



Ottawa, 10 June 2020  
SOPF File: 120-712-C1

## VIA REGISTERED MAIL & EMAIL

Senior Director, Incident Management  
Canadian Coast Guard  
200 Kent Street (6S049)  
Ottawa, Ontario K1A 0E6

**RE: F/V SIKUK — Clarenville, Newfoundland and Labrador**  
**Incident date: 2017-09-21**

---

### OFFER OF COMPENSATION

This letter responds to a submission from the Canadian Coast Guard (the “CCG”) with respect to the fishing vessel SIKUK, which was reported as dragging anchor on 21 September 2017 at Clarenville, Newfoundland and Labrador (the “Incident”).

On 1 March 2019, the Office of the Administrator of the Ship-source Oil Pollution Fund (the “Fund”) received the CCG’s submission in this matter, on behalf of the Administrator. The submission advanced a claim in the amount of \$195,109.00<sup>1</sup> for costs and expenses related to the Incident. On 5 May 2020, the CCG revised its claimed amount to \$130,208.34. The submission and supplementary documentation provided by the CCG, including a claim pertaining to a related incident involving the vessel FRANÇOISE, have been reviewed. Determinations with respect to the amounts sought have been made. This letter advances an offer of compensation to the CCG with regard to the SIKUK claim, pursuant to sections 105 and 106 of the *Marine Liability Act* (the “MLA”). Also provided in this letter are a description of the CCG’s submissions and an explanation of the findings and the ultimate determinations that flow from them.

It has been determined that the CCG’s claim should be allowed, in part. The amount of \$79,826.14 is offered (the “Offer”) with respect to the claim. Should the Offer be accepted, interest accrued under section 116 of the MLA will be calculated to the date on which payment is directed.

\*\*\*

---

<sup>1</sup> Due to a presumed rounding error, this figure is \$0.01 lower than the total of claimed amounts across all schedules. The total original claimed amount has therefore been adjusted upwards to \$195,109.01.

**TABLE OF CONTENTS**

**THE CLAIM SUBMISSION.....3**

    The narrative ..... 3

    Cost summary ..... 7

    Summary, receipt, and invoices in support of claimed materials and supplies ..... 8

    Summary and invoices in support of claimed contracted services ..... 9

    Summary, logs, and receipts in support of claimed travel costs ..... 11

    Summary and logs in support of claimed salary costs ..... 11

    Summary and logs in support of claimed overtime costs ..... 12

    Summary, logs, and fuel receipts in support of claimed vehicle usage costs ..... 12

    Personnel & Equipment Daily Logs and summary of pollution counter-measures equipment costs ..... 12

    Breakdown of claimed administration costs ..... 14

    CCG Notice and Direction with regard to the SIKUK dated 22 September 2017 ..... 14

    CCG email exchange with representative of the Burry Group ..... 15

    CCG Direction with regard to the SIKUK dated 26 September 2017 ..... 16

    CCG letter to the owner of the SIKUK dated 8 November 2017 ..... 16

    London Offshore Consultants Condition Survey and Towage Assessment ..... 16

    Email exchange with owner of the SIKUK and CCG letter dated 24 November 2017 ..... 17

    Summary of security services quotes obtained by the CCG ..... 18

**SUPPLEMENTARY EVIDENCE & CORRESPONDENCE WITH THE CLAIMANT .....18**

    SIKUK and FRANÇOISE claims investigated and assessed together ..... 18

    SIKUK and FRANÇOISE claims re-apportioned, reducing the total SIKUK claim ... 19

    Evidence of value included in the FRANÇOISE claim or arising from the assessment thereof ..... 19

    Requests for further documentation and clarification ..... 20

**FINDINGS AND DETERMINATIONS.....22**

    The CCG submission is eligible as a claim under section 103 of the MLA ..... 22

    Most of the facts presented by the CCG are accepted ..... 22

    Note on the owners of the Vessels ..... 23

    The Vessels posed an oil pollution threat while at anchor in Clarenville Harbour ..... 23

    The McKeil towage operation was a reasonable measure ..... 24

    The decision to use the Hardwoods dock as temporary safe refuge was reasonable.... 26

    The costs of storing the SIKUK for an extended period were not reasonable..... 27

    Establishing 24 October 2017 as the cut-off date for storage costs associated with the SIKUK ..... 32

    Findings on personnel effort allocation and associated costs ..... 32

**OFFER BREAKDOWN .....34**

    Schedule 1: Materials and Supplies ..... 34

    Schedule 2: Contract Services ..... 36

    Schedule 3: Travel ..... 38

    Schedule 4: Salaries – Full Time Personnel ..... 39

    Schedule 5: Overtime – Full Time Personnel ..... 39

Schedule 11: Pollution Counter-measures Equipment .....	39
Schedule 12: Vehicles.....	39
Schedule 13: Administration.....	40
<b>OFFER SUMMARY .....</b>	<b>40</b>

### **THE CLAIM SUBMISSION**

The CCG claim submission is comprised of the following:

