Ottawa, 12 July 2019
SOPF File: 120-811-C1
CCG File:

VIA REGISTERED MAIL

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

RE: *SC 170* – Port McNeil, BC – DOI: 22 August 2017

We have completed our investigation and assessment of the claim for $11,606.93 (the "Claim") that the Canadian Coast Guard (the "CCG") submitted for costs and expenses incurred in relation to an oil pollution incident involving the fishing vessel *SC 170* (the "Vessel"). We find the Claim to be established, in part, in the amount of **$8,528.54**. Accordingly, we hereby make an Offer of Compensation (the "Offer") in that amount, plus accrued interest of $451.38, pursuant to sections 105, 106, and 116 of the *Marine Liability Act* (the "*MLA*"). The amount of the Offer plus interest comes to $8,979.92.

The following reasons are provided to explain the disparity between the amount claimed and the amount offered by the Administrator of the Ship-source Oil Pollution Fund (the "Administrator").

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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 when Bill C-86 came into force.

Overview of the Incident

On 22 August 2017, CCG responded to a report that the Vessel was sinking and discharging oil pollutants into Port McNeil's marine environment. CCG tasked the Port Hardy Lifeboat station with the response. The Port Hardy personnel dewatered the Vessel and noted no further water ingress. CCG contacted the owner, who told CCG he would remove the Vessel for repairs.

On 5 September 2017, the Port McNeil Harbour Authority (the "Harbour Authority") informed CCG that the Vessel had not been removed and was again taking on water. On scene on 6 September 2017, CCG Emergency Response ("ER") personnel conducted an assessment of the Vessel, noting the poor condition of the engine room and bilge. The "Narrative" includes their observations: "[o]bvious signs of oil pollution was [*sic*] observed throughout the bilge and engine room which coated the wooden timbers." The photos taken during the assessment, which include images of an oily bilge and engine room, corroborate this observation. The owner

informed CCG that illness had prevented him from effecting repairs earlier, but that he would do so immediately.

On 17 October 2017, the Harbour Authority informed CCG that the Vessel had not been removed and the bilge pumps were not keeping up with water ingress. The Harbour Authority sent information demonstrating the Vessel's unseaworthiness, which included photos of an oil sheen around the Vessel and of a person's thumb pressed into Vessel's rotting wood planks. CCG then arranged for the Vessel to be removed and put in storage by Progressive Diesel Ltd.

On 16 November 2017, while the Vessel was in storage, CCG arranged for Building Sea Marine to conduct a survey of the Vessel. An invoice included in the Claim states the purpose of this survey was "to assess the current condition and salvage value of the vessel."

At some point between 19 January 2018 and 4 February 2018, the Vessel was removed from storage, hauled to the demolition yard, and deconstructed.

Overview of the Decision

We find the majority of this Claim for preventive measures within the meaning of section 77 of the *MLA* to be established.

The decision on 5 September 2017 to ER personnel for a site visit and assessment was reasonable. The subsequent measures that generated hourly, overtime, administrative, and travel expenses were also reasonable. A portion of the travel expenses are not be established due to lack of evidence.

The Vessel was known to have discharged oil pollutants into the marine environment, and its wooden planks were saturated in oil to the extent that the Vessel itself not only posed an ongoing oil pollution threat but likely was an ongoing source of actual oil pollution. The Vessel was also unseaworthy, as its wood planks were rotten and the bilge pumps could not keep pace with water ingress. Given these factors, in addition to the owner's inaction, we find the decision to remove the Vessel reasonable. We also conclude that at the time of removing the Vessel, CCG knew or ought to have known that deconstructing the Vessel would have been reasonable in light of the ongoing oil pollution threat it posed. With this in mind, we find the 16 November survey amounted to a duplication of effort, and that the reasonableness of storing the Vessel for three months cannot be established on the evidence.

Assessment

As our reductions are limited to Schedules 2 and 12, we limit our reasons to a discussion of those Schedules.

Schedule 2 – Contract Services

CCG claimed a total of $9,749.88 for two separately contracted services. The cost of the first service totalled $7,889.28 for Progressive Diesel Ltd. to remove, haul, store, and deconstruct the Vessel. The cost of the second service, provided by Building Sea Marine, totalled $1,860.60 for the survey of the Vessel.

Progressive Diesel Ltd.

We find a majority of the claimed amount for Progressive Diesel Ltd. services to be established. Three portions were not made out.

First, evidence suggests that on or before 17 October, CCG had sufficient knowledge to justify removing and deconstructing the Vessel. The decision to store the Vessel on shore from 19 October 2017 to 19 January 2018 – a period of three months – conflicts with this knowledge. Since CCG provided no explanation or justification to support its decision to store the Vessel before its deconstruction, we find this measure unreasonable on the evidence. As a result, the attached expense of $450.00 is rejected.

Second, the decision to unload the Vessel for storage necessarily required the Vessel to be hauled to the demolition yard (the "Second Haul") for deconstruction. The decision of the Second Haul is therefore ancillary to the decision to store the Vessel. As we have found the storage of the Vessel to be an unreasonable measure, it follows that the Second Haul was likewise unreasonable. The associated expense of $119.50 is thereby rejected.

Third, it appears CCG inadvertently applied a duplicate charge of $358.60 in GST to the Progressive Diesel Ltd. total. We have corrected the total to account for the discrepancy.

Accordingly, we find the amount of $6,961.18 of the claimed $7,889.28 in this portion to be established.

Building Sea Marine

The survey conducted by Building Sea Marine on 16 November 2017 amounted to a duplication of effort. CCG had its assessment and photos taken on 6 September 2017 and the Authority's photos taken on 17 October 2017. The assessment and photos depict the Vessel's rotten wooden hull and oil-saturated wood in the bilge and engine room. While the Building Sea Marine survey may have corroborated CCG's findings, CCG already possessed this knowledge before the Vessel was removed from the water and before the survey was commissioned.

We reject the $1,860.60 claimed in this portion.

Schedule 12 – Vehicles

CCG claimed $573.29 for vehicle-related expenses, relying on a rate of $0.52/km without accompanying gas receipts. This rate appears to rely on the National Joint Council ("NJC") directive for BC, which was $0.505/km at the time of the incident. However, this rate applies to government business conducted using a privately-owned vehicle. The CCG personnel conducted government business with a government vehicle, so the NJC rate cannot apply.

The CCG Cost Recovery Manual does not include instruction on submitting kilometre rates without gas receipts. As such, we looked to past claims to establish a baseline rate of $0.22/km (without gas receipts).

Applying the kilometre rate of $0.22/km, we find the amount of $283.60 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,

Anne Legars, LL.M., CAE
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	$9,749.88	$6,961.18
3 – Travel	$154.58	$154.58
4 – Salaries – Full Time Personnel	$648.45	$648.45
5 – Overtime – Full Time Personnel	$459.26	$459.26
12 – Vehicles	$573.29	$283.60
13 – Administration	$21.47	$21.47
Total in Principal	$11,606.93	**$8528.54**
Interest		**$451.38**
Grand Total		**$8,979.92**