



Ottawa, 17 December 2020  
*SOPF File: 120-871-C1*  
*CCG File:*

**BY EMAIL**

Senior Director of Incident Management, Response Directorate  
Canadian Coast Guard  
200 Kent Street (5N177)  
Ottawa, Ontario K1A 0E6

**RE: *M/V MAVERICK IV* — Cowichan Bay, British Columbia**  
**Incident date: 2018-10-05**

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**SUMMARY AND OFFER**

This letter responds to a submission from the Canadian Coast Guard (the “CCG”) with respect to the pleasure craft MAVERICK IV (the “Vessel”), which was involved in an incident on 5 October 2018, at Cowichan Bay, British Columbia (the “Incident”).

On 24 September 2020, 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 \$52,522.45 for costs and expenses arising from measures taken by the CCG to respond to the Incident.

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 *Marine Liability Act*, SC 2001, c 6 (the “MLA”).

The amount of \$18,905.55 (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.

The reasons for the Offer are set forth below, along with a description of the CCG’s submission.

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**THE SUBMISSION RECEIVED**

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 and Photographs

According to the narrative, on 5 October 2018, Pier 66 Marina, in Cowichan Bay, British Columbia, advised the CCG that “the P/C Maverick, approximately 55 ft in length, was sinking. Several small pumps had been placed onboard by marina personnel. [Marina personnel were] unable to make contact with the owner.”

The narrative continues:

Ganges Lifeboat Station tasked to assess and mitigate any pollution threat. Eagle Eye Marine were in vicinity and hired to attend because of their close proximity/availability and ability to salvage vessel should it sink. Eagle Eye Marine would also have additional pumps should they be required. [Environmental Response] crew (2 personnel) from Coast Guard Base Victoria enroute with ER vessel (733 FRC) in tow. ER vessel to be launched at Institute of Ocean Science (IOS), Patricia Bay.

Eagle Eye Marine were first to arrive and observed that the vessel had been let go from the dock, still buoyant (leaned over to starboard side) and floating towards other vessels in the marina. A slight sheen observed. Eagle Eye then towed vessel to shallow water and grounded it away from other vessels.

Ganges Lifeboat Station crew later arrived on scene and placed sorbent boom around vessel to mitigate pollution threat. Ganges Lifeboat Station are not trained to deal with sunken vessels and salvage and stood by until the arrival of trained ER personnel from Victoria.

12:11 pm ER crew arrived on scene. Ganges Lifeboat Station stood down. Upwelling of diesel observed from the vessel. Extra sorbent boom placed by ER personnel. Still no contact with owner. ER could not wait for owner contact to plan salvage. There was an unknown amount of pollution on board and a consistent upwelling.

Eagle Eye would try again to move vessel to more shallow water. Plan for salvage was to wait until low tide (approximately 8am) to dewater and refloat vessel. Vessel would then be towed to Vector Marine where it would be removed from the marine environment.

ER crew departed for Victoria via IOS. Vessel secured at IOS for operation next day.

3pm ER crew arrived in Victoria.

The narrative goes on, with respect to 6 October 2018:

ER crew (2 personnel) departed Coast Guard Base Victoria enroute IOS to board ER vessel (FRC 733) and head to P/C Maverick.

8:15am ER personnel arrived P/C Maverick. Eagle Eye Marine already on scene and had commenced dewatering operations. Slight sheen still observed around vessel. ER were on scene to ensure salvage was being done safely and to deploy extra boom and pumps should the need arise.

As the salvage progressed, ER had to provide extra pumps and generator to assist with refloat.

By 9:30am vessel was refloated and prepared for tow to Vector Marine. ER crew collected sorbent boom.

10:25am P/C Maverick was taken under tow by Eagle Eye Marine. Eagle Eye Marine personnel were kept on board vessel to maintain pumps during tow. IOS, Patricia Bay, was along the route to Vector Marine, therefore ER vessel accompanied tow to ensure tow was secure and to provide extra pumps or assistance, if required.

11:00am Tow was just off Patricia Bay. Eagle Eye Marine and ER determined tow was secure and ER vessel would no longer be required. ER personnel departed for IOS.

On arrival IOS, ER vessel removed from water onto trailer and transported back to Coast Guard base Victoria.

12:15pm arrived Victoria. ER vessel cleaned and engines flushed.