- Cover letter from the CCG’s Atlantic Region Director of Incident Management;
- Cover letter from the CCG’s Atlantic Region Superintendent of Environmental Response;
- Narrative describing events relating to the Incident and the CCG response;
- Cost summary;
- Summary, receipt, and invoices in support of claimed materials and supplies;
- Summary and invoices in support of claimed contracted services;
- Statement of work for towage contract;
- Towage agreement;
- Summary, logs, and receipts in support of claimed travel costs;
- Summary and logs in support of claimed salary costs;
- Personnel & Equipment Daily Logs;
- Summary and logs in support of claimed overtime costs;
- Summary in support of claimed costs for pollution counter-measures equipment;
- Summary, logs, and fuel receipts in support of claimed vehicle usage costs;
- Breakdown of claimed administration costs;
- Email correspondence with the owner of the SIKUK;
- CCG Notice with regard to the SIKUK dated 22 September 2017;
- CCG Direction with regard to the SIKUK dated 22 September 2017;
- CCG email exchange with representative of the Burry Group;
- Email correspondence with the owner of the FRANÇOISE;
- CCG Direction with regard to the SIKUK dated 26 September 2017;
- CCG letter to the owner of the SIKUK dated 8 November 2017;
- CCG letter to the owner of the SIKUK dated 24 November 2017;
- London Offshore Consultants Condition Survey and Towage Assessment; and
- Summary of security services quotes obtained by the CCG.

To the extent that the above documentation is relevant to the assessment of the submission, its contents are described below.

#### The narrative

According to the narrative, at 18:02 on 21 September 2017, the CCG Environmental Response (“ER”) Duty Officer received a report that two vessels were adrift or dragging anchor in Clarenville Harbour, Newfoundland and Labrador. It was determined that these

two vessels were the SIKUK and the FRANÇOISE (collectively, the “Vessels”), both fishers that had been placed at anchor by Burry’s Shipyard (“Burry’s”). The CCG contacted Burry’s, which identified and provided contact information for the owners of the Vessels.

The SIKUK’s owner was contacted and given a verbal Notice under paragraph 180(1)(a) of the *Canada Shipping Act, 2001* (the “CSA”), which advised of the need for immediate action.

On 22 September 2017, two ER personnel were dispatched to Clarenville from St. John’s, arriving at 08:40. The ER personnel were transported to the SIKUK on a Fisheries patrol boat for boarding. They observed that the FRANÇOISE was secured to the port side of the SIKUK with three mooring lines. The SIKUK lacked power, and its two bow anchors were down. The FRANÇOISE lacked anchors entirely and could not be boarded due to safety concerns. Neither vessel was fitted with navigation lights or day marks. The SIKUK was estimated to contain 11,500 litres of pollutants. After their preliminary assessment, the two ER personnel returned to St. John’s.

The CCG proceeded to issue first a Notice and then a Direction under section 180 of the CSA to the owner of the SIKUK and to Burry’s. The CCG requested to be notified immediately of the intentions of both parties. Burry’s responded that it did not consider itself a responsible party and indicated that it would take no further action. No response was received from the owner of the SIKUK.

At 02:00 on 23 September 2017, the CCGS HARP arrived at a disused Clarenville dock to monitor and assess the Vessels. The CCG had identified the BEVERLY M I, located at Sydney, Nova Scotia, as the nearest available commercial tug. The CCG prepared a statement of work for towage and entered into an emergency contract with McKeil Marine Ltd. (“McKeil”), the operator of the BEVERLY M I. The tug was to transit to Clarenville as soon as possible. ER personnel began efforts to find a suitable place of refuge to secure the Vessels.

On 24 September 2017, the BEVERLY M I was en route and estimated to arrive at Clarenville at 06:00 the next morning. The CCG secured a temporary place of refuge for the Vessels at the dock where the HARP had been stationed. The dock was in poor condition, with deteriorated decking, so the CCG agreed to terms of use with its owner, Newfoundland Hardwoods Ltd. (“Hardwoods”). Under the terms, 24-hour security for the site was to be engaged to mitigate liability concerns, and no one other than CCG personnel was to be allowed on the dock. After obtaining four quotes, the CCG contracted GardaWorld to provide site security.

The crew of the HARP took soundings around the Hardwoods dock and purchased the supplies necessary to secure the Vessels. ER personnel arrived with 700 feet of rope, web straps, and shackles and cleared the decks of the Vessels.

The BEVERLY M I arrived on scene at Clarenville at 04:20 on 25 September 2017. After a safety briefing involving the crews of the HARP and the newly arrived tug, the towage operation began at 07:00. The SIKUK was secure at the Hardwoods dock by 10:00 and the

BEVERLY M I was released from the scene thereafter. No pollution was released during the towage operation from either of the Vessels, nor had any pollution been reported earlier.

On 26 September 2017, the CCG sent a second formal Direction to the owner of the SIKUK under section 180 of the CSA. An action plan was requested by 09:00 on 2 October 2017. The owner responded the following day, advising that a local representative for the SIKUK had been appointed and that an action plan would be presented by 30 September 2017 at the latest.

On 30 September 2017, ER personnel departed St. John's to inspect the Vessels' moorage situation. The situation was noted as unchanged since the towage operation, with the SIKUK resting on an even keel with a constant draught. Minor adjustments were made to mooring shackles. GardaWorld personnel reported no unauthorized persons had been on site, though CCG personnel observed that the forecandle door on the SIKUK was open. A follow-up with the commanding officer of the HARP revealed that the door had inadvertently been left open after the towage operation.

At 08:47 on 2 October 2017, the owner of the SIKUK submitted a plan of action with respect to the vessel. The CCG rejected this plan, deeming it vague and incomplete and taking issue with its two-week timeline. In particular, the lack of a plan to remove pollutants from the SIKUK was not acceptable to the CCG. The following day, the CCG sent the owner a letter setting out the additional details required and imposing a deadline of 4 October 2017. The letter also stated that the CCG would take action to eliminate the pollution threat from the SIKUK if the owner failed to do so.

