danger to pollute. Nor is there evidence that the needed repairs would be difficult to carry out or lengthy.
- [39] On 19 November 2021, after the first effort to refloat the *Rnooknoo* did not succeed, the CCG mandated that the owner provide a response plan, which presumably included the removal of the vessel from the water and a survey. The owner was given four hours to provide this plan. The CCG’s authority to issue such a mandate

is clear under the CSA. However, that does not mean that all costs and expenses resulting from that mandate are compensable under the MLA. In this case, it appears that at the time the CCG issued the owner a mandate, it was aware of the limited risk of a subsequent sinking.

- [40] In any event, the owner indicated he could not afford to take the steps mandated by the CCG. The CCG took over the response. Within a few hours, the *Rnooknoo* was successfully refloated by the same contractor originally hired by the owner, with no apparent change in the operation. The vessel was then lightered of hydrocarbons.
- [41] There is no evidence that, after it was refloated and lightered, anything was observed about the *Rnooknoo* indicating it was at risk to sink again or otherwise cause an oil pollution incident. Absent such evidence, it cannot be concluded that the vessel's removal from the site was a measure reasonably taken with respect to a risk of oil pollution.
- [42] In this case, the CCG was planning for further response measures, beyond raising and repairing the *Rnooknoo*, even while the owner was carrying out a response. These contingency measures were initiated within twenty minutes of the owner being mandated to produce a more expansive response plan. They included contacting Saltair Marine about having the vessel towed and stored at their facility and later having a deconstruction bidding process take place.
- [43] Planning for contingencies can be appropriate measures taken with respect to oil pollution. No concern is raised with respect to contingency planning. The difficulty with this claim is that what ought to have been reasonable contingency planning became quickly locked in as the planned response. The condition of the vessel was not reevaluated after it was refloated and lightered. Instead, plans were made to tow it a significant distance with a view to deconstructing it. The vessel then sat in the water for months before it was surveyed, demonstrating that the oil pollution risk (and the sinking risk) posed by the *Rnooknoo* was limited.
- [44] The costs up to 19 November 2021 are permitted (i.e., up to the refloating and lightering). As well, the costs of having contractors monitor the vessel overnight after it was refloated are accepted as reasonable, as it was possible that there could have been more damage which could have led to the vessel taking on more water. However, no such observation was made. Costs incurred after the overnight monitoring which did not result in concerning observations, are therefore rejected.

Incurring contractor costs are partially accepted

- [45] The claimed contract services costs in Schedule 2 total \$232,084.02. The amount of \$8,242.50 is accepted.
- [46] Contract services costs were paid to five groups and are accepted or rejected as follows:
 - a. \$2,730 to Ryan Sea Marine for overnight vessel monitoring—accepted;

- b. \$13,597.50 to Cold Water Divers for salvage operations—the amount of \$5,512.50 is accepted;
- c. \$68,651.52 to Saltair Marine Services primarily for towing, wharfage, and storage—rejected;
- d. \$630 to Frykas Marine Services for a vessel survey—rejected; and
- e. \$146,475.00 to Khowutzun Industrial and Marine Joint Venture for vessel recovery and demolition—rejected.

Reasons for cost reductions

- [47] The costs for Saltair Marine Services, Frykas Marine Services and Khowutzun Industrial and Marine Joint Venture were incurred after the vessel was refloated, lightered, and without any evaluation finding evidence that the vessel remained an oil pollution risk. The evidence does not establish that these were measures reasonably taken with respect to a risk of ship-source oil pollution, and for that reason they are rejected in their entirety.
- [48] The costs paid to Ryan Sea Marine for overnight vessel monitoring are accepted. While the evidence does not establish that any damage to the vessel had been identified which made it a risk to sink, the possibility that such damage could have taken place but not been observed is accepted. Therefore, overnight monitoring for the night after the vessel was refloated is accepted. When no water was observed to have entered the ship overnight, the response should have been concluded.
- [49] The amount of \$5,512.50 is accepted for costs paid to Cold Water Divers for vessel lifting, hull repair, boat fee, equipment decontamination, and 5% GST. The reductions from the CWD claim arise from the number of hours claimed—seventeen hours at \$700 per hour. CWD was already deployed when the CCG retained them, and the raising was successful in the evening.
- [50] The direct evidence fails to establish how CWD was required to spend seventeen hours on scene. The narrative provides a potential explanation, stating that CWD was tasked to the night watch. However, \$700 per hour is an unreasonably high rate for monitoring services, particularly when the pollution threat is low. Moreover, overnight monitoring costs are accepted in other parts of the claim, and the evidence does not justify what appears to be a duplicated effort.

Remaining costs are partially accepted

- [51] The remaining costs are summarized below:
 - a. the claimed travel costs in Schedule 3 total \$447.60—accepted;
 - b. the claimed salary costs in Schedule 4 total \$2,507.99—the amount of \$1,980.31 is accepted;
 - c. the claimed overtime costs in Schedule 5 total \$8,558.63—the amount of \$3,468.73 is accepted;

- d. the claimed pollution counter-measures equipment (“PCME”) costs in Schedule 11 total \$16,679.25—accepted;
- e. the claimed vehicle costs in Schedule 12 total \$341.04—accepted; and
- f. the claimed administration costs in Schedule 13 total \$78.41—the amount of \$62.02 is accepted.

[52] The reductions for costs in Schedules 4, 5, and 13 are also attributable to the reasons stated above. The costs for the work conducted on 18 November through the early hours of 20 November 2021 are accepted.

OFFER SUMMARY AND CLOSING

[53] The following table summarizes the claimed and offered expenses.

Schedule	Claimed	Offered
2 – Contract Services	\$232,084.02	\$8,242.50
3 – Travel	\$447.60	\$447.60
4 – Salaries – Full time personnel	\$2,507.99	\$1,980.31
5 – Overtime – Full time personnel	\$8,558.63	\$3,468.73
11 – Pollution Counter-Measures Equipment (PCME)	\$16,679.25	\$16,679.25
12 – Vehicles	\$341.04	\$341.04
13 – Administration	\$78.41	\$62.02
TOTAL	\$260,696.94	\$31,221.45

Table 1 – Total claimed versus offered costs.

[54] Costs and expenses in the amount of **\$31,221.45** are accepted and will be paid together with statutory interest calculated at the date of payment if the Offer is accepted.

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

[56] 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.

[57] 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.

[58] 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.

[59] 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,

Chiamaka Mogo, MPPGA
Deputy Administrator, Ship-source Oil Pollution Fund