



OFFER LETTER

Ottawa, 15 November 2023
SOPF File: 120-957-C1

VIA EMAIL

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*Via email to DFO.CCGERCostRecoveryRSP-
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RE: F/V ROBERT AND MARILYN — Iona, Nova Scotia
Incident date: 2021-09-25

SUMMARY AND OFFER

[1] This letter responds to a submission from the Canadian Coast Guard (the “CCG”) with respect to the fishing vessel *Robert and Marilyn* (the “Vessel”), which grounded on or about 25 September 2021, in the Bras D’Or Lakes area near Iona, NS (the “Incident”).

[2] On 22 June 2023, the office of the Administrator of the Ship-source Oil Pollution Fund (the “Fund”) received a submission from the CCG on behalf of the Administrator. The submission advanced claims totaling \$56,268.88 for costs and expenses arising from measures taken by the CCG to respond 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 101 and 103 of the *Marine Liability Act*, SC 2001, c 6 (the “MLA”).

[4] The amount of \$2,062.04 (the “Offer”), plus statutory interest to be calculated at the time the Offer is paid and in accordance with section 116 of the MLA, is offered with respect to this claim.

[5] The reasons for the Offer are set forth below, along with a description of the CCG’s 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 that the CCG claims and corroborating documents. To the extent that the narrative and corroborating documents are relevant to the determination, they are reviewed below.

The narrative

[7] According to the narrative, on 25 September 2021, the CCG was notified of a grounded vessel. The CCG identified a concern regarding the location of the vessel. It was in the Bras D'Or Lakes district, which is a UNESCO Biosphere Reserve. The area supports an extensive marine ecosystem, maritime industries, and the activities of multiple Indigenous reserves.

[8] The CCG mobilized two personnel from the outpost in Canso Canal to the site. When they first arrived at the site, they were unable to attend to the scene of the incident as it was located at the base of a cliff. No pollution was observed, although the risk of discharge was identified due to damage caused during the grounding.

[9] The CCG crew spoke to the local authorities on the scene and was given the owner's name, but no contact information. They were provided with a cell phone number for the deckhand that was on the vessel. However, when the crew called the number, an unidentified female answered the call and informed them that this was a wrong number. Local authorities confirmed the number was copied correctly.

[10] On 26 September, the CCG sent three personnel along with a pollution response vessel class 1 ("PRV 1") to access the vessel because there was no access from the shore. Due to unexpected wave activity, they decided it was unsafe and would return when weather conditions tempered.

[11] On 29 September, the CCG returned with three personnel and a PRV 1 equipped with enough equipment to complete bulk oil removal. They boarded the vessel and determined there were roughly 100 liters of various oils on board. They observed holes in the bottom of the vessel, and there was no oil spill, but the hull wood appeared to be oil saturated. They proceeded to pump oil off the vessel. Sorbent pads were also used. The bulk oil debris floating in and near the vessel, which appeared to be sheening, was removed.

[12] With the risk of oil pollution reduced, the CCG implemented a monitoring plan.

[13] On 4 October 2021, two CCG personnel returned to the site to perform soundings of the shoreline near the vessel to gather further information about a potential vessel removal. They observed the vessel's integrity was degrading, and the combination of winds and rocky shoreline would accelerate that further.

[14] On 13 October 2021, two CCG personnel arrived at the site and found no sign of pollution, but determined that the risk remained.

[15] On 20 October 2021, three CCG personnel arrived with a PRV 1 and discovered the vessel had broken up and scattered around the incident site. They noted no sign of pollution.

[16] The CCG determined that the monitoring trips were no longer economically feasible, and ran a competitive process for vessel removal to “permanently eliminate the threat of pollution.” They awarded the contract to Marine Recycling Corporation (“MRC”) who subcontracted Commercial Diving and Marine Services (“CDMS”) for assistance.