The narrative concludes by noting that at 14:25, “Eagle Eye Marine advised P/C Maverick removed from the marine environment at Vector Marine. No further CCG ER response.”

The submission includes several uncaptioned and undated photographs.

### Cost Summary

The CCG submission summarizes claimed costs<sup>1</sup> as follows:

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<sup>1</sup> The sum of the amounts sought by the CCG is actually \$52,522.45, or \$0.01 higher than indicated in Figure 1.

		<u>SCH</u>
MATERIALS AND SUPPLIES	-	1
CONTRACT SERVICES	41,128.61	2
TRAVEL	-	3
SALARIES - FULL TIME PERSONNEL	1,393.35	4
OVERTIME - FULL TIME PERSONNEL	1,229.27	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)	8,569.00	11
VEHICLES	166.34	12
ADMINISTRATION	35.88	13
	<hr/>	
TOTAL CCG COST OF INCIDENT	<u>\$ 52,522.44</u>	

Figure 1 – Screen capture of the CCG cost summary

### Contractor Documentation

The CCG submission summarizes claimed contractor costs as follows:

CONTRACT SERVICES	AMOUNT	GST	TOTAL	REFERENCE
VECTOR YACHT SERVICES	30,105.55	1,505.28	31,610.83	INV 30638
VECTOR YACHT SERVICES	1,251.80	62.59	1,314.39	Paid Feb 1/19 INV 31181
BUILDING SEA MARINE	2412.75	120.64	2,533.39	Paid Jan 25/19 INV 716
EAGLE EYE MARINE SERVICES	5400	270	5,670.00	Paid Nov 21/18 INV 1038 Paid by GAC
			-	

Figure 2 – Screen capture of contractor costs summary

The claimed costs appearing in Figure 2 are supported by four primary invoices paid by the CCG and ten secondary invoices from seven different subcontractors and suppliers.

The first Vector Yacht Services Ltd. (“Vector”) invoice is dated 9 January 2019. It covers the removal, four-day storage, deconstruction, and disposal of the MAVERICK IV. It includes brief descriptions of that work, much of which was performed by subcontractors and aided by suppliers:

**Work To Be Performed:**

NON TECH

**Work Performed:**

Started removing garbage from boat.  
Cut up furniture to be able to fit in dumpster.  
Removed contents of vessel.  
Break out window on stbd side and start cleaning out cabin.  
Drilled holes and started removing fuel from boat.  
Cut a hole in side of the boat for removal of garbage.  
Pumped diesel/water out of tanks, threw garbage away.  
Cleaned out garbage Took out everything from inside boat. Tidy it up.  
Threw away metal/garbage from inside boat.

Grind off shafts.  
Removed props and took to shop.  
Continued with demoitioning boat.  
Started Pulling metal off boat.  
Suck out transmission oil. Cleaned bilge. Pumped water and oil out.  
Removed deck railings, mast and hardware from boat.  
Disposing/recycling of boat.  
Pumped out fuel tanks of all remaining fuel.120 gallons. Separate copper, metal and general disposal of vessel into bins.

Break down boat and put into dumpsters. Separate metals.  
Continued with clean up.  
Clean up from break down.

**Sub-totals for job:** Labour: 12,474.00      Parts: 0.00      Other: 0.00

**Work To Be Performed:**

HAUL BOAT TRAVEL LIFT  
PRESSURE WASH  
BLOCK

**Work Performed:**

Emergency haul out.  
Scraped and shovelling mussels from boat.

Charges For Job:	Description	Quantity	Price	Extended
ZZZ11	HAUL/LAUNCH BOAT /EMERGENCY HAUL	1.5	778.00	1,167.00
ZZZ131	LAY DAYS (PER DAY) 10/6/2018	4	117.00	468.00

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ZZZ132	PRESSURE WASH	56	3.00	168.00
ZZZ1321	ENVIRONMENTAL PRESSURE WASH FEE	56	0.66	36.96
KI-510	5" X10' LINKABLE OIL BOOM	6	42.00	252.00
<b>Sub-totals for job:</b> Labour: 858.00      Parts: 2,091.96      Other: 0.00				