On 4 October 2017, the owner of the SIKUK submitted the requested information. The owner had engaged a marine consultant and had begun to investigate options for towing its vessel. The CCG spoke with the owner's marine consultant, noting, "[the marine consultant] was not given full details of the situation by owner, and now had a better understanding of the situation."

On 11 October 2017, the owner informed the CCG that the marine consultant had produced a plan for the SIKUK. The CCG reminded the owner of the urgency of the situation but received only incomplete or vague information over the next several weeks, despite several requests for clarity and action.

On 12 October 2017, ER personnel returned to Clarenville to check on the Vessels and inspect their mooring lines. No issues were noted, and the situation appeared unchanged.

On 8 November 2017, the CCG emailed the owner a "Final notice regarding compliance with the CSA 180 DO issued September 26, 2017, with deadline of 10:00 hrs, Tuesday, November 4, 2017 [sic]".<sup>2</sup> The owner was also informed that failure to comply would result in the CCG taking action.

---

<sup>2</sup> The deadline date appears to represent a typographical error in the narrative. The later narrative entry for 14 November 2017 suggests that that later date, rather than 4 November 2017, was in fact the deadline.

On 13 November 2017, the owner's consultant called the CCG requesting an extension of two weeks on the owner's behalf. The CCG replied that immediate action was required.

On 14 November 2017, the 10:00 deadline passed, but by the early afternoon the CCG had received four emails from the owner. These emails failed to disclose, *inter alia*, a Transport Canada-approved tow plan, a wreck removal insurance policy, or details on removal of pollutants from the SIKUK.

On 16 November 2017, ER personnel arrived in Clarendville to check on the Vessels and inspect their mooring lines. No issues were noted, as the situation appeared unchanged. At 10:00, London Offshore Consultants ("LOC") representatives arrived on scene to conduct, under CCG supervision, an assessment of pollutants on board the SIKUK. After a safety briefing, the pollutants assessment was conducted, and all LOC and CCG personnel departed the scene at 16:40. A written report was to issue from LOC within ten days.

On 17 November 2017, the owner of the SIKUK sent the CCG an email inquiring as to why there had been no permission to go ahead with the proposed plan. The CCG sent an email to the owner indicating that a revised plan was to be submitted by 29 November 2017 at 10:00 and should comprise of the following, all of which had been required by previous orders:

- Timelines for the removal of pollutants and towage to a suitable dock, including arrangements for securing and monitoring the SIKUK at that new location;
- All contractual documentation;
- Proof of wreck removal insurance coverage; and
- A third-party review of the towage plan by a qualified marine surveyor.

The CCG advised the owner of the LOC assessment, which had found 16,500 litres of pollutants on board the SIKUK. The owner was further advised that a failure to act as directed would result in the CCG taking action, which might include the removal, destruction, or sale of the SIKUK and its contents.

On 27 November 2017, the owner acknowledged receipt of the CCG's 17 November 2017 email.

On 29 November 2017, the owner submitted the required documentation to the CCG.

On 1 December 2017, the CCG confirmed that the owner had secured wreck removal insurance for the SIKUK, but the underwriter informed the CCG that the owner still needed to complete a form prior to commencing any towing operation. The CCG forwarded this form to the owner of the vessel and sought clarity on the situation.

On 4 December 2017, the owner acknowledged the CCG's request.

On 8 December 2017, having received no response to its request, the CCG followed up with the owner. The owner replied, requesting to schedule a date and time for access to the vessel for assessment purposes. The CCG reminded the owner that access to the

Hardwoods dock would not be granted, and that the SIKUK would have to be boarded from seaward.

On 13 December 2017, the owner's representatives conducted an assessment of the SIKUK under the supervision of ER personnel from St. John's. The following day, the owner proposed that pollutants would be removed from the SIKUK *in situ*. The CCG requested a plan for this operation, reminding the owner that access to the Hardwoods dock would not be permitted. A plan was submitted and accepted in the following days, with an agreed date of 28 December 2017.

Weather conditions on 28 December 2017 caused delays, and the CCG agreed to 3 January 2018 as a revised start date. On 2 January 2018, the start date was again revised to 4 January 2018, when the tug engaged by the owner was expected to arrive at Clarenville.

On 4 January 2018, ER personnel from St. John's arrived at Clarenville to supervise the removal of pollutants from the SIKUK. The owner's contracted tug, the R J BALLOTT, was secured alongside the SIKUK at 09:00. Pollutants on the SIKUK were pumped into a single tank to ease removal by vacuum truck. The CCG requested that the vacuum truck crew bring oil boom as a precaution. Work began on the vessel, and ER personnel departed the scene at 20:30.

On 5 January 2018, the arrival of the owner's contracted vacuum truck was delayed to the following day, but work was able to continue on the SIKUK. Sorbent boom was delivered.

On 6 January 2018, the vacuum truck arrived, and sorbent boom was deployed at the site. The vacuum truck removed 10,456 litres of pollutants from the SIKUK, and a further 7,600 litres of oils were transferred to the R J BALLOTT's tanks.

On 8 January 2018, a Transport Canada inspector and marine warranty surveyor arrived on scene to conduct a tow survey. ER personnel also monitored the preparations for the tow, as set out in the owner's plan. The SIKUK departed Clarenville under tow at 21:00, bound for Springdale, where it was expected to arrive at 12:00 on 10 January 2018. Regular status reports would be provided by the tug while en route. ER personnel departed the scene soon after the SIKUK and returned to St. John's the following day.