[17] On 16 December 2021, three CCG personnel arrived with a PRV 1 and the Roseborough 911 vessel. They met MRC and CDMS there, who were instructed to deploy airbags into the submerged ship parts which were then connected to the drive train and refloated for extraction. CCG personnel did not observe any oil pollution throughout this process. The CCG collected leftover debris from the site. The drive train was extracted, and sections of the vessel were transported to MRC’s disposal facility in Sydney, NS. There was no longer a threat to the marine environment. That concluded the CCG operation.

Cost summary

[18] The CCG submission summarizes the claimed costs as follows:

DESCRIPTION	TOTAL	SCHEDULE #
MATERIALS AND SUPPLIES	\$ 350.00	1
CONTRACT SERVICES	\$ 48,617.69	2
TRAVEL	\$ -	3
SALARIES - FULL TIME PERSONNEL	\$ 2,733.63	4
OVERTIME - FULL TIME PERSONNEL	\$ 2,163.68	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)	\$ 1,326.55	11
VEHICLES	\$ 956.32	12
ADMINISTRATION	\$ 121.01	13
TOTAL CCG COST OF INCIDENT	\$ 56,268.88	

Figure 1: Screen capture of the claim cost summary

DETERMINATIONS AND FINDINGS

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

[19] The Incident resulted in oil pollution damage suffered, or the threat of such damage, within the territorial seas or internal waters of Canada, as well as in costs and expenses to carry out measures to mitigate further damage. As a result, claims arising from the Incident are potentially eligible for compensation.

[20] The CCG is an eligible claimant for the purposes of section 103 of the MLA.

[21] The submission arrived prior to the limitation periods set out under subsection 103(2) of the MLA.

[22] 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 potentially eligible for compensation.

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

Findings on the evidence submitted by the CCG

The facts of the Incident as set out by the CCG are generally accepted

[24] This description of the material events in the CCG narrative is accepted as generally accurate.

The Vessel posed a pollution threat and some of the measures taken are admissible

[25] This was a fishing vessel containing approximately 100 litres of various oils aboard. There was never any evidence of oil pollution caused by the ship. Considering the amount of oil on board and the damage suffered in the grounding, it is accepted that there was a risk of oil pollution in this incident at the outset.

[26] Given the information available to the CCG at the time, including the presence of diesel aboard and the belief that hull damage occurred, including environmental sensitivities in the Bras D’Or area, it was reasonable to send a crew to be physically present at the site.

[27] However, after the bulk oil removal, the risk posed by the ship was not obvious. While the narrative repeats that such a risk was present, the measures taken by the CCG do not reflect an operational belief that a material threat continued to exist. Ultimately, the ship was allowed to break up in the water without further intervention by the CCG.

[28] The clean-up effort weeks after the ship broke up is not accepted as a measure taken with respect to ship-source oil pollution. It is not accepted that relevant quantities of oil remained weeks after the ship broke apart. The narrative refers to oiled planks which were removed from the water. While oil might have remained in those planks, those planks had been in the water for weeks. There is no evidence that they continued to pose an oil pollution risk, nor can such a risk be inferred.

CLAIM AND OFFER DETAILS

[29] The CCG presented its claimed costs and expenses to the Fund across six schedules, each of which is outlined below.

[30] Under Part 7 of the MLA, the measures taken to respond to an oil pollution incident and the resulting costs must be reasonable in order to be compensable by the Fund. To the extent that reasons are not already set out in this letter, the sections below explain why certain portions of the CCG's claim have been allowed while others have been decreased.

Schedule 1 – Materials and Supplies Claimed: \$350.00

[31] These costs arise from the use of 10 bundles of sorbents at \$35.00 per bundle, which is a reasonable cost. The use of sorbents in the case of removals is acceptable. The crew used the sorbents while removing oil and debris from the vessel, which was a reasonable measure to prevent pollution in the circumstances.

The materials portion of this claim is allowed in its entirety.

Schedule 2 – Contract Services Claimed: \$48,617.69

[32] Approximately 86% of the amount of this claim comes from contract services. These costs are split up between \$39,807.25 from contractor MRC for the removal and disposal of the vessel, and \$8,810.44 from subcontractor CDMS to MRC, for the dive team and boom truck services.