**Work To Be Performed:**  
SUPPLY PARTS FROM STOCK FOR SERVICE ORDER

**Work Performed:**

Charges For Job:	Description	Quantity	Price	Extended
AWA306017	304 SS HOSECLAMP 40/64-45/64	2	3.23	6.46
COVERALL	COVERALL	2	9.16	18.32
75123	BLUE PAPER SHOP TOWELS ROLL	1	3.12	3.12
C27946	MARINE CLEANER 946ML	1	14.98	14.98
ZZZ47	ENVIRO-CONTAMINATED/OILY WATER	625	1.00	625.00
<b>Sub-totals for job:</b> Labour: 0.00      Parts: 667.88      Other: 0.00				

**Work To Be Performed:**  
SPECIAL ORDER PARTS FOR SERVICE ORDER:

**Work Performed:**

Charges For Job:	Description	Quantity	Price	Extended
ZZZ30	FREIGHT RUSH SERVICE	1	75.00	75.00
KI-XB25D	XSORB OUTDOOR ALL-PURPOSE ABSORBENT (25LB BAG)	20	44.80	896.00
ZZZ133	SUB CONTRACT- ANALYSIS FOR ASBESTOS/LEAD LEACHATE TEST/LABOUR & DRIVE TIME/REPORT PREP AREC#13283	1	1,263.90	1,263.90
ZZZ103	DLBINS#44100-REMOVAL OF BOAT	1	1,962.75	1,962.75
ZZZ105	DEMOLITION-LEADER#13611	1	1,500.00	1,500.00
ZZZ40	ENVIRO - DISPOSAL WASTE ABSORBANT PADS/OILY WATER-HETHRINGTON#85534	1	2,520.00	2,520.00
ZZZ103	REMIEDIATE ASBESTOS CONTAINING PIPE INSULATION FRM FURNACE CHIMNEY-LOCAL#1024	1	385.00	385.00
ZZZ104	RENTAL OF CUTOFF SAW	1	66.55	66.55
KI-900	US-M-WM- MED WEIGHT OIL ABSORBENT PADS	1,000	0.84	840.00
KI-DBAG	HD HAZMAT YELLOW DISP BAG	50	3.36	168.00
KI-510	5" X10' LINKABLE OIL BOOM	8	42.00	336.00
ZZZ104	DLBINS#44119-REMOVAL & TIPPING FEE	1	3,075.51	3,075.51
ZZZ104	ENVIRO FEE=TERRAPURE#84205	1	925.00	925.00
<b>Sub-totals for job:</b> Labour: 0.00      Parts: 14,013.71      Other: 0.00				

Total Parts: \$16,773.55	SubTotal: \$30,105.55
Total Labor: \$13,332.00	PST: \$0.00
Total Sublet: \$0.00	Shipping: \$0.00
Total Disposal: \$0.00	GST: \$1,505.28
Pickup/Delivery: \$0.00	Total: \$31,610.83
Service Call: \$0.00	Payment Received: \$0.00
	Balance Due: \$31,610.83

Figures 3 through 6 – Screen captures from Vector invoice dated 9 January 2019

The 9 January 2019 Vector invoice is additionally supported by nine invoices from seven different subcontractors and suppliers. These invoices generally align with the details already presented in Figures 3 through 6, and few of them present any additional detail.

One of the invoices, from West Coast Spill Supplies Ltd. (“West Coast”), does not align with the information presented in Figures 3 through 6. The West Coast invoice is numbered 37636 and dated 20 December 2018:

Quantity	Item No.	Description	Tax	Unit Price	Amount
20	KI-XB25D	XSORB Outdoor All-Purpose Absorbent (25 lb. Bag)	G	32.00	640.00
10	KI-900	US-M-WM - Medium Weight Oil Absorbent Pads (100 per bundle)	G	60.00	600.00
1	KI-DBAG	HD Yellow Hazmat Disposal Bags (33" x 45" x 6 mil, 50 per roll)	G	120.00	120.00
2	KI-510	5" x 10' Linkable Oil Absorbent Boom (4 per bundle)	G	120.00	240.00
		Subtotal:			1,600.00
		Freight	G		75.00
		G - GST @ 5%			

Rec'd  
 Adv.  
 Subst.

