



Ottawa, 5 May 2020  
*SOPF File: 120-860-C1*  
*CCG File: n/a*

**VIA MAIL AND EMAIL**

Director, Operational Business  
Canadian Coast Guard  
200 Kent Street (6S049)  
Ottawa, Ontario K1A 0E6

**RE: *Vahine Moana* – Fernwood Point, Saltspring Island, British Columbia**  
**Incident date: 2018-03-25**

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**SUMMARY AND OFFER**

This letter responds to a submission from the Canadian Coast Guard (the “CCG”) with respect to a vessel sometimes identified as the *Vahina Moana*, which was registered under the name *Vahine Moana* (the “Vessel”). The Vessel was involved in an incident on or about 25 March 2018, off Fernwood Point, Saltspring Island, British Columbia (the “Incident”).

On 19 March 2020, the office of the Administrator of the Ship-source Oil Pollution Fund received on the Administrator’s behalf a submission from the CCG. The submission advances claims totaling \$14,473.00 for costs and expenses arising from measures taken by the CCG in respect of the Incident.

The submission has been investigated and assessed as a submission to the Administrator under s. 103 of the *Marine Liability Act* (the “MLA”). Based on the investigation and assessment, the Administrator has made determinations, including on what compensation is available.

This letter advances an offer of compensation to the CCG pursuant to sections 105, 106 and 116 of the MLA. Also provided in this letter are a description of the CCG’s submission and an explanation of the determinations reached by the Administrator.

The claim is allowed, in part. The amount of **\$2,823.73** (the “Offer”), plus statutory interest to be calculated at the time of payment in accordance with s. 116 of the *MLA*, is offered with respect to this claim.

The reasons for the Offer are set out below.

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## THE SUBMISSION RECEIVED

The submission includes a narrative that describes certain events relating to the Incident.

The submission also includes a summary of the costs and expenses claimed, backup documents related to some of those claimed costs and expenses, and documentation from contractors for work performed.

Where those documents are relevant to the determinations made, they are discussed below.

### The narrative

On 23 March 2018 (a Friday), at 14:00, the “ER Duty Officer had received a call from Eagle Eye Marine (EEM) Services to inform of a sailing vessel that was dragging anchor and who’s ground tackle had been fouled off Fernwood Point (48 55N, 123 31.9W). Ganges lifeboat crew had evacuated the two passengers however they were unable to assist with the stricken vessel at that time.”

“Ganges lifeboat crew have indicated this was the third time dealing with this vessel and that the persons evacuated were incompetent and without proper charts or electronics on board. [...] Request for [Eagle Eye Marine] to assess fuel onboard as the quantity is unknown at this time. Also request to send photos, remove ground tackle if necessary and take under tow to Ganges to be secured and monitored.”

“Presumed owner ([P.G.]) reported there was fuel on board, quantity unknown. Winds on scene reported to be 15-25 knots. Anchor line was chaffed and vessel was unmanned and at risk for further dragging and or going adrift.”

At 18:15, “Vessel secured in Ganges Harbour. EEM informed that RCMP notified at this time as they were apparently interested in searching vessel as owners were known to them.”

On 27 March 2018, at 10:00 “ER crew depart IOS onboard CG705 for Ganges. CG705 was chosen to transit to Ganges as she was already in the water and best suited for weather conditions at that time. ER crew met with [P.B.] in Ganges, she informed the Duty Officer that the vessel is hers and that she had been selling it to [P.G.] under payment plans and that the payments had not yet been completed. Vessel assessment revealed there was no functional bilge pumping arrangement and that the rudder stock gland was a source of water ingress. About three feet of water removed from bilge at this time, still unable to confirm volume of fuel in tanks. Engine almost completely covered in sea water.”

On 28 March 2018, at 15:39 “Received a call from [P.B.] from a pay phone claiming that [P.G.] is taking ownership and responsibility of the vessel. Duty Officer was able to speak to [P.G.] on the same phone call and informed him of his responsibilities and requested that he submit a plan via email by the end of March 29<sup>th</sup>. His plan should consist of how he will achieve the following:

- a. Transfer of ownership
- b. Registration of the vessel

- c. Obtain ground tackle and anchor line
- d. A functional bilge pumping arrangement
- e. Repair of rudder stock gland
- f. Repairs to make the engine operational
- g. Payment to Eagle Eye for services rendered

He agreed to submit his plan and that he would complete all of the above. However, he did not provide any plan by COB Mar 29.”