[33] The invoice costs for CDMS's dive team and boom truck services, which is at \$7,661.25 plus tax, is already included in the MRC invoice and thus should be removed from the claim. This decreases the claim to \$39,807.25.

[34] In addition, given the contract work that CDMS undertook, the allocation of MRC's overhead costs to the amount of \$12,400.00 is questionable. MRC only had 2 employees on site, and there is no indication in their documents of their role in the process. CDMS carried out the contract work using its labour and equipment, so MRC's contribution margin of 31% is called into question. The MRC lack of receipts and unsatisfactory explanation regarding the \$1,000.00 disposal of waste charge, it is also not accepted.

[35] The question of whether such contracting services were necessary should also be asked. The narrative states that the oil on board was removed on 29 September, although no documentation mentions the exact amounts of each substance that was removed. At no time during the four monitoring dates of October 4, 13, 20, and December 16 was there any stated evidence of oil pollution on the water or shoreline. The same was said during the recovery.

[36] However, the ship broke up weeks before the removal.

[37] The CCG has not justified its decision to remove the broken-up vessel, which therefore extends to the decision to employ contracting services. The evidence does not establish that whatever residual oils remained weeks after the break-up justified taking any further measures, let alone measures which cost tens of thousands of dollars. The fact that no sheening was observed during the removal operation confirms the apparent lack of remaining risk of discharge.

[38] As a result, the contractor expense is rejected outside of the planning effort.

The contract services portion of this claim is rejected in its entirety.

Schedule 4 – Salaries – Full-Time Personnel Claimed: \$2,733.63

[39] These costs are for the multiple CCG Response Specialists at either the GL-Man-10, GT-04 or GT-05 level. The two GT-04 personnel had rates of \$34.04 and \$38.71 per hour respectively, the one GT-05 personnel had a rate of \$38.21 per hour, the one GL-Man-10 personnel had a rate of 31.23 per hour, all including employment benefit contributions.

[40] On 29 September, the CCG claimed salary for the three-man crew including two GT-04 and one GL-Man-10 for 5 hours each, which are reasonable and accepted. Including employment benefit contributions, this is a sum of \$660.27.

[41] The 29 September attendance succeeded in removing bulk oil from the ship. While further monitoring of the vessel might be reasonably undertaken on similar facts in light of the risk posed by any remaining oils, it is not accepted that the way monitoring was conducted was reasonable on the available evidence. There is no record of a monitoring plan. It is not apparent how the CCG determined that further attendances would take place, or what those attendances were intended to accomplish. Ultimately the vessel broke up in the water before any further substantive response measures took place. Therefore, the remainder of the salaries claim from October 4, 13, 20, and December 16, totaling \$2,073.35 including employment benefit contributions, is not accepted.

The salaries portion of the submission is allowed in part in the amount of \$660.27.

Schedule 5 – Overtime – Full Time Personnel

Claimed: \$2,163.68

[42] These costs are for the multiple CCG Response Specialists that worked overtime hours on 25-26 September and 16 December. This included the two GT-04 personnel with rates of \$34.04 and \$38.71 per hour respectively, and the one GT-05 personnel at \$38.21 per hour, all including employment benefit contributions.

[43] The overtime claim from December 16 of \$265.82 was related to the removal of debris from the ship weeks after it broke apart. For the reasons provided in the decision, this claim is not accepted.

[44] The costs claimed on 25-26 September are questionable. These two days mostly consisted of identifying the owner and the vessel and assessing the situation. The record does not adequately demonstrate precisely what form these efforts took.

[45] The claim provides no evidence that the CCG personnel obtained any info about the fuel type and fuel tank capacities of the vessel, which would have assisted in their assessment of the oil pollution risk that the vessel posed.

