



OFFER LETTER

Ottawa, 4 October 2023
SOPF File: 120-948-C1
CCG File:

VIA EMAIL

Manager, Response Services and Planning
Canadian Coast Guard
200 Kent Street
Ottawa, Ontario K1A 0E6

*Via email to [DFO.CCGERCostRecoveryRSP-
RecouvrementdescoutsIESIPGCC.MPO@dfo-mpo.gc.ca](mailto:DFO.CCGERCostRecoveryRSP-RecouvrementdescoutsIESIPGCC.MPO@dfo-mpo.gc.ca)*

RE: F/V Tracey (or, Tracy) Isle – MK Bay Marina, Kitimat, British Columbia
Incident date: 2021-04-04

SUMMARY AND OFFER

- [1] This letter responds to a submission from the Canadian Coast Guard (“CCG”) with respect to a former salmon fishing vessel, which released hydrocarbons near Kitimat, British Columbia, on 4 April 2021 (the “Incident”).
- [2] On 16 February 2023, the office of the Administrator of the Ship-source Oil Pollution Fund (“Fund”) received the claim submission from the CCG. The submission advanced claims under sections 101 and 103 of the *Marine Liability Act*, SC 2001, c 6 (“MLA”) totaling \$118,155.63 for costs and expenses arising from measures taken in response 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 **\$99,459.13** (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 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 and corroborating documents.

Narrative Summary

- [6] On 4 April 2021 at 0753, the CCG at Prince Rupert received a report that the *Tracey Isle* (or, in some spellings, the *Tracy Isle*)—an approximately 10.5-meter carvel planked ex-commercial salmon troller, built in 1967—was taking on water and at risk of polluting the marine environment at the MK Bay Marina in Kitimat, British Columbia. The CCG contacted the owner who informed them that he was not physically or financially capable of effecting a response. Accordingly, CCG took over response operations and deployed to the Incident site with a response trailer and PRV II (CGE 752) in tow.
- [7] When CCG officers arrived on site, they found the *Tracey Isle* had been cut loose from the dock and was mostly submerged in 30-40 feet deep water, continuously discharging fuel. They deployed containment and sorbent boom around the area. They then returned to Prince Rupert.
- [8] On 6 April, two officers returned to the site. They found oil within the boomed area, recovered soiled sorbent pads, replaced sorbent boom and pads, and returned to the depot. They left the trailer and PRV II at the site.
- [9] On 8 April, two officers went back and readjusted the containment boom and recovered sorbent pads, reporting minimal recoverable oil within the contained area. They left the PRV II onsite but returned to the depot with the trailer.
- [10] On 9 April, contract divers plugged the vents to prevent discharge. The two CCG response officers on site reported no waste oil to recover.
- [11] On 29 April, three CCG officers and contractors operating a tug and barge worked to lift the *Tracey Isle* from the water onto the barge deck and dewatered it. The contractors left the incident site with the vessel onboard and returned to Prince Rupert at the contractor's facilities. CCG officers cleaned up the containment area of sorbent material, debris, and they collected the containment boom. They departed the incident site at 1530.
- [12] On 3 May, three CCG officers attended to the vessel at the contractor's facilities and prepared it for assessment. A survey of the vessel was conducted, finding that it had no salvage value. CCG officers removed more water and fuel from the vessel and spent the remainder of the workday clearing contaminated debris and cleaning oil from the interior. Cleanup efforts continued for the next couple of days.
- [13] On 6 May, the vessel was deconstructed, and the recoverable hazardous waste was properly disposed of.

Cost Summary

[14] The CCG submission summarizes the amount of \$118,155.63 in claimed costs as follows:

		<u>SCH</u>
MATERIALS AND SUPPLIES	-	1
CONTRACT SERVICES	\$98,212.89	2
TRAVEL	-	3
SALARIES - FULL TIME PERSONNEL	\$6,798.02	4
OVERTIME - FULL TIME PERSONNEL	\$4,210.08	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)	\$7,746.60	11
VEHICLES	\$1,012.99	12
ADMINISTRATION	\$175.05	13
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TOTAL CCG COST OF INCIDENT	<u>\$ 118,155.63</u>	

Figure 1 – Screen capture of the cost summary

DETERMINATIONS AND FINDINGS

The submission is admissible

- [15] The majority of the costs and expenses are accepted as payable. In brief, the costs are reduced where evidence does not establish that they were reasonably incurred.
- [16] 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.
- [17] The CCG is an eligible claimant for the purposes of section 103 of the MLA.
- [18] The submission was received within the limitation periods set out under subsection 103(2) of the MLA.
- [19] 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.

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

[21] The extent to which the measures taken were reasonable must be evaluated.

The CCG’s response operation was reasonable

[22] The CCG’s response was generally reasonable. Notwithstanding, some costs were unnecessarily incurred where the CCG carried out tasks which had been contracted out to third parties.

[23] The claimed contract services costs in Schedule 2 total \$98,212.89. The amount of \$84,173.81 is accepted. Contract services costs were paid to three general subcontractors: \$94,875.08 to Heiltsuk Horizon Maritimes Services Ltd. (“HHMS”), \$2,273.81 to Terrapure Environmental, and \$1,064.00 to Quality Marine Surveyors Ltd.