At 14:30 “Duty Officer had recommended to the Senior Response Officer that the vessel be taken in tow to be secured and monitored until a proper assessment could be conducted.”

On 6 April 2018, “CCG ER Duty Officer sent Direction Order via email to [P.B] as the owner. The Direction Order was also emailed to EEM to post on the vessel[...].” At 10:32, “Message from [P.B] left on Duty Officer’s phone indicating she is not the owner but suggested that Coast Guard “get rid of the vessel” and she would contact the Duty Officer at a later date which she did not do.”

On 12 April 2018, “Quotes requested for removal and deconstruction from Saltair Marine and Vector Yacht Services.”

On 26 April 2018, “Duty Officer had received a call from EEM, water ingress had increased and he would attempt to seal the rudder stock gland from the outside of the hull. The Senior Response Officer authorized and approved the Vector quote, called and emailed Vector Marine to move forward with tow and removal of vessel.”

On 8 May 2018, “EEM has vessel under tow and bound for vector. Building Sea Marine (BSM) contacted to conduct a survey once the vessel is removed and blocked.”

On 9 May 2018, “Photos and video were taken on site. Significant oil observed in bilge (see video).”

On 10 May 2018, “Survey completed, Duty Officer contacted via email and informed there is no residual value in this vessel.”

On 16 May 2018, “Duty Officer contacted Vector Marine for update. He mentioned that the Capital Regional District (CRD) which dealt with control waste disposal has new disposal criteria which ultimately affected the timeline of the deconstruction and disposal of the vessel.”

On 23 May 2018, “Vector Marine hired AREC ENVIRONMENTAL to take samples and conduct testing for hazardous materials to comply with the new CRD regulations. The sampling report is attached to this claim package.”

On 30 May 2018, “Duty Officer sent email and permit application for hazmat disposal to Vector Marine and to request an update. Vessel is scheduled to be disposed of on June 15<sup>th</sup>.”

On 15 June 2018, “Phone call from Vector informing that CRD required more testing and that AREC were working directly with CRD to complete requirements for disposal.

*This was the response from CRD when we (Vector Marine) submitted the analysis for the ferro-cement boat.*

*“Boats need to be assessed slightly differently for leachate metals, compared to homes. In homes, the only concern for paint is lead. In boats, however, there is the potential for numerous types of heavy metals to be in the paint. As a result, the sample must be assessed for ALL leachate metals under the BC Hazardous Waste regulation. Once this characterization is complete we can further review your application.”*

On 6 July 2018, “Duty Officer contacted AREC who confirmed the meeting last week with Vector and secondary testing. Sample results should be available by July 10<sup>th</sup> and that they were sampled mid June.”

On 27 July 2018, “Vector indicates that they had separated metals for recycling and that they had been having difficulty getting the vessel in bins due to wire mesh and concrete construction.

On 1 August 2018, “Vessel deconstruction complete and gone to landfill. No further action Required.”

The narrative also includes a number of photographs, none of which was obviously relevant to the Administrator’s assessment.

#### *The costs and expenses summary*

The submission provided by the CCG includes the following summary of expenses incurred:

**COST SUMMARY  
POLLUTION INCIDENT**

<b>INCIDENT:</b>	<b>VAHINA MOANA</b>	<b>PROJECT CODE:</b>	<b>FHUY5</b>
<b>INCIDENT DATE:</b>	<b>March 23, 2018</b>	<b>DATE PREPARED:</b>	<b>Feb 13/20</b>
<b>DEPARTMENT:</b>	<b>CANADIAN COAST GUARD</b>	<b>PREPARED BY:</b>	<span style="background-color: black; color: black;">XXXXXXXXXX</span>

		<u>SCH</u>
MATERIALS AND SUPPLIES	-	1
CONTRACT SERVICES	8,978.01	2
TRAVEL	-	3
SALARIES - FULL TIME PERSONNEL	1,159.91	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)	4,209.50	11
VEHICLES	95.72	12
ADMINISTRATION	29.87	13
	<hr/>	
<b>TOTAL CCG COST OF INCIDENT</b>	<b>\$ 14,473.00</b>	

*Figure 1 - Screen capture of CCG cost summary*

### **DETERMINATIONS**

*The claim presented is potentially eligible under section 103 of the MLA*

The Incident resulted in damage suffered within the territorial seas of Canada, as well as in costs and expenses to carry out measures to avoid or minimize further damage. As a result, claims arising from the Incident are potentially eligible for compensation.