On 10 January 2018, the R J BALLOTT reported that the SIKUK had been secured at a dock in Springdale at 11:00 with no release of pollution. The CCG stood down.

#### Cost summary

The claim submission includes the following summary of costs and expenses claimed by the CCG:

INCIDENT:	FV Sikuk	PROJECT CODE:	2ER98
INCIDENT DATE:	September 21, 2017	DATE PREPARED:	January 28, 2019
DEPARTMENT:	Canadian Coast Guard	PREPARED BY:	[REDACTED]
			<u>SCH</u>
MATERIALS AND SUPPLIES	\$ 3,725.19		<u>1</u>
CONTRACT SERVICES	\$ 177,677.75		<u>2</u>
TRAVEL	\$ 2,014.02		<u>3</u>
SALARIES - FULL TIME PERSONNEL	\$ 4,072.63		<u>4</u>
OVERTIME - FULL TIME PERSONNEL	\$ 6,110.35		<u>5</u>
OTHER ALLOWANCES	\$ -		<u>6</u>
SALARIES - CASUAL PERSONNEL	\$ -		<u>7</u>
SHIPS' COSTS (EXCL. FUEL & O/T)	\$ -		<u>8</u>
SHIPS PROPULSION FUEL	\$ -		<u>9</u>
AIRCRAFT	\$ -		<u>10</u>
POLLUTION COUNTER-MEASURES EQUIPMENT (PCME)	\$ 69.45		<u>11</u>
VEHICLES	\$ 1,183.96		<u>12</u>
ADMINISTRATION	\$ 255.66		<u>13</u>
			<hr/>
TOTAL CCG COST OF INCIDENT	\$ 195,109.00		

Figure 2: Screen capture of cost summary

### Summary, receipt, and invoices in support of claimed materials and supplies

Claimed costs for materials and supplies are supported by one receipt and three invoices. The CCG also submitted a summary breakdown of this portion of its claim:

MATERIALS AND SUPPLIES:	AMOUNT	HST	TOTAL	REFERENCE
CANADA POST	\$ 22.87	\$ -	\$ 22.87	1-1 <i>Paid by MC</i>
EXTREME EAST RIGGING SERVICES Emergency Towing Bridle	\$ 2,380.00	\$ 357.00	\$ 2,737.00	1-2 <i>Paid by MC</i>
NORTH ATLANTIC MARINE SUPPLIES 4 x Mooring Rope 100ft at \$96.14 each	\$384.56	\$57.68	\$ 442.24	1-3 <i>Paid by MC</i>
NORTH ATLANTIC MARINE SUPPLIES 3 x Choke Straps large at \$139.55 each 1 x Choke Straps small at \$36.20 each	\$454.85	\$68.23	\$ 523.08	1.4 <i>Paid by MC</i>

Figure 3: Screen capture of materials and supplies costs summary

The Canada post expenditure is supported by a receipt dated 8 November 2017. It covers the cost of sending a registered letter to the owner of the SIKUK in St. Hubert, Québec.



The Extreme East Rigging Services Ltd. (“Extreme East”) Emergency Towing Bridle expenditure is supported by an invoice dated 13 October 2017. The invoice description refers to the HARP, and it includes the handwritten notation “FV SIKUK”. The invoice covers just one item: “1 each: 16mm x 20 metres 2 leg bridle”.

There are two North Atlantic Marine Supplies & Services Inc. (“North Atlantic”) invoices. The first, for 700 feet of mooring rope, is dated 21 November 2017. It indicates a total of \$773.89, approximately 57% of which, representing 400 feet of rope, appears in the materials and supplies summary for the SIKUK claim. Attached to this invoice is a receipt, also dated 21 November 2017, indicating payment in full. The second North Atlantic invoice, dated 20 February 2018, has no attached receipt or notations. It contains the following information:

Qty. Ord.	Qty. Shp.	Item Number	Description	Unit Price	UOM	Extended Price
5.00	5.00	NAMEE2903X12000	Sling Polyester Web 3' x 12 ft Cert#: NAM54055-1-5	36.20	ea	181.00
3.00	3.00	NAMEE2606X20	Sling Polyester Web 6' x 20' 2 Ply Cert#: NAM54056-1-3	139.55	ea	418.65
				<b>Due Date</b>	<b>Amount Due</b>	
				Mar 22, 2018	689.60	

Figure 4: Screen capture of North Atlantic invoice dated 20 February 2018

#### Summary and invoices in support of claimed contracted services

Claimed costs for contracted services are supported by 25 invoices. The CCG also submitted a summary breakdown of this portion of its claim:

CONTRACT SERVICES	AMOUNT	GST	TOTAL	REFERENCE
LONDON OFFSHORE CONSULTANTS Condition Survey and Towing Assessment	\$ 7,794.06	\$ 1,169.11	\$ 8,963.17	2-1, 2-2 Paid Jun 25/18
MCKEIL MARINE LIMITED Towing and Securing of F/V Sikuk	\$ 110,490.73	\$ 16,573.61	\$ 127,064.34	2-3 - 2-10 Paid Oct 23/17
GERGAR ENTREPRISE LIMITED Spetic pumping of portable toilet Total cost divided between F/V Sikuk and F/V Francoise	\$ 750.00	\$ 112.50	\$ 862.50	2-11, 2-12 Paid Dec 4/17
BATTLEFIELD EQUIPMENT RENTAL Rental of portable toilet Cost from Sept. 26, 2017 to Jan. 8, 2018 divided between F/V Sikuk and F/V Francoise	\$ 1,120.20	\$ 168.02	\$ 1,288.22	2-13 - 2-16 Paid by MC
GARDAWORLD 24 hour on-site security Cost from Sept. 26, 2017 to Jan. 8, 2018 divided between F/V Sikuk and F/V Francoise Cost from Jan.9-13, 2018 associated to F/V Francoise	\$ 70,565.00	\$ 10,584.76	\$ 81,149.76	2-17 - 2-36 Paid by MC
			\$ 40,574.88	

