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Oil Pollution Fund

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VIA MAIL AND EMAIL

Senior Director of Incident Management, Response Directorate
Canadian Coast Guard
200 Kent Street (5N177)
Ottawa, Ontario K1A 0E6

RE: *S/V DELPHINUS* - Gowlland Island, British Columbia
Incident date: 2018-02-19

SUMMARY AND OFFER

This letter responds to a submission from the Canadian Coast Guard (the “CCG”). The office of the Administrator of the Ship-source Oil Pollution Fund received the submission on 05 February 2020 on behalf of the Administrator. The submission was treated as a claim to the Administrator under section 103 of the *Marine Liability Act*, S.C. 2001, c.6, as amended (the “MLA”).

The submission sets out claims for various costs and expenses incurred by the CCG in taking measures in response to an incident involving the vessel S/V DELPHINUS. The S/V DELPHINUS washed ashore at Gowlland Island, BC, on 19 February 2018 (the “Incident”). The total amount claimed by the submission is \$25,579.91.

The submission has been assessed and a determination has been reached with respect to its claims. 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 findings and ultimate determination.

The claim is allowed in part. The amount of the offer of compensation is \$4,378.08 (the “Offer”), plus statutory interest to be calculated at the time payment is made on the Offer.

The reasons for the Offer are set forth below.

THE SUBMISSION RECEIVED

The submission includes a narrative that describes the Incident and the subsequent response.

The submission also includes paysheets noting overtime hours worked by employees of the CCG, as well as photographs of the Incident, receipts for vehicles and equipment, and invoices for contract services and administrative costs.

To the extent that those documents are relevant to the determination, they are discussed below.

The narrative

The narrative included in the submission sets out a description of the Incident.

According to the narrative, on the morning of 19 February 2018, the Regional Operations Centre contacted CCG Environmental Response (“ER”) staff to forward a report from the Harbour Master of Quadra Island that the S/V DELPHINUS, a known derelict ship, had washed ashore at Gowlland Island.

CCG ER contacted the Campbell River Lifeboat Station and tasked them to proceed to the location and assess the vessel. Once on scene, the Campbell River crew observed the vessel leaning on its port side completely out of the water at low tide. The crew did not board the vessel, as they believed it appeared unstable. The Officer in Charge (“OIC”) from the Campbell River crew recognized the ship as one that had been adrift the previous month and which they had towed and re-anchored.

On 20 February 2018, an ER crew from Victoria Coast Guard Base proceeded to Campbell River. The crew consisted of three Response Specialists in an F350 Response Truck with pollution response equipment, towing a Pollution Response Vehicle (“PRV”). Once in Campbell River, the crew launched the PRV and proceeded to Gowlland Island with pollution response equipment to assess and possibly remove any pollutants from on board the S/V DELPHINUS.

On arrival at the S/V DELPHINUS, the vessel continued to lay on its port side at low tide. Upon assessment by the ER crew, the hull was determined to be concrete, and the interior was in disrepair. The ship contained a 100-litre cylindrical diesel fuel tank, a four-cylinder diesel engine full of oil, and several loose containers of engine oil.

Due to the angle of the vessel, the ER crew could remove only 75 litres of diesel from the tank and 4 litres of oil from the engine, as well as the loose oil containers. Given the residual fuel, engine oil, and oily bilge, the ER crew believed the vessel remained an on-going pollution threat.

An unnamed party recommended the removal of the vessel from the marine environment to mitigate any future pollution threat. The ER crew then proceeded back to Campbell River in the PRV, loaded the PRV on its trailer, and returned to Victoria.

On 21 February 2018, the RCMP joined CCG ER in its search for an owner. ER arranged for Rilaur Enterprises Ltd., to assess and, if possible, attempt to remove the vessel from the marine environment the following day.

On 22 February 2018, Rilaur Enterprises Ltd. towed the S/V DELPHINUS to Fresh Water Marina in Campbell River where it was removed from the water. The identity of the ship's owner continued to elude both the RCMP and the ER.

On 23 February 2018, Building Sea Marine completed a survey of the S/V DELPHINUS. It concluded that the vessel had no value whole or disassembled, could not reasonably or economically be returned to a seaworthy state, and was at risk if it were to remain in the marine environment in its current state. Based on the marine survey and being unable to locate any owner, the ER determined the S/V DELPHINUS would be deconstructed.

On 26 February 2018, the ER received a quote for deconstruction from DCD Pile Driving but required more information concerning trucking, dump fees, and demolition. The vessel sat at Fresh Water Marina for several months while ER tried to get this information from DCD Pile Driving. The ER received no other quotes during this time.