The CCG is an eligible claimant for the purposes of section 103 of the MLA. The submission arrived prior to the limitation periods set out under subsection 103(2).

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, and are therefore eligible for compensation.

For the foregoing reasons, it is determined that the submission presents claims that are potentially eligible for compensation under s. 103 of the MLA.

#### *Findings on the initial response to the Incident*

The *Vahine Moana* was a 37-foot, 11.86 GRT sailing yacht, with a ferrocement hull. Transport Canada records suggest it was home-built in 1979, in Nepean, Ontario. The Vessel was equipped with a Lister 2-cylinder diesel engine, which drove a 3-blade propeller, for auxiliary power. The Vessel was equipped with two 50-gallon stainless steel diesel fuel tanks, which were stored forward in the Vessel.

On the morning of 23 March 2018, the Vessel was in distress off Fernwood Point, Saltspring Island. The CCG received a report from a concerned citizen that the Vessel was dragging anchor. The CCG sent a Search and Rescue (SAR) team from Ganges Lifeboat Station to investigate. This was the second CCG response to this Vessel in a week. The first occurred on 16 March 2018 at Dodds Narrows. The CCG reports that they had also responded to the Vessel on a third occasion on an unspecified date.

The submission includes inconsistencies as to the nature of the conditions at sea on 23 March 2018. The SAR mission report indicates 35 knot winds and 2.0 metre seas, while the pollution report indicated calm seas. There are also inconsistencies with respect to the times certain events occurred. Ultimately, however, these inconsistencies do not need to be resolved to reach the necessary determinations.

When the SAR team arrived at the scene of the Incident at 11:35, they found two persons onboard the *Vahine Moana*. The Vessel’s anchor line was determined to be wrapped around the rudder post. The Vessel appeared not to be equipped with navigational equipment or charts. The CCG determined that the passengers should be removed from the Vessel the passengers. They were taken to a dock at Fernwood point and left to arrange for commercial assistance for the Vessel.

To this point, the CCG considered that its response had been lifesaving operation. It is determined that this is an accurate assessment.

#### *Findings on the subsequent response to the Incident*

After dropping the passengers off at the dock, the CCG requested that a contractor inspect the Vessel and determine the amount of fuel onboard, to remove the fouled anchor and to tow the Vessel to Ganges where it could be secured and monitored. The contractor completed that work by 18:15

On 6 April 2018, one apparent owner for the vessel indicated that the CCG should dispose of the Vessel. The other apparent owner had, at this point, vanished and the CCG did not hear from him again.

The Vessel, at this point, did not appear to pose an imminent risk of oil pollution to the marine environment. Notably, the narrative reports that on 12 April 2018, the CCG received quotes for deconstruction of the Vessel. This suggests that the deconstruction decision was reached *before* the danger of oil pollution from the Vessel increased.

Subsequently, the CCG received a report on 26 April 2018 that the Vessel was sinking while moored and apparently still in CCG custody. The contractor caring for the Vessel repaired the rudder stock gland, which apparently halted the ingress of water. The same day, the CCG made arrangements to have the Vessel towed for removal from the marine Environment.

On 8 May 2018, the Vessel was towed to the facility of a different contractor, where a Marine survey was carried out. Oil was observed in the Vessel’s bilge, as demonstrated in a video provided by the CCG. On 10 May 2018, the surveyor advised the CCG that the vessel had no value.

The CCG made arrangements for the disposal of the Vessel. Given the location of the Vessel, municipal environmental disposal regulations had to be carried out. Ultimately this involved environmental testing the hull of the Vessel. The environmental testing did not detect oil contamination of the Vessel. This is the expected result for a vessel constructed with a ferrocement hull and underscores the limited oil pollution threat posed by the Vessel itself.

It is determined that the deconstruction of the Vessel was carried out for purposes other than the danger posed by oil pollution. Certain other measures taken by the CCG, however, were reasonably taken with respect to oil pollution and are compensable. Those items are discussed in detail in the Claim and Offer Details section.