Pads = \$ .60  
 → .84  
 MU = 40%  


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 Bags = \$ 2.40  
 → \$ 3.36  
 MU = 40%  


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 Boom = \$ 30  
 → \$ 42 40%

Figure 7 – Screen capture from West Coast invoice dated 20 December 2018

The second Vector invoice is dated 11 January 2019 and covers a single subcontractor invoice, from D.L. Bins Ltd (“D.L.”). The Vector invoice contains the description “EXTRA DISPOSAL FEE”. The D.L. invoice is dated 11 January 2019 and includes two charges with no further description:

Date	Item	Ticket #	Qty	Price Each	Amount
2018-12-18	Haul Charge - Large	67042 - 40y 4005	1	275.00	275.00
2018-12-20	Tipping Fec	20190108	4.44	220.00	976.80
				5.00%	62.59

Figure 8 – Screen capture from D.L. invoice dated 11 January 2019

The Building Sea Marine (“BSM”) invoice is dated 19 October 2018. It covers a 15 October 2018 “Survey for Condition and Salvage Value”, including a survey report and photographs.

Finally, the Eagle Eye Marine Services (“Eagle Eye”) invoice is dated 12 October 2018:

DATE	ACTIVITY	AMOUNT
05/10/2018	Maverick - 60ft Vessel Sinking in Cowichan Bay	0.00
05/10/2018	Tow vessel to beach, deployed absorption boom, picked up debris, 6 @ \$200.00	1,200.00
06/10/2018	Pumped, patched and towed vessel to Vector (2 response vessels and 5 crew), 1 @ \$4,200.00	4,200.00

Figure 9 – Screen capture from Eagle Eye invoice dated 12 October 2018

### BSM and CCG Emails Dated 15 October 2018 and BSM Survey Report

An email from BSM to the CCG dated 15 October 2018 contains a preliminary summary of the surveyor’s findings. The summary indicates that the MAVERICK IV was positively identified as the vessel registered under that name, a 1959-built wooden pleasure craft of approximately 52 feet in length and 40 gross tons, based on a Transport Canada official number carved into its planks.

The BSM email summary concludes that the vessel was in poor condition and effectively unsalvageable. It notes that portions of the interior of the vessel could not be accessed due to detritus and makes two references to oil pollutants, stating that: (1) The “Vessel [was] on blocks in the yard and leaking oily bilge water from several butt seams and portions of the garboard seam along port side”; and (2) Fuel tanks and machinery were assumed to be full of oils and/or water.

Also included in the submission is an internal CCG email of 15 October 2018, forwarding the surveyor’s summary findings along with a recommendation: “I recommend that this vessel be deconstructed. The owner is unwilling and unable, and denying ownership as well.”

The main text of the BSM survey report, dated 19 October 2018, is nine pages long. The survey report also includes an appendix containing 74 captioned colour photographs of the MAVERICK IV. The report includes the following description of tasking:

The purpose of the survey was to sight the vessel externally & internally, as much as was physically possible and permitted by the state of the vessel, in order to determine the following:

- The current condition of the vessel;
- If the vessel could be efficiently repaired and safely put back into the water;
- If the vessel is a reasonable candidate for reconstruction; and,
- What is the residual value (if any) if the vessel was deconstructed.

The survey report does not differ significantly from the summary email of 15 October 2018, though it does offer slightly more detail on oils, including estimated volumes on board:

The main engines, marine gears and hydraulic system remain assembled so it is assumed they also remain with their internal lubricating & hydraulic oils mostly in place in the sumps.

Total volume estimated to be 60 gallons (270 litres) of gear oil and engine oil.

Total volume estimated to be 20 gallons (90 litres) of hydraulic oil.

[...]

The Isuzu auxiliary engine systems remain intact and so considered to contain an estimated 5 gallons of coolant and 5 gallons of sump oil, or 25 litres each.

It is considered that the fuel tanks are full of diesel fuel / water mixture, so containing approximately 300 gallons each or 600 gallons (2700 litres) total.

The diesel stove and diesel fired heating furnace remain connected, and so those systems remain with fuel in them.

The photographs included with the survey report confirm that the Vessel was in poor condition and that the lower parts of its interior spaces were cluttered. While some of the external photographs show a short section of sorbent boom on the ground beneath the vessel, the internal photographs do not appear to show signs of oil saturation.

#### Personnel and Equipment Daily Logs

Two Personnel & Equipment Daily Logs (the “Logs”) are included with the CCG submission. The Logs are both dated 5 October 2018, though the first is labelled “DAY 1” and the second is labelled “DAY 2”.<sup>2</sup>

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<sup>2</sup> Based on the narrative and the contents of the Logs, it appears that “DAY 2” was in fact 6 October 2018.