On 30 July 2018, deconstruction of the S/V DELPHINUS was completed. The initial invoice from DCD was missing information and ER did not receive a complete invoice until 30 October 2018.

The costs and expenses summary

The CCG submission includes the following summary of costs and expenses incurred by the CCG during the response to the Incident:

		<u>SCH</u>
MATERIALS AND SUPPLIES	-	1
CONTRACT SERVICES	22,826.19	2
TRAVEL	-	3
SALARIES - FULL TIME PERSONNEL	972.68	4
OVERTIME - FULL TIME PERSONNEL	1,503.84	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)	67.93	11
VEHICLES	188.77	12
ADMINISTRATION	20.51	13
	<hr/>	
TOTAL CCG COST OF INCIDENT	<u>\$ 25,579.91</u>	

Figure 1 - The CCG cost summary

The CCG submission included six schedules totaling \$25,579.91, as indicated in the above table.

DETERMINATIONS AND FINDINGS

The CCG submission presents potentially eligible claims under section 103 of the MLA

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

The CCG is considered 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).

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 potentially eligible for compensation.

Therefore, the investigation and assessment proceeded in accordance with section 103 the MLA.

The facts presented by the CCG are accepted

The narrative and photographs presented by the CCG set out the facts of the Incident. The version of events presented therein is accepted as generally accurate.

The S/V DELPHINUS was a minimal oil pollution threat

The S/V DELPHINUS was a “known” derelict vessel, having been found adrift in January 2018 by the CCG who subsequently towed and re-anchored it. The vessel had a ferrocement hull, a method of construction wherein mortar or plaster is applied over a reinforced metal armature. This results in a frame that is low weight, low maintenance, and unlikely to absorb oil in any credible amount.

The Delphinus, when in the water, posed an oil pollution threat. The vessel had oil aboard, and after its abandonment it had been involved in at least two incidents requiring a CCG response. While no oil was released as a result of the Incident, or the prior occurrence, the risk of a discharge had the vessel been left where it sat was tangible. It was reasonable for the CCG to take measures to remove the oil pollution threat from the marine environment. As the effort to remove oil from the vessel left residual and inaccessible amounts of oil on board, the measure of removing the vessel from the water was also reasonable.

The submission from the CCG indicates that once the S/V DELPHINUS was removed from the water, it sat in dry storage for several months while deconstruction efforts were organized. The submission does not include evidence establishing that the vessel was an oily wreck or posed a risk of discharging oil into the marine environment once on land. It follows that while the towing and removal expenses were measures reasonably taken in response to the Incident, the storage and deconstruction expenses were not.

In summary, the majority of the claimed costs and expenses are not considered to be measures reasonably taken to “prevent, repair, remedy or minimize” oil pollution damage from a ship, as contemplated under Part 6, Division 2 of the MLA. Those costs and expenses are therefore ineligible for compensation.

The reasonableness of the remaining costs and expenses must be considered in accordance with s. 77(2) of the MLA.

CLAIM AND OFFER DETAILS

The submission breaks down the claim for costs and expenses into several categories. This section of the offer letter reviews each of those categories of claim in detail, and provides reasons as to why portions of the claim have been allowed or disallowed.

This portion of the CCG submission is divided into four items, as detailed below.

Item 1 – Rilaur Enterprises Ltd.

According to the submission, some oil was left on board the S/V DELPHINUS despite efforts by CCG to remove it. Rilaur Enterprises subsequently dragged the vessel off the beach at Gowlland Island and towed it approximately 2 nautical miles to Freshwater Marina in Campbell River. The work was done at high tide and took 3.5 hours to complete. The effort and costs incurred to remove and relocate the S/V Delphinus appear reasonable.

This portion of the claim is allowed in its entirety.

Item 2 – Freshwater Marina

The Freshwater Marina invoice includes the costs associated with lifting the S/V DELPHINUS out of the water and 159 days of land storage fees from February 22 to July 31, 2018. Although nothing in the CCG submission suggests the vessel was in immediate danger of sinking, it is accepted as prudent to remove the S/V DELPHINUS from the water as some fuel remained on board. Once removed from the water, the vessel no longer threatened to pollute the marine environment. Any remaining fuel would have been a residual amount in the engine or tank, and the vessel's ferrocement hull was unlikely to have absorbed oil.

As the storage fees were incurred by the CCG while it arranged for disposal of the vessel, this portion of the claim is rejected in part. The amount of \$285.60 (including GST) related to removing the vessel from the water is allowed.

