Ottawa, 31 May 2019
SOPF File: 120-804-C1-C
CCG File:

VIA REGISTERED MAIL

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

RE: *Jasper* – Deep Bay, BC – DOI: 25 July 2017

We have completed our investigation and assessment of the claim for $36,490.94[1] (the "Claim") that the Canadian Coast Guard ("CCG") submitted for costs and expenses incurred in relation to an oil pollution incident involving the wooden motor vessel *Jasper* (the "Vessel"). We find the Claim to be established, in part, in the amount of **$33,657.50**. Accordingly, we hereby make an Offer of Compensation (the "Offer") in that amount, plus accrued interest of $2,041.50, pursuant to sections 105, 106, and 116 of the *Marine Liability Act* (the "*MLA*"). The amount of the Offer plus interest comes to $35,699.00.

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Applicable Statutory Scheme

This Claim is subject to the substantive provisions of the *Canada Shipping Act, 2001* (the "*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 from the marine environment. It required regular pumping to be kept afloat, and it had discharged a small quantity of the pollutants that were on board. Further, the apparent owner of the Vessel had denied responsibility and refused to take action. We are further satisfied on the evidence that removal was a reasonable measure with an attached reasonable cost as contemplated by subparagraph 77(1)(c)(i) *MLA*.

Our assessment of the CCG decision to deconstruct the Vessel was complicated by evidentiary shortfalls and inconsistencies. We note first that the Claim "Narrative" effectively terminates on 2 August 2017 with the arrival of the Vessel at the Saltair Marine Services Ltd ("Saltair") facility. The Building Sea Marine Ltd ("BSM") survey was conducted on 14 August. The survey report, however, is dated 24 September. By this time, Saltair had finished dismantling the Vessel.

[1] This figure appears to be the result of a very minor mathematical error. The total of claimed amounts from all Schedules actually comes to $36,490.93.

As we have no evidence that BSM communicated its findings of 14 August 2017 to CCG before the decision to deconstruct was made, we must conclude that the survey did not inform this decision. Thus, the survey cannot be deemed to represent a reasonable measure: it serves at best as an after-the-fact justification for the decision to deconstruct. It is of note also that BSM was tasked with determining the following: (1) Structural condition of the Vessel; (2) Viability of repair and refloating; (3) Reconstruction prospects; and (4) Residual monetary value on deconstruction. The report attached to the Claim reflects this tasking, with limited specifics or analysis of any pollution threat posed by the Vessel.

Without the benefit of the BSM survey report, the question of central concern to the Administrator of the Ship-source Oil Pollution Fund (the "Administrator") becomes whether CCG has demonstrated that it had sufficient reason to believe a pollution threat existed at the time the decision to deconstruct was made and whether such threat continued to exist when the deconstruction began. To this end, CCG has provided some degree of helpful evidence throughout the documentation of its Claim.

Photographs taken while the Vessel was still in the water illustrate its generally poor condition and suggest interior oil saturation. CCG situation reports and the Claim Narrative add support to these conclusions. The chronology provided by Saltair Marine Services Ltd ("Saltair") with its invoice of 16 October 2017 references the use of sorbent pads on the Vessel from 1 August, when "oily sludge" was cleaned from around the drive shaft, through 20 September, when dismantlement of the Vessel was completed. It is also clear that quantities of diesel and other waste oils were removed from the Vessel's tanks and machinery in the course of deconstruction. As a result, we find that CCG was able to determine early in the course of its response that the Vessel could not be returned to the marine environment without further discharge of oil, thereby giving it the power to deconstruct under paragraph 180(1)(a) of the *CSA*.

As to the reasonableness of deconstruction as a preventive measure under the *MLA*, our assessment is complicated by our inability to determine the specific date that CCG decided to have the Vessel deconstructed. In spite of this evidentiary failing, however, we are willing to accept that CCG acted reasonably in the circumstances regardless of when it made its decision. Informing this finding are the following factors: the Vessel had discharged oil and was not seaworthy; the apparent owner was unwilling to respond; quantities of pollutants were on board the Vessel; and portions of the Vessel's interior were saturated with oil.

As our reductions are limited to the amounts claimed under Schedule 2, we confine our reasons below to this Schedule.

Assessment

Schedule 2 – Contract Services

CCG claimed $33,407.76 for the services of two contractors. As noted, BSM conducted a survey on 14 August 2017, producing a report dated 24 September, at a total cost of $1,307.25. For the reasons above, we reject this portion of the Claim.

In addition to the BSM survey, CCG claimed $32,100.51 for the services of Saltair, which included removal, storage, deconstruction, and disposal of the Vessel. For the reasons enumerated above, we find the removal, deconstruction, and disposal of the Vessel to have

represented reasonable preventive measures. We find further that the costs attached to these measures were reasonable. On the question of storage, which lasted 48 days, CCG has provided no justification whatsoever on this front. Accordingly, we have applied a reduction of $1,526.18, representing 45 of the unsupported storage days. We thus find the amount of **$30,574.33** to be established under this Schedule.

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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.: Superintendent, Environmental Response, Western Region

Appendix: Summary Assessment Table

Schedule	Claimed	Established
2 – Contract Services	$33,407.76	$30,574.33
3 – Travel	$100.80	$100.80
4 – Salaries – Full Time Personnel	$1,012.35	$1,012.35
5 – Overtime – Full Time Personnel	$434.99	$434.99
11 – Pollution Counter-measures Equipment	$1,247.56	$1,247.56
12 – Vehicles	$263.58	$263.58
13 – Administration	$23.89	$23.89
Total in Principal	$36,490.93	**$33,657.50**
Interest		**$2,041.50**
Grand Total		**$35,699.00**