The Logs note that two CCG personnel began work at 06:00 on 5 October 2018, with one individual finishing at 15:00 and the other at 18:00, staying on to draft a report. The following day, both personnel began work at 06:00 and finished at 14:00.

The Logs also shed some light on CCG vessel, vehicle, equipment, and materials usage. Both of the Logs indicate that a Ford F-350 was used to travel 80 kilometers each day. In addition, the Logs show the use of “CGE 777 (Fast Response Craft - 8.6m)” on both days of the CCG response. Finally, with respect to equipment and materials, the Logs indicate the use of 80 feet of sorbent boom, a generator, and two 2-inch electric pumps.

Additional CCG Internal Documentation

The submission provides the following summary in support of claimed salary costs for two CCG personnel:

	Group & Level	Time (Hours)	Rate	COST	REFERENCE
	GT 04	15.0	43.76	656.40	As per Personnel log
	GT 05	15.0	49.13	736.95	As per Personnel log

Figure 10 – Screen capture of CCG personnel salaries summary (names of personnel redacted)

A further summary is provided in support of claimed overtime costs for the same two CCG personnel:

	Group & Level	1.5 x	2.0 X	Total Overtime Hours	Rate	COST	REFERENCE
	GT 04	9		13.50	36.47	492.35	Oct 5 to 6
	GT 05	12		18.00	40.94	736.92	Oct 5 to 6

Figure 11 – Screen capture of CCG personnel overtime summary (names of personnel redacted)

Additional overtime logs indicate that the first of the two CCG personnel deployed (GT 04) worked one hour of overtime on 5 October 2018 and eight hours of overtime on 6 October 2018. The second individual (GT 05) appears to have worked four hours of overtime on 5 October 2018 and eight hours of overtime on 6 October 2018. Both individuals were paid overtime at 1.5 times their ordinary rate, exclusive of employee benefits.

Another summary is provided in support of claimed costs for pollution counter-measures equipment:

Description	BALE	TIME (days)	RATE (per ft)	RATE (daily)	COST	REFERENCE
SORBENT BOOM	2			75.00	150.00	Ref Equip Log
CGE 777 (Fast Resp Craft)		2.00		4209.50	8,419.00	Ref Equip Log

Figure 12 – Screen capture of CCG pollution counter-measures equipment summary

Finally, claimed vehicle usage and administration costs are supported by additional CCG internal documentation, the contents of which align with that already described above.

## **DETERMINATIONS AND FINDINGS**

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

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.

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

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

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.

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*

The CCG submission includes a narrative setting out the facts of the Incident, up to and including the 6 October 2018 removal of the Vessel from the water. This description is accepted as generally accurate.

*The pollution threat posed by the Vessel and the measures taken in response to same*

It is accepted that the Incident as described by the CCG involved both an oil discharge with the threat of environmental damage as well as the threat of future discharges. While the Vessel remained submerged, it was not known how much oil remained aboard. The Vessel continued to discharge oils, as evidenced by continued upwelling and sheening. As a result, it is concluded that all of the steps taken up to and including the removal of the Vessel were reasonable measures taken with respect to a demonstrated oil pollution threat. To the extent that these measures were taken by Eagle Eye and Vector, the associated costs are also considered reasonable.

Apart from a possible claim for the cost of sorbent materials deployed on the morning of 5 October 2018, which is accepted as reasonable, the CCG does not seek to recover any costs associated with the efforts of the CCG Lifeboat Station at Ganges.

*The evidentiary gaps on CCG decision-making after the Vessel's removal pose problems*

Save for the short internal CCG email of 15 October 2018, the CCG's submission includes no testimonial or direct evidence with respect to decision-making following the Vessel's removal from the water on 6 October 2018, though 60% of the claimed costs and expenses were incurred subsequent to that point. The lack of pertinent evidence about those costs and expenses means many could not be determined to be compensable under the Part 7 of the MLA.

Generally, the CCG can recover for the reasonable costs associated with deconstructing and disposing of an entire vessel where it is shown that the vessel itself is an oil pollution waste. With wooden vessels, hull planking may be substantially soaked with oils, to the extent deconstruction becomes a reasonably cost-effective avenue to ensuring that the vessel in question no longer poses a threat to the marine environment. To establish this, direct evidence is required as to a vessel's oiled state.

Because the reasonableness of a measure depends on what was known at the time that measure was taken, the details of the decision-making process are also important.