[24] The costs claimed for HHMS are reduced to those which are established in the evidence. Following the Fund’s request for further information, the CCG provided the Scope of Work and a copy of the Call-up Against a Standing Offer with HHMS and, later, Wainwright’s invoice to HHMS.

[25] The narrative would suggest that Wainwright was hired directly by the CCG to act as a marine contractor. This decision would not be surprising, in that the CCG has retained Wainwright in other claims to the Fund. However, that is not what happened.

[26] In response to questions from the Fund, the CCG indicated that HHMS acted as a third-party broker-dealer between Wainwright and the CCG. That is, the CCG hired HHMS and then HHMS hired Wainwright. The CCG response, on 12 July 2023, indicated that “CCG had gone to Wainwright directly but was told that if the work was to be done in a timely manner it would need to be done through HHMS. HHMS subcontracted Wainwright to do the work as this was the simplest and quickest way to accommodate CCG.”

[27] The above explanation is not suggested in the narrative or direct CCG documentation. Wainwright’s representative, when contacted by the Fund, indicated that they had not declined to work directly for the CCG. Moreover, they were not aware of any substantive involvement in the response by HHMS, and there is no record of any such involvement in the CCG documents.

[28] Beyond the conflicting information as to why HHMS was retained, the HHMS documents are ambiguous and cannot be accepted at face value as showing HHMS’s work. The Wainwright invoice provided by the CCG in response to questions from the Fund shows that Wainwright billed HHMS \$81,900.00 for its response work.

Given the total claim by HHMS, Wainwright's work must have been the majority, or all, of the response work included in the HHMS invoice. However, the HHMS invoice does not mention Wainwright. In the result, HHMS's invoice cannot be relied upon as confirmation that HHMS itself carried out response work.

- [29] It is, therefore, not clear whether HHMS added any value to the response effort. Nor, for that matter, is it apparent what response role any manager from HHMS might have played in the response, even if there was participation.
- [30] In the absence of evidence that HHMS's activities extended beyond hiring Wainwright, coupled with the absence of a verifiable reason as to why Wainwright was not hired directly by the CCG, the HHMS invoice is rejected. The amount of Wainwright's invoice (\$81,900.00) is allowed. If Wainwright had been hired directly by the CCG, its invoice would have been incontrovertible.
- [31] The costs incurred by Terrapure are reasonable and accepted in full.
- [32] The costs incurred by Quality Marine Surveyors are rejected. The survey was conducted to appraise the residual value of the vessel, not to determine whether it still posed an oil pollution risk and to what extent.
- [33] The claimed salary costs in Schedule 4 total \$6,798.02. The amount of \$4,785.80 is accepted. The costs incurred from April 4th to 29th are reasonable and accepted. Those incurred from May 3rd through 6th are unreasonable because the work conducted by the response officers should have been carried out by the contractors, per the terms of the agreement. The costs for these dates have been reduced to the amount required for one response officer to maintain oversight.
- [34] The claimed overtime costs in Schedule 5 total \$4,210.08. The amount of \$3,518.02 is accepted. The costs claimed for April 4th with respect to response officer EW is reduced by two hours as a result of insufficient evidence in the submitted materials, and by two hours on April 29th due to a discrepancy in the number of hours claimed for different officers. The costs incurred from May 3rd through 6th are rejected for the reasons stated in the previous paragraph.
- [35] The claimed pollution counter-measures equipment ("PCME") costs in Schedule 11 total \$7,746.60. The amount of \$5,991.22 is accepted. The costs incurred for the PRV II are reduced to half-days for April 6th, 8th, and 9th, based on the hours established in the evidence. The costs incurred for the use of CCG equipment on May 3rd through 5th are rejected as the contract agreement in place created the expectation that the contractor should have carried out the work that CCG conducted on these dates. Notwithstanding these reductions, the amount accepted for curtain boom costs is \$737.00, not \$335.00, due to a calculation error in the submission.
- [36] The claimed vehicle costs in Schedule 12 total \$1,012.99. The amount of \$882.33 is accepted. Costs are accepted for one day, not two, of use for vehicles 19-815 and 16-805, as established by the Daily Trip Records and Personnel and Equipment Daily Logs.

[37] The claimed administration costs in Schedule 13 total \$175.05. The amount of \$107.95 is accepted. This reduction is due to the corresponding salary reduction, above.

OFFER SUMMARY AND CLOSING

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

Schedule	Claimed	Offered
2 – Contract Services	\$98,212.89	\$84,173.81
4 – Salaries – Full time personnel	\$6,798.02	\$4,785.80
5 – Overtime – Full time personnel	\$4,210.08	\$3,518.02
11 – Pollution Counter-Measures Equipment (PCME)	\$7,746.60	\$5,991.22
12 – Vehicles	\$1,012.99	\$882.33
13 – Administration	\$175.05	\$107.95
TOTAL	\$118,155.63	\$99,459.13

Table 1 – Total claimed versus offered costs.

[39] Costs and expenses in the amount of **\$99,459.13** are accepted and will be paid together with statutory interest calculated at the date of payment if the Offer is accepted.

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

[41] 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.

[42] 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.

[43] 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.

[44] 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