Figure 5: Screen capture of contract services costs summary

The LOC expenditure is supported by an invoice dated 20 April 2018. The invoice subtotal of \$7,794.06 is broken down into \$6,720.00 for “Professional Fees (Hours)” and \$1,074.06 for “Reimbursable Expenses”. A detailed breakdown for each cost is attached to the invoice, indicating, with regard to the professional fees and hours portion, as follows:

			Hours	Rate	Amount
00371	██████████	11/15/2017	3.00	210.00	630.00
	Travel to St John's				
00371	██████████	11/16/2017	10.00	210.00	2,100.00
	Travel to Clarenville, inspection of Sikuk and then return to Halifax				
00375	██████████	11/17/2017	3.00	210.00	630.00
	Anticipated trim calculations based on assumed liquids ROB				
00375	██████████	11/21/2017	2.00	210.00	420.00
	Estimate of trim associated with loss of anchors/chains				
00375	██████████	11/22/2017	2.00	210.00	420.00
	Estimate of volume of oily water in engine room bilge				
00371	██████████	11/22/2017	2.00	210.00	420.00
	Estimation of pollutants				
00371	██████████	11/30/2017	3.00	210.00	630.00
	Reporting				
00371	██████████	1/4/2018	7.00	210.00	1,470.00
	Reporting				
	Totals		32.00		6,720.00

Figure 6: Screen capture of LOC professional fees (hours) breakdown (names of the two LOC marine consultants redacted)

The McKeil expenditure is supported by an invoice dated 27 September 2017, a Statement of Work dated 22 September 2017, and a BIMCO International Towing Agreement signed and dated 25 September 2017, but indicating an agreement was reached as of 22 September 2017. All three documents describe towing of both of the Vessels. The invoice indicates use of the BEVERLY M I for six days (22 September 2017 through 27 September 2017) at a daily rate of \$14,500.00, plus fuel costs of \$23,490.73 and total taxes of \$16,573.61.

The Gergar Enterprises Limited (“Gergar”) expenditure is supported by two invoices. The first totals \$287.50 and is dated 8 November 2017. The second totals \$575.00 and is dated simply “Dec. 2017”.

The Battlefield Equipment Rentals (“Battlefield”) expenditure is supported by four invoices, dated 18 October 2017 through 25 January 2018. Each invoice totals \$315.88 and contains handwritten notations explaining apportionment of costs as between the SIKUK and the FRANÇOISE. The first three invoices are divided equally between the Vessels. The final invoice, which covers portable toilet rentals from 19 December 2017 through 16 January 2018, contains a notation indicating that only the costs up to and including 8 January 2018, totalling \$225.60, are apportioned equally between the Vessels. The remaining \$90.28 is allocated solely to the FRANÇOISE.

Finally, the GardaWorld expenditure is supported by 17 invoices, dated 4 October 2017 through 17 January 2018. The totals on each of these invoices vary from \$253.00 to \$6,072.00, and each contains a handwritten notation apportioning costs between the Vessels. Generally, each of the invoices covers a week of security costs for the Vessels. Each week contained 14 twelve-hour shifts, during each of which just one security guard was present on site. The first 16 invoices are divided equally between the Vessels. The notation on the final invoice, which covers the period of 7 through 13 January 2018, indicates that only \$822.25, representing the first two days of the period covered, have been allocated to the SIKUK.

Summary, logs, and receipts in support of claimed travel costs

Claimed travel costs appear to cover a single trip undertaken by two ER personnel, from 4 through 9 January 2018. Various logs are presented in support of *per diem* costs, and four hotel receipts are presented in support of commercial accommodations costs.

Detailed travel costs summaries for each of the two personnel are included as follows:

Date	Province	Breakfast	Lunch	Dinner	Incidentals	Private Accommodation
4-Jan-18	NL	\$ 19.10	\$ 18.90	\$ 47.35	\$ 17.30	\$ -
5-Jan-18	NL	\$ 19.10	\$ 18.90	\$ 47.35	\$ 17.30	\$ -
6-Jan-18	NL	\$ 19.10	\$ 18.90	\$ 47.35	\$ 17.30	\$ -
7-Jan-18	NL	\$ 19.10	\$ 18.90	\$ -	\$ 17.30	\$ -
8-Jan-18	NL	\$ 19.10	\$ 18.90	\$ 47.35	\$ 17.30	\$ -
9-Jan-18	NL	\$ 19.10	\$ -	\$ -	\$ 17.30	\$ -
<b>Totals:</b>		<b>\$ 114.60</b>	<b>\$ 94.50</b>	<b>\$ 189.40</b>	<b>\$ 103.80</b>	<b>\$ -</b>

**Accommodations**  
**Commercial Accommodation:** 3 nights (Jan 4-7) at \$119.95 + HST (\$17.99) = \$413.82  
 1 night (Jan 8) at \$109.95 + HST (\$16.49) = \$126.44