The present claim submission does not include such evidence. The limited record following 6 October 2018 (i.e., the internal email recommendation of 15 October 2018) suggests that the Vessel was deconstructed primarily because its apparent owner lacked the capacity or willingness to take action. It is not possible to determine on the record exactly when or why the decision to deconstruct was taken. The remaining evidentiary issues are discussed in more detail below.

*The survey and deconstruction are not accepted as reasonable oil mitigation measures*

The primary evidence with respect to the Vessel's deconstruction comprises the BSM documentation and the various invoices associated with Vector's work. This evidence is not sufficient to demonstrate that the Vessel was an oil pollution waste. As a result, many of the claimed contract services costs have not been established as reasonably incurred with respect to mitigating oil pollution, for the purposes of Part 7 of the MLA.

According to the narrative, all deployed sorbent boom was collected by CCG personnel at around 09:30 on 6 October 2018, just after the Vessel was raised. Eagle Eye then towed the Vessel to the Vector facility, with a generator powering pumps on board to keep it afloat during transit. The responding CCG personnel provided an escort as far as Patricia Bay before departing for Victoria.

On the evidence, it appears the only inspection of the Vessel was carried out by BSM, whose surveyor was not specifically tasked with assessing oil pollutants on board.

While the BSM survey lists estimated volumes of oil pollutants in the Vessel's various tanks and machinery, the likely presence of engine oils in closed systems is seldom sufficient to render compensable the costs of deconstructing an entire vessel. The survey report also notes that oily water was leaking from the lower planks on the Vessel's hull while it was stored on blocks at Vector's yard. This finding too is inconclusive: the Vessel

had recently been submerged, and the presence of oily water in its bilge does not mean that its planks were saturated with oils.

The BSM report indicates that the surveyor could not inspect the Vessel’s bilge and machinery spaces due to piled up debris in parts of the Vessel’s interior. Nothing in the evidence suggests that the debris could not have been removed prior to the survey, nor that the survey could not have been delayed to follow removal of that debris. As a result, and in light of the tasking set out in the BSM report, it is determined that oil pollution assessment was not part of BSM’s core tasking. For these reasons, the BSM survey is not accepted as a reasonable measure taken with respect to determining any residual oil pollution threat posed by the Vessel.

The Vector invoices and those provided by subcontractors and suppliers suggest that during the deconstruction process the oils and oily water from within the Vessel were pumped out and disposed of through appropriate waste streams. Soiled sorbent materials used throughout the response appear to have entered similar streams, but there is no indication that any actual components of the Vessel were disposed of in a manner that might suggest oil saturation.

In the absence of direct evidence on the point, a finding cannot be made that the Vessel’s planks were saturated with oils. As a result, most of the deconstruction and disposal services rendered by Vector and its various subcontractors and suppliers are not established as measures reasonably taken with respect to oil pollution. The specifics of this finding are set out below.

**CLAIM AND OFFER DETAILS**

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

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 below explains why certain portions of the CCG’s claim have been allowed while others have been disallowed.

Schedule 2 – Contract Services Claimed: \$41,128.61

The contract services in this case were divided among three companies, one of which issued two separate invoices:

<b>Company</b>	<b>Invoice Date</b>	<b>Work Description</b>	<b>Claimed</b>
Eagle Eye	2018-10-12	Towage, deployment of sorbents, pumping	\$5,670.00
BSM	2018-10-19	Survey, travel, survey report, photographs	\$2,533.39
Vector	2019-01-09	Removal, storage, deconstruction, disposal	\$31,610.83
Vector	2019-01-11	Additional disposal fees	\$1,314.39

*Table 1 – Summary and brief description of claimed contract services*

The CCG submission did not include some important contractor documentation such as statements of work or agreements on rates. While in this case some of the documentation from two of the contractors engaged, along with other evidence, is sufficient to establish the reasonableness of some of the claimed costs, such omissions could in other cases reduce the likelihood of a claim being accepted. The absence of presumably available evidence to establish a claim can result in an adverse inference being drawn where the claimed expense is not otherwise adequately supported.

*Eagle Eye*

For the reasons set out above, the amounts paid to Eagle Eye are allowed in full.

*BSM*

For the reasons set out above, the cost of the BSM survey is not accepted.