Item 3 – DCD Pile Driving Ltd. (Invoice #1)

The CCG contracted with DCD Pile Driving Ltd. to deconstruct the S/V DELPHINUS. The submission from the CCG did not show that the vessel posed an oil pollution threat once removed from the marine environment, nor that it had any residual value. No testing for contaminants was done and the vessel was disposed of in a landfill. Therefore, costs associated with the deconstruction of the vessel do not appear to be reasonable.

This portion of the claim is rejected.

Item 4 – DCD Pile Driving Ltd. (Invoice #2)

This invoice provides for disposal, processing, and handling fees associated with the deconstruction performed by DCD Pile Driving Ltd. under Invoice #1. Similarly, this portion of the claim is rejected.

Summary of the dispositions of the contractor costs and expenses

The costs and expenses associated with contractor work have been allowed, in part. The disposition, broken down by contractor item, is set out below.

Table 1 - Summary of costs and expenses

Item	Contractor	Work Done	Cost	Offer
1	Rilaur Enterprises Ltd.	Tow S/V DELPHINUS off the beach and deliver to Freshwater Marina.	\$1,338.75	\$1,338.75
2	Freshwater Marina	Remove vessel from the water and storage ashore.	6,128.85	\$285.60
3	DCD Pile Driving	Deconstruction and disposal	11,778.59	0
4	DCD Pile Driving	Disposal, processing and handling fees	3,580.00	0
		Total	\$22,826.19	\$1,624.35

Schedule 4 – Salaries

Claim: \$972.68

The claim includes the salary costs of the three CCG Response Specialists who responded to the Incident on 20 February 2018.

According to the CCG submission, the Response Specialists are each paid at the GT-04 level, which is \$43.23 per hour including EBP. While the Personnel & Equipment log and salary hours do not reconcile with the CCG narrative, there is sufficient evidence elsewhere in the claim to establish that the three Response Specialists departed Victoria around 0730, drove to Campbell River, launched the PRV1, sailed to Gowlland Island, removed as much fuel as possible from the S/V DELPHINUS, and returned to Victoria the same day at 2300. The degree of effort and associated costs are reasonable in the circumstances.

This portion of the claim is allowed in its entirety.

Schedule 5 – Overtime

Claim: \$1503.84

The submission includes a claim for overtime costs. Those are for the continued response of the same three CCG Response Specialists on 20 February 2018, as noted in Schedule 4.

The overtime rate is paid at the GT-04 level of \$36.02 per hour excluding EBP. The extra-duty work reports and Personnel & Equipment log indicate their overtime wage began at 1400 and ended at 2300 on February 20, 2018. The completed extra-duty work reports signed by the manager are consistent with contractual obligations. The level of effort and associated costs are reasonable in the circumstances.

This portion of the claim is allowed in its entirety.

Schedule 11 – Pollution Counter-measures Equipment

Claim: \$67.93

The CCG submission indicates the Response Specialists used an 18-foot LOA boat (“PRV1”), a Honda compressor, and a diaphragm pump on 20 February 2018. The equipment was charged out at a rate consistent with the rate appearing in the CCG

Equipment Charge-Out Manual. The use of these items to remove fuel from the S/V DELPHINUS in response to the Incident is reasonable.

This portion of the claim is allowed in its entirety.

Schedule 12 – Vehicles

Claim: \$188.77

The claimed cost of the vehicle used is less than the daily CCG charge-out rate and is supported by the vehicle logs. No fuel receipts are included, however the CCG used a rate of \$0.22/km to account for fuel usage during the 560km travelled. The cost and use of the vehicle is reasonable.

This portion of the claim is allowed in its entirety.

Schedule 13 – Administration Costs

Claim: \$20.51

The administration costs are less than 0.1% of the original claim and the rate has been applied only to limited to the salary costs, excluding EBP. As the salary claim was considered reasonable, so too are the administration costs.

This portion of the claim is allowed in its entirety.

OFFER SUMMARY AND CLOSING

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

Table 2 - Summary of claims made and allowed

Schedule	Amount claimed	Amount allowed
1 – Materials & Supplies	nil	nil
2 – Contract Services	\$22,826.19	\$1,624.35
3 - Travel	nil	nil
4 - Salaries - CFT personnel	\$972.68	\$972.68
5 - Overtime - CFT personnel	\$1,503.84	\$1,503.84
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)	\$67.93	\$67.93
12 - Vehicles	\$188.77	\$188.77
13 - Administration	\$20.51	\$20.51
Total	\$25,579.91	\$4,378.08

The amount of the offer of compensation is \$4,378.08 (the "Offer"). Statutory interest calculated in accordance with s. 116 of the MLA will be included with the payment made should the Offer be accepted.

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 from the Fund, the Fund 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