Date	Province	Breakfast	Lunch	Dinner	Incidentals	Private Accommodation
4-Jan-18	NL	\$ 19.10	\$ 18.90	\$ 47.35	\$ 17.30	\$ -
5-Jan-18	NL	\$ 19.10	\$ 18.90	\$ 47.35	\$ 17.30	\$ -
6-Jan-18	NL	\$ 19.10	\$ 18.90	\$ 47.35	\$ 17.30	\$ -
7-Jan-18	NL	\$ 19.10	\$ 18.90	\$ -	\$ 17.30	\$ -
8-Jan-18	NL	\$ 19.10	\$ 18.90	\$ 47.35	\$ 17.30	\$ -
9-Jan-18	NL	\$ -	\$ -	\$ -	\$ 17.30	\$ -
<b>Totals:</b>		<b>\$ 95.50</b>	<b>\$ 94.50</b>	<b>\$ 189.40</b>	<b>\$ 103.80</b>	<b>\$ -</b>

**Accommodations**  
**Commercial Accommodation:** 3 nights (Jan 4-7) at \$109.95 + HST (\$16.49) = \$379.32  
 1 night (Jan 8) at \$109.95 + HST (\$16.49) = \$126.44

Figures 7 and 8: Screen captures of detailed travel cost summaries for each of two ER personnel

The commercial accommodations costs detailed in Figures 7 and 8 accord with each of the four hotel receipts submitted with the CCG claim.

Summary and logs in support of claimed salary costs

Claimed salary costs for four ER personnel are supported by logs and summarized as follows:

	Group & Level	Time (Hours)	Rate	COST	REFERENCE
<b>September 22 - October 12, 2017</b>					
	GT-05	7.5	\$ 44.38	\$ 332.85	4-1
	GT-05	7.5	\$ 45.71	\$ 342.83	4-2
	GT-04	7.5	\$ 38.37	\$ 287.78	4-3
	GT-04	7.5	\$ 43.62	\$ 327.15	4-4
				<b>\$ 1,290.60</b>	
				<b>\$ 645.30</b>	
<b>November 16, 2017 - January 9, 2018</b>					
	GT-05	15.0	\$ 44.38	\$ 665.70	4-1
	GT-05	26.0	\$ 45.71	\$ 1,188.46	4-2
	GT-04	41.0	\$ 38.37	\$ 1,573.17	4-3
				<b>\$ 3,427.33</b>	

Figure 9: Screen capture of salary costs summary (names of four ER personnel redacted)

Summary and logs in support of claimed overtime costs

Claimed overtime costs for four ER personnel are supported by logs and summarized as follows:

	Group & Level	1.5 x	2.0 x	Total Overtime Hours	Rate	COST	REFERENCE
<i>September 22 - October 12, 2017</i>							
	GT-05	19.00	13.50	55.50	\$ 36.98	\$ 2,052.39	5-1 - 5-4
	GT-05	6.50	0.00	9.75	\$ 38.09	\$ 371.38	5-5 - 5-7
	GT-03		12.5	25.00	\$ 28.38	\$ 709.50	5-10, 5-11
						\$ 3,133.27	
	<i>Total cost divided between FV Sikuk and FV Francoise</i>						\$ 1,566.63
<i>November 16, 2017 - January 8, 2018</i>							
	GT-05	5.5	0.0	8.25	\$ 36.98	\$ 305.09	5-1 - 5-4
	GT-05	27	10.0	60.50	\$ 38.09	\$ 2,304.45	5-5 - 5-7
	GT-04	27	10.0	60.50	\$ 31.97	\$ 1,934.19	5-8, 5-9
						\$ 4,543.72	

Figure 10: Screen capture of overtime costs summary (names of four ER personnel redacted)

Summary, logs, and fuel receipts in support of claimed vehicle usage costs

Claimed vehicle usage costs are supported by vehicle-specific logs and fuel receipts. The CCG also submitted a summary breakdown of its claim with respect to vehicles:

UNIT #	MILEAGE (Kms)	RATE	TIME (days)	RATE	COST	REFERENCE
FORD F450 - #12-031	726	\$ 0.22	2.00	\$ 67.56	\$ 135.12	12-1, 12-2, 12-3
Fuel Cost					\$ 172.35	
<i>Travel to Clarendville, NL, September 22-24, 2017</i>						
<i>Cost divided between FV Sikuk and FV Francoise</i>						\$ 153.74
NISSAN ROGUE - #16-036	367	\$ 0.22	1.00	\$ 67.56	\$ 148.30	12-4, 12-5
<i>Travel to Clarendville, NL, September 30, 2017</i>						
<i>Cost divided between FV Sikuk and FV Francoise</i>						\$ 74.15
FORD EXPEDITION - #16-035	377	\$ 0.22	1.00	\$ 67.56	\$ 150.50	12-6, 12-7
<i>Travel to Clarendville, NL, October 12, 2017</i>						
<i>Cost divided between FV Sikuk and FV Francoise</i>						\$ 75.25
FORD EXPEDITION - #16-035	369	\$ 0.22	1.00	\$ 67.56	\$ 148.74	12-8, 12-9
<i>Travel to Clarendville, NL, November 16, 2017</i>						
FORD EXPEDITION - #16-035	365	\$ 0.22	1.00	\$ 67.56	\$ 147.86	12-10, 12-11
<i>Travel to Clarendville, NL, December 13, 2017</i>						
FORD EXPEDITION - #16-035	813	\$ 0.22	6.00	\$ 67.56	\$ 584.22	12-12, 12-13
<i>Travel to Clarendville, NL, January 4-9, 2018</i>						

Figure 11: Screen capture of vehicle costs summary

Personnel & Equipment Daily Logs and summary of pollution counter-measures equipment costs

Thirteen Personnel & Equipment Daily Logs (the “Daily Logs”) give a brief general overview of the entire ER operation, providing some additional information on vehicle and

equipment usage, namely mileage data, which roughly accords with that shown in Figure 11. The Daily Logs are dated as follows: 21, 22, 24, and 30 September 2017; 12 October 2017; 16 November 2017; 13 December 2017; and 4 through 9 January 2018.

The entry for 21 September 2017 includes a note indicating that the Vessels had been towed to their anchorage by Burry’s approximately three weeks prior.

The entry for 22 September 2017 contains the following note, in relation to the SIKUK: “1115 - ER personnel boarded and conducted pollutant assessment. From what could be seen, at least 1500ltrs of oils/fuel/chemicals on board. Unable to access fuel tanks to determine levels in tank bottoms.”

The same entry also contains the following notes: “1655 - Arrived depot. Discussion with ROC re status of vessels. Conducted search for tug availability for SRO”, and, “2220 - Completed notes and email updates to Superintendent and SRO accordingly.”

The entry for 24 September 2017 details the use of a “Goose neck trailer”. This appears to be reflected in a claim for \$69.45, representing half the day rate for a response trailer, split between the Vessels and summarized and claimed under pollution counter-measures equipment (Schedule 11).

The same entry also lends clarity to the usage of the materials purchased from North Atlantic (see Figures 3 and 4):

MATERIALS & SUPPLIES	MISSION #	QUANTITY	FIELD PURCHASES	INITIAL
Diesel fuel		77.9 ltrs	\$93.93 @ Donovans Irving	JP
6" by 6" by 12' pressure treated posts.		2	From depot inventory	JP
1 coil of 1 ½" poly rope		700ft	From depot inventory – replaced at NAM - \$773.89	JP
1" shackles		8	From depot inventory	JP
3" x 12' Choke straps		5	From depot inventory – replaced at NAM - \$208.15	JP
6" x 20' Choke straps		3	From depot inventory – replaced at NAM - \$481.45	JP

Figure 12: Screen capture from 24 September 2017 Daily Log

In addition, the entry for 30 September 2017 contains the following description of the mooring arrangements for the vessels: “Francoise secured port side to with three 100’ mooring lines, three 1” shackles and four 3” x 12’ choke straps from ER Depot. [...] Sikuk secured stbd side to with four 100’ mooring lines, five 1’ shackles, one 3” x 12’ choke straps and three 6” x 20’ choke straps.”

Finally, the entry for 16 November 2017 contains the following note: “1615 - [LOC] Assessment completed. LOC personnel indicated they will provide written report with [sic] 10 days.”

The notes and equipment descriptions in the Daily Logs otherwise generally accord with the narrative and the other documentation submitted by the CCG. The Daily Logs are also helpful in summarizing daily personnel effort allocation, which is addressed in more detail below.

Breakdown of claimed administration costs

The claim submission includes the following summary of claimed administration costs:

		CCG REGION	
(i)	Rates:		
	Salaries portion		1.44%
	Other portion		1.09%
	Total Rate		<u>2.53%</u>
(ii)	Costs subject to Regional Rate (excl. EBP)		
	Materials and Supplies	3,725.19	
	Travel	2,014.02	
	Salaries - Full Time Personnel	3,393.86	
	Other Allowances	-	
	Salaries - Casual Personnel	-	
	Ship O & M Costs	-	
	Aircraft O & M Costs	-	
	Total Costs subject to Regional Rate	<u>9,133.07</u>	
	Regional Administration Cost		<u>231.07</u>
(iii)	Costs subject to Corporate Rate (excl. EBP)		
	Materials and Supplies		3,725.19
	Travel		2,014.02
	Salaries - Full Time Personnel		3,393.86
	Other Allowances		-
	Salaries - Casual Personnel		-
	Ship O & M Costs		-
	Aircraft O & M Costs		-
	Regional Administration costs		<u>231.07</u>
		Total Costs subject to Corporate Rate	
	Corporate Administration Cost		<u>-</u>
	Total Administration costs excl. EBP		<u>231.07</u>
	Total Administration Costs incl. EBP		<u>255.66</u>

Figure 13: Screen capture of administration costs breakdown

CCG Notice and Direction with regard to the SIKUK dated 22 September 2017

The claim submission contains an email sent by the CCG to the owner of the SIKUK on 22 September 2017 at 14:39. The email contains two attachments.

The first attachment is a Notice addressed to the owner of the SIKUK and “Norcon Marine”. The Notice describes both of these entities as “Owner” and “Person in Charge” of the vessel. The Notice describes the CCG’s powers and responsibilities under the CSA, and the owner’s liability for any CCG costs or expenses that arise therefrom, before requesting that the owner inform the CCG of her intentions by 17:00 on 22 September 2017.