*Vector*

With respect to the Vector invoices (i.e., dated 9 and 11 January 2019 and totaling \$32,925.22 when combined), it is noted that Vector paid various amounts to seven different subcontractors and suppliers: AREC Environmental (“AREC”), D.L., Sunbelt Rentals of Canada Inc. (“Sunbelt”), Local Hauling and Clean Ups Ltd. (“Local”), Terrapure Environmental (“Terrapure”), Leader Mercantile Ltd. (“Leader”), and West Coast. It is helpful to briefly summarize key items covered by those invoices, with all listed costs including applied taxes (see also Figures 3 through 6):

<b>Company</b>	<b>Invoice Date</b>	<b>Work Description</b>	<b>Paid</b>
AREC	2018-11-19	Asbestos analysis, lead leachate test, report preparation	\$1,327.10
Terrapure	2018-12-07	Disposal of soiled sorbents and oily water	\$2,646.00
Local	2018-12-11	Asbestos remediation in furnace chimney	\$431.20
Sunbelt	2018-12-20	Rental of 14” gas cutoff saw and gas can	\$74.36
West Coast	2018-12-20	Sorbent materials (boom, pads), hazmat disposal bags	\$1,758.75
Leader	2018-12-21	Demolition of boat at Vector yard	\$1,575.00
D.L.	2018-12-27	Haul charge (7.435 tons)	\$2,060.89
D.L.	2018-12-31	Haul charge (6.43 tons), tipping fee (4.845 tons)	\$3,229.29
Terrapure	2019-01-10	Disposal of waste sorbents	\$971.25
D.L.	2019-01-11	Additional haul charge, tipping fee (4.44 tons)	\$1,314.39
<b>Total</b>			<b>\$15,388.23</b>

*Table 2 – Summary and brief description of subcontractor and supplier invoices paid by Vector*

In addition to the total for subcontractor and supplier services indicated in Table 2, and as detailed above, the CCG paid a markup of 40% on \$1,600.00 of the pretax West Coast costs, bringing the total costs associated with that supplier to \$2,430.75, inclusive of GST, or \$672.05 more than indicated in Table 2.

It is also noteworthy that Vector paid PST/HST (i.e., 12%) to Sunbelt and Local, but only passed on the cost of GST (i.e., 5%) to the CCG. As a result, Vector paid \$31.43 more than the CCG did for the services of those two companies.

As a result of the findings contained in the two foregoing paragraphs, it is determined that the CCG paid \$16,028.85 to Vector, inclusive of markup and taxes, with respect to subcontracted services and suppliers.

In addition, the CCG paid \$13,998.60 to Vector, inclusive of GST, for labour. Some general details of labour tasking are described in the 9 January 2019 invoice, but an hourly breakdown of these labour costs is absent. Finally, the CCG paid \$2,897.83, inclusive of GST, for “Parts” services provided by Vector. All of the costs discussed in this paragraph are set out in Figures 3 through 5.

For the reasons set out above, only costs clearly associated with mitigating the pollution threat posed by the Vessel have been considered for compensation. On this front, the costs associated with Terrapure, totaling \$3,617.25, are considered reasonable and are accordingly allowed in full.

While core West Coast supplies costs (see Figure 7) are accepted as directly linked with oil pollution mitigation, the 40% markup rate is not. This rate results in prices for sorbent materials that are more than double the CCG’s own rates. Generally, and without need for special justification, a markup in the region of 10% on subcontracted services and supplier costs is considered reasonable. Here, no special justification is provided. As such, a markup of 10% has been applied and accepted in place of the claimed 40% markup.

The adjusted markup applied against the West Coast invoice subtotal of \$1,600.00 yields an allowed subtotal of \$1,760.00, plus \$75.00 freight and \$91.75 GST, for an accepted total of \$1,926.75.

Finally, because it has been found that the Vessel represented an oil pollution threat while still in the water, the majority of the costs associated with its removal (see Figures 4 and 5) are accepted. The only reduction necessary here is with respect to the cost associated with six units of oil boom that are not included on the West Coast invoice but appear to have been subject to the same 40% markup. Applying the 10% substituted markup yields a reduction of \$54.00 to the pretax Vessel removal total of \$2,949.96, resulting in a total pretax allowed cost of \$2,897.96, or \$3,042.86 inclusive of GST.

In summary, the following amounts paid by the CCG to Vector are accepted: \$3,617.25 for Terrapure to dispose of oil waste; \$1,926.75 for sorbent materials and disposal bags provided by West Coast; and \$3,042.86 for the Vessel’s removal. This yields an allowed total of \$8,586.86 for the services performed by Vector.