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**CLAIM AND OFFER DETAILS**

The CCG submission breaks the claims down into several categories. A table showing the items claimed is provided below:

Schedule	Cost claimed
1 – Materials & Supplies	nil
2 – Contract Services	\$8,978.01
3 - Travel	nil
4 - Salaries - CFT personnel	\$1,159.91
5 - Overtime - CFT personnel	nil
6 - Other allowances	nil
7 – Salaries Casual Personnel	nil
8 – Ships Costs (excluding fuel & overtime)	nil
9 – Ships propulsion fuel	nil
10 – Aircraft	nil
11 - Pollution counter-measures equipment (PCME)	\$4,209.50

Schedule	Cost claimed
12 - Vehicles	\$95.72
13 - Administration	\$29.87
<b>Total Claim</b>	<b>\$14,473.00</b>

Figure 2 – Tabulated summary of the claims submitted

This section of the offer letter reviews the claims from each category in detail and provides reasons as to why certain portions of the claim have been allowed or disallowed.

***Schedule Two – Contract Services***

***Claim: \$8,978.01***

The CCG claims for contract services provided by two contractors:

- Vector Yacht Services, who hauled the Vessel from the water, removed oil from the Vessel and ultimately deconstructed it (\$6,903.21); and
- Building Sea Marine, who carried out a survey of the vessel (\$2,074.80).

***Vector Yacht Services***

The documentation submitted in support of the Vector Yacht Services claim is a two-page invoice that lists work done (deconstruction of the Vessel, stripping wood, removing oil) on 1 August 2018. The invoice does not include the cost for AREC Environmental Group (\$628.19) who prepared a Hazardous Material Survey Report to secure a permit to deconstruct the Vessel.

That Hazardous Material Survey Report shows that the vessel’s hull was tested for a variety of environmental contaminants, including oil. The amount of oil found in the hull was not significant.

Given that the hull was made of ferrocement, notwithstanding that there was oil in the bilge, it is not expected that the Vessel would have itself been significantly contaminated by oil to the point that its deconstruction could be considered a reasonable measure taken to avoid oil pollution. The Hazardous Material Survey Report confirms that the Vessel itself was not, apparently, an oily waste.

In the circumstance, the cost for Vector Yacht Services to remove oil from the Vessel (\$344.00) is accepted as a measure reasonably taken to address oil pollution, while the remainder of the invoice is rejected.

This portion of the claim is allowed, in part, in the amount of \$344.00.



### *Building Sea Marine*

The item is for the Building Sea Marine survey carried out on 10 May 2018, and for the report on the survey that was subsequently generated.

The survey report on its face appears to be to ascertain the condition and value of the vessel, rather than being directed towards oil pollution. The report references oil in three locations:

1. the bilge was full of an oil/water mixture;
2. the size and location of the fuel tanks was noted; and
3. an estimate of the amount of oil products remaining aboard was provided.

None of this information required the attendance of a surveyor to ascertain, and it is not accepted that this report was obtained as part of a measure reasonable taken with respect to oil pollution. Moreover, the report does not conclude that the Vessel posed an oil pollution threat other than the oil onboard the Vessel, which oil could be readily removed.

This portion of the claim is disallowed.

### *Summary*

The following table summarizes the determinations made with respect to contractor expenses:

<b>Item</b>	<b>Contractor</b>	<b>Work Done</b>	<b>Cost</b>	<b>Recommendation</b>
1	Vector Yacht Services	Haul vessel, remove/dispose all fluids, demolish and dispose. Includes additional costs for sampling.	\$6,903.21	\$344.00
2	Building Sea Marine	Vessel Survey	\$2,074.80	0
		<b>Total</b>	<b>\$8,978.01</b>	<b>\$344.00</b>

*Figure 3 - Contractor summary*

It is noted that there is no invoice or claim made for the contractor who first towed the vessel and kept custody of it, prior to Vector Yacht Services. Consequently, no compensation is awarded for those efforts.

### ***Schedule 4 – Salaries***

***Claim: \$1,159.91***

The submission includes claims for the involvement of four CCG Response Specialists at the GT-04 grade (\$43.77 per hour) in the response to this Incident.

