

VIA REGISTERED MAIL

Director, Operational Business
Canadian Coast Guard
200 Kent Street (5N177)
Ottawa, Ontario K1A 0E6

RE: *Nika* – Campbell River, BC – DOI: 12 May 2017

We have completed our investigation and assessment of the claim for \$23,646.38 (“Claim”) that the Canadian Coast Guard (“CCG”) submitted to the Administrator of the Ship-source Oil Pollution Fund (“Administrator”) for costs and expenses incurred in relation to an oil pollution incident involving the converted fishing vessel *Nika* (“Vessel”). We find the Claim to be established, in part, in the amount of **\$22,720.29**. Accordingly, we hereby make an Offer of Compensation (“Offer”) in that amount, plus accrued interest of \$2,074.41, pursuant to sections 105, 106, and 116 of the *Marine Liability Act* (“MLA”). The amount of the Offer plus interest comes to \$24,794.70.

Applicable Statutory Scheme

This Claim is subject to the substantive provisions of the *Canada Shipping Act, 2001* (“CSA”) and the *MLA* as they were at the time of the incident. All references to these statutes refer to them as they were before the changes introduced in Bill C-86 came into force.

Overview of the Decision

We are satisfied on the evidence that CCG had the power under paragraph 180(1)(a) CSA to remove the Vessel, which discharged pollutants on 12 and 16 May 2017, from the marine environment. We note that it is not clear on the evidence whether it was in fact CCG or the owner of the Vessel who initiated this contracted work: all three invoices from JW Timber Co Ltd (“Timber”) are addressed to the Vessel’s owner, and the first is signed by same. We are, however, satisfied that CCG ultimately paid all three of the Timber invoices. We further find the removal of the Vessel to have been a reasonable preventive measure as contemplated by subparagraph 77(1)(c)(i) *MLA*.

The evidence is clear that by 16 May 2017, CCG was dealing with an uncooperative, irresponsible, and hostile owner. Furthermore, the Vessel, which had partially flooded twice by the time it was removed from the water, was no longer seaworthy. The aging wooden hull was unsound and the fuel lines were malfunctioning. We are satisfied based on the findings of the survey conducted by Building Sea Marine Ltd (“BSM”) on 21 May that the Vessel’s interior was oil-saturated to the extent that it would remain a continuing pollution threat if returned to the marine environment, even if all accessible pollutants were first pumped off. CCG had the power

to deconstruct the Vessel under the *CSA*. In addition, and in light of all the circumstances, we find that the ultimate decision to do so was reasonable as contemplated under the *MLA*.

Assessment

As our reductions are limited to Schedule 2 – all other claimed items being found established in full – we limit our reasons to a discussion of that Schedule.

Schedule 2 – Contract Services

CCG claimed \$22,534.05 for the services of two contractors: (1) \$1,220.10 for a survey and report from BSM; and (2) \$21,313.95, billed over three invoices, for removal, storage, deconstruction, and disposal by Timber. Given the evidentiary and demonstrated operational decision-making value of the BSM survey, we find its associated claimed amount to be established in full.

With regard to the work done by Timber, we find only the storage component from 6 through 26 July 2017 to have generated an unreasonable cost. CCG issued no fewer than three formal Direction Orders between 23 May and 6 July to the owner of the Vessel, none of which generated any meaningful action from him. Given the owner's persistent refusal to act or acknowledge his responsibility, we find that by 6 July the continued storage of the Vessel on the hard, at a cost of \$926.10, had ceased to be reasonable.

We therefore find this Schedule to be established in the amount of **\$21,607.95**.

We look forward to receiving notification of your acceptance so that payment can be made without delay. In considering this Offer, kindly note that you have 60 days upon receipt to notify the undersigned whether you accept it. Alternatively, you have 60 days upon receiving this Offer to appeal its adequacy in the Federal Court. The *MLA* provides that if no notification is received at the end of the 60-day period, you will be deemed to have refused the Offer.

If you accept this Offer, the *MLA* provides that the Administrator benefits from a statutory release and subrogation to the extent of the payment made to you in relation to the subject incident.

Yours sincerely,

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

Encl.: Appendix (1)

c.c.: Acting Superintendent, Environmental Response, Western

Appendix: Summary Assessment Table

Schedule	Claimed	Established
2 – Contract Services	\$22,534.05	\$21,607.95
3 – Travel	\$67.20	\$67.20
4 – Salaries – Full Time Personnel	\$688.13	\$688.13
12 – Vehicles	\$340.80	\$340.80
13 – Administration	\$16.21	\$16.21
Total in Principal	\$23,646.38	\$22,720.29
Interest		\$2,074.41
Grand Total		\$24,794.70