**The contract services portion of this claim is allowed in the amount of \$14,256.86.**

Schedule 4 – Salaries – Full Time Personnel

Claimed: \$1,393.35

It appears that each of the two CCG personnel involved in the response to the Incident worked 7.5 regular salaried hours each on 5 October 2018. This is considered a reasonable

deployment to facilitate measures taken in response to oil pollution. Inexplicably, the CCG has claimed for a total of 15 regular salaried hours for each of these personnel. As a result, only half of the total claimed amount for regular salaries is accepted.

**The salaries portion of the submission is allowed in the amount of \$696.68.**

Schedule 5 – Overtime – Full Time Personnel Claimed: \$1,229.27

Overtime was claimed for work done by two CCG personnel on 5 and 6 October 2018. As with the allowed regular salaried time, it is accepted that the overtime cost was incurred to facilitate measures taken in response to oil pollution.

**The overtime portion of the submission is allowed in its entirety in the amount of \$1,229.27.**

Schedule 11 – Pollution Counter-measures Equipment Claimed: \$8,569.00

The claim submission indicates that CCG personnel used an 8.6-metre “733 Fast Response Craft” to travel from the Institute of Ocean Sciences to Cowichan Bay on both 5 and 6 October 2018. It has been determined that this vessel was a rigid hull inflatable, similar in size and capability to a Pollution Response Vessel, Class II (“PRV II”). The use of this vessel is considered to have been reasonable in the circumstances.

Without explanation, however, the CCG seeks to recover the day rate associated with the use of a Pollution Response Vessel, Class III, or \$4,209.50, for each of the two days the rigid hull inflatable was used. This cannot be accepted without justification. Instead, the substituted amount of \$1,194.23, or the day rate associated with the use of a PRV II, has been accepted for each of the two days the vessel was used, for a total accepted amount of \$2,388.46.

The CCG further claims for the use of two bundles of sorbent boom, at a total cost of \$150.00. It is accepted that this cost was incurred to facilitate measures taken in response to oil pollution.

**The pollution counter-measures portion of the submission is allowed in the amount of \$2,538.46.**

Schedule 12 – Vehicles Claimed: \$166.34

The CCG claims for the use of one vehicle for its response to the Incident: a 2018 Ford F-350 (16-824), which appears to have made a round trip from Victoria to the Institute of Ocean Sciences on both 5 and 6 October 2018. The vehicle in question drove a total of 160 kilometers on those days.

The CCG claims a day rate of \$65.57 for the use of its vehicle, plus fuel costs at a rate of \$0.22 per kilometer, or \$35.20.

It is accepted that the use of the CCG vehicle in response to the Incident was reasonable in the circumstances. Furthermore, the vehicle expenses sought are reasonable, and in line with CCG costing guidelines.

**The vehicles portion of the submission is allowed in its entirety in the amount of \$166.34.**

Schedule 13 – Administration

Claimed: \$35.88

The CCG submission advances a claim for administration costs at a rate of 3.09%, applied against claimed salaries, less the 20% markup associated with the costs of the employee benefits plan.

The 3.09% rate is generally accepted as reasonable, but a downward adjustment is required in order to account for the reduced amount accepted with respect to the CCG’s salaries claim.

**The administration portion of the submission is allowed in the amount of \$17.94.**

### **OFFER SUMMARY AND CLOSING**

The following table summarizes the claimed and allowed expenses with respect to the CCG claim regarding the Vessel:

<b>Schedule</b>	<b>Claimed</b>	<b>Allowed</b>
2 – Contract Services	\$41,128.61	\$14,256.86
4 – Salaries – Full Time Personnel	\$1,393.35	\$696.68
5 – Overtime – Full Time Personnel	\$1,229.27	\$1,229.27
11 – Pollution Counter-measures Equipment	\$8,569.00	\$2,538.46
12 – Vehicles	\$166.34	\$166.34
13 – Administration	\$35.88	\$17.94
<b>Totals</b>	<b>\$52,522.45</b>	<b>\$18,905.55</b>

*Table 3 – Summary of amounts claimed and allowed*

Costs and expenses in the amount of \$18,905.55 are accepted and will be paid together with statutory interest calculated at the date of payment if the Offer is accepted.

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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.

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 in 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.

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 issue.

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,

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