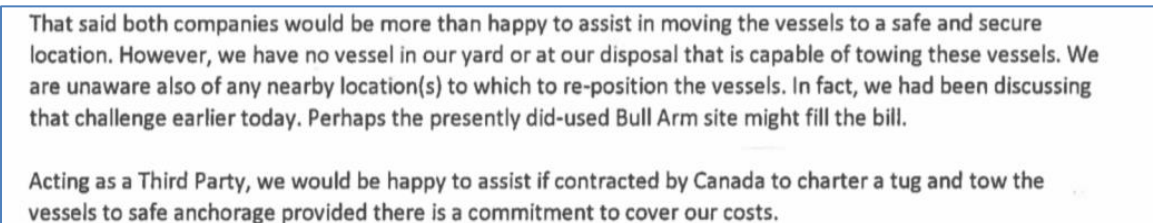
The second attachment, a similarly addressed Direction, goes further by identifying specifically required action: “Immediately secure the FV Sikuk currently anchored in Clarenville Harbour to mitigate the pollution threat posed by the forecasted weather system.”

## CCG email exchange with representative of the Burry Group

The claim submission includes an email exchange between a representative of Burry's and the CCG. In response to the CCG's 22 September 2017 Notice and Direction addressed to "Norcon Marine", the Burry's representative sent an email at 16:58 advising that he had provided contact information for the owners of the Vessels in separate emails.

The representative explains that the owners of the Vessels had been advised when Burry's towed them to their anchorage in Clarenville Harbour and reminded them of their duty to advise Transport Canada of the situation and fit the Vessels with navigation lights. He explains that the Vessels had been impeding commercial operations, and that one of them (unspecified) had accrued "long overdue bills".

The representative further states that no "person in the employ of Norcon Marine Services Limited and/or Burry's Shipyard Inc. is the 'Person in Charge' [of the Vessels]." The email goes on:



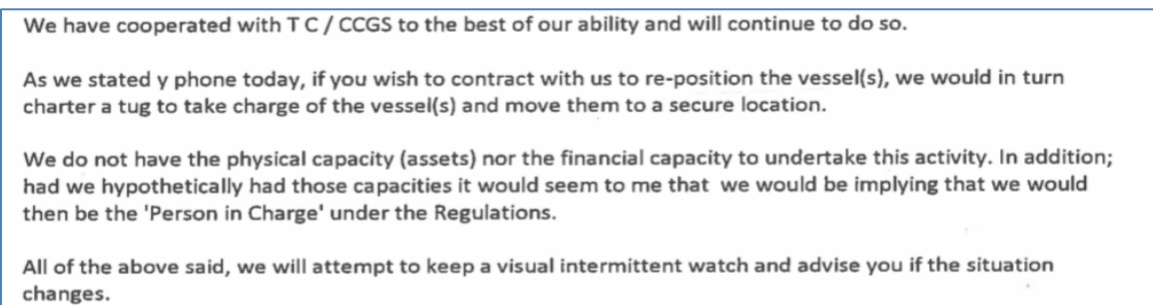
That said both companies would be more than happy to assist in moving the vessels to a safe and secure location. However, we have no vessel in our yard or at our disposal that is capable of towing these vessels. We are unaware also of any nearby location(s) to which to re-position the vessels. In fact, we had been discussing that challenge earlier today. Perhaps the presently did-used Bull Arm site might fill the bill.

Acting as a Third Party, we would be happy to assist if contracted by Canada to charter a tug and tow the vessels to safe anchorage provided there is a commitment to cover our costs.

*Figure 14: Screen capture of Burry's email reply to the CCG Notice and Direction, 22 September 2017*

The CCG replied to the Burry's email at 19:38: "[...] in response to your email and our telephone conversation PM September 22, 2017 and on advice of our Legal counsel we want to ensure that you understand that failure to comply with the directive is an offense [...]".

To this, the Burry's representative responded, at 20:38, that the CCG reply was received but not understood. The representative again summarizes his understanding of the situation and reiterates that Burry's considered itself a third party and not a "Person in Charge" of either of the Vessels. The email concludes:



We have cooperated with T C / CCGS to the best of our ability and will continue to do so.

As we stated y phone today, if you wish to contract with us to re-position the vessel(s), we would in turn charter a tug to take charge of the vessel(s) and move them to a secure location.

We do not have the physical capacity (assets) nor the financial capacity to undertake this activity. In addition; had we hypothetically had those capacities it would seem to me that we would be implying that we would then be the 'Person in Charge' under the Regulations.

All of the above said, we will attempt to keep a visual intermittent watch and advise you if the situation changes.

*Figure 15: Screen capture of second Burry's email to the CCG of 22 September 2017*

No CCG response to this final Burry's communication is included in the claim submission.

### CCG Direction with regard to the SIKUK dated 26 September 2017

The claim submission includes a Direction issued to the owner of the SIKUK, dated 26 September 2017. The Direction reads as follows: “Provide a ‘Plan’ to eliminate the threat of pollution from your vessel the MV Sikuk by 0900hrs local 2 October 2017. [...] The ‘Plan’ must contain the location you will be taking your vessel, the tow plan to get it there, and the arrangements made to secure the Sikuk once on site.”

### CCG letter to the owner of the SIKUK dated 8 November 2017

A second email sent by the CCG to the owner of the SIKUK is dated 8 November 2017 at 08:49. The email contains an attached letter to the owner of the SIKUK. The letter purports to represent final notice as to the requirements set out on the Direction of 26 September 2017, further requiring “a timeline, with all contractual information, relating to the pollutant removal, towing vessel with approved tow plan and arrangement, destination and arrangements for securing and dismantling the vessel.” The letter sets a deadline of 10:00 on 14 November 2017 for submission of the required plan.

### London Offshore Consultants Condition Survey and Towage Assessment

The LOC survey report is dated 28 January 2018. It indicates that it is based on a 16 November 2017 inspection of the SIKUK, and is comprised of 35 pages, including three appendices. Appendix A contains