On the first day of the incident, 27 March 2018, three different response specialists travelled from Victoria to Patricia Bay to board a CCG vessel and travel to Saltspring Island

to meet with the apparent owner of the Vessel. This measure is considered reasonable, as was the cost and expense arising from the time taken to carry out this measure.

The second day for which a claim for labour is sought is 9 May 2018. Two response specialists drove from Victoria to Sidney to inspect the Vessel on blocks at the Vector Yacht facility. It is considered reasonable for the CCG to have personnel inspect the Vessel after it was removed from the water, particularly in light of the disallowance of the surveyor expense.

This portion of the claim is allowed, in its entirety.

**Schedule 11 – PCM Equipment**

**Claim: \$4,209.50**

This entire category of claimed cost and expense relates to the use of a CCG vessel, on a single day. That vessel is a CGE705, is 27 feet long, and its use is considered reasonable in the circumstances.

The claimed expense for this measure is \$4,209.50, based on a \$4,209.50 per day rate associated with a type PRV 3 craft. The claimed expense is not, in the circumstances, reasonable.

The CGE705 falls within the length range for PRV 3 craft (it is 27 feet long, and the range is 25 to 39 feet). However, the use of the most recent PRV 3 replacement cost data to calculate a day rate for the CGE705 craft significantly overvalues the daily rate for the craft. The PRV 3's built most recently under a government stimulus program, designed by Robert Allen Ltd. and built by Marener Industries, are 47-feet long, have 14.74 GRT and twin diesel inboard/outboard engines. The CGE705 has twin diesel engines, but is significantly shorter, and much smaller, at 1.73 GRT. By way of a comparison, the charge out rate for an ECRC 49-foot command vessel is \$2,777.00 per day.

While the use of a CGE705 was reasonable in the circumstances was a reasonable measure for transporting crew members to meet with an owner, the use of a typical PRV 3 vessel for that purpose likely would not be. As a result, applying the cost of a typical PRV 3 vessel results in an unreasonable expense claim in the circumstances, notwithstanding that the CGE705 does fall within the PRV 3 range size.

In the circumstances, a PRV 2 type vessel could have sufficed for the purpose; the CGE705 is also comparable with typical PRV 2 type vessels. Therefore, the day rate for a PRV 2 vessel (\$1,194.23) is applied.

This portion of the claim is allowed, in part.

**Schedule 12 – Vehicles**

**Claim: \$95.72**

The claim seeks to recover for one day of road vehicle use, spread over two days (27 March 2018 and 9 May 2018). This claim is supported by vehicle logs. No fuel receipts are

provided, but CCG uses its standard rate of 22-cents per km, which is considered reasonable when very few kilometers are driven. The amount claimed for the vehicle use is in conformance with typical CCG charge out rates, and is reasonable in the circumstances.

This portion of the claim is allowed.

**Schedule 13 – Administration**

**Claim: \$7.54**

The administration cost amounts to 0.2% of the total claim, and is calculated only based on the salary costs which has been allowed in its entirety.

This portion of the claim is allowed.

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**OFFER SUMMARY AND CLOSING**

The following table is provided to summarize the claimed and allowed expenses with respect to the CCG claim for the response to the Incident:

<b>Schedule</b>	<b>Cost claimed</b>	<b>Recommendation</b>
1 – Materials & Supplies	nil	nil
2 – Contract Services	\$8,978.01	\$344.00
3 - Travel	nil	nil
4 - Salaries - CFT personnel	\$1,159.91	\$1,159.91
5 - Overtime - CFT personnel	nil	nil
6 - Other allowances	nil	nil
7 – Salaries Casual Personnel	nil	nil
8 – Ships Costs (excluding fuel & overtime)	nil	nil
9 – Ships propulsion fuel	nil	nil
10 – Aircraft	nil	nil
11 - Pollution counter-measures equipment (PCME)	\$4,209.50	\$1,194.23
12 - Vehicles	\$95.72	\$95.72
13 - Administration	\$29.87	\$29.87
<b>Total Claim</b>	<b>\$14,473.00</b>	<b>\$2,823.73</b>

*Figure 4 - Summary of claims made and allowed*

The Offer is \$2,823.73 plus statutory interest to be calculated at the time of payment in accordance with s. 116 of the *MLA*.

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

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.

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.

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.

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 Administrator in subrogation efforts.

Yours sincerely,

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