[46] In terms of the initial attendances at the site, there was no evidence of what evidence the CCG obtained prior to departing for the vessel site. The narrative states on 25 and 26 September that wave activity precluded any action by the CCG. There is a lack of evidence as to why this was the case. On 25 September, was the CCG surprised that the site was accessible only by water? The evidence does not explain this. Was there an unexpected change from the forecasted weather on 26 September which frustrated the investigative effort? Did the CCG consider the readily available weather reports from the Environment Canada's Eskasoni First Nations Automatic Weather Station nearby, which indicated strong winds in the southeastern direction that would have precluded approach of the vessel on water? The cost of prudent but unsuccessful measures can be compensated for where the evidence shows they were reasonably taken. Here, the evidence is insufficient to demonstrate that these unsuccessful efforts were reasonably taken.

[47] Despite this, some of the costs incurred on 25 and 26 September were reasonable. The costs associated with obtaining follow-up information and to proceed to the site to assess the vessel are reasonable. The costs associated with the two personnel to travel to the incident site using the PRV 1 are reasonable. Therefore, costs for 5 hours at the 1.5 rate for the two personnel are reasonable and accepted.

The overtime portion of the submission is allowed in part in the amount of \$576.90.

Schedule 11 – Pollution Counter-measures Equipment

Claimed: \$1,326.55

[48] These expenses arise from the use of pumps, a crew support trailer, the PRV 1 and the Roseborough vessel. The trailer had a cost of \$138.89 per day used for 1 day, the PRV 1 had a cost of \$53.21 per day used for 5 days, and the Roseborough vessel had a cost of

\$921.61 per day used for one day. For some reason, the CCG failed to state the total costs of the pumps or to calculate it as part of the total claim in Schedule 11. Thus, the cost of nil for the pumps is accepted.

[49] The CCG's published charge-out rates correspond with the costs per day of the crew support trailer and the PRV 1, but not the Roseborough vessel. The cost of the Roseborough vessel resembled the daily rate of an 18ft – 21 ft 3 in rigid hull inflatable.

[50] The cost for the trailer is reasonable. The cost for two days of the PRV 1 is reasonable, but for the other three days it is not reasonable because it was used for wreck removal and not pollution response. This amounts to \$245.31, which is the amount accepted.

The pollution counter-measures portion of the submission is allowed in part in the amount of \$245.31.

Schedule 12 – Vehicles

Claimed: \$956.32

[51] The CCG claimed \$0.22 per kilometre plus the \$67.56 daily rate for use of three crew cab vehicles, for a total of \$956.32.

[52] The CCG failed to submit any fuel receipts, so the amount claimed for fuel cannot be accepted. In addition, and following the trends in this offer, costs incurred after 29 September are not reasonable and therefore not accepted. This means that the daily vehicle rate for one vehicle on 25 September and two vehicles on 29 September are accepted.

The vehicles portion of the submission is allowed in part in the amount of \$202.68.

Schedule 13 – Administration

Claimed: \$121.01

[53] The CCG submission advances a claim for administration costs at a rate of 3.09%, applied against claimed salaries and materials expenses.

[54] The 3.09% rate is generally accepted as reasonable. When recalculating the administrative costs for the readjustments to the salary claims, the sum of the recommended costs (Schedules 1 - \$350.00, and Schedule 4 - \$660.27 less EBP = \$519.90) becomes \$869.90. Applying the 3.09% administrative rate to this amount equals \$26.88.

The administration portion of the submission is allowed in the amount of \$26.88.

OFFER SUMMARY AND CLOSING

[55] The following table summarizes the claimed and allowed expenses:

Schedule	Claimed	Allowed
1 – Materials and Supplies	\$350.00	\$350.00
2 – Contract Services	\$48,617.69	\$0
4 – Salaries – Full Time Personnel	\$2,733.63	\$660.27
5 – Overtime – Full Time Personnel	\$2,163.68	\$576.90
11 – Pollution Counter-measures Equipment	\$1,326.56	\$245.31
12 – Vehicles	\$956.32	\$202.68
13 – Administration	\$121.01	\$26.88
Totals	\$56,268.88	\$2,062.04

Table 1 – Summary of amounts claimed and allowed.

[56] Costs and expenses in the amount of \$2,062.04 are accepted and will be paid together with statutory interest calculated at the date of payment if the Offer is accepted.

[57] 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.

[58] 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.

[59] 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.

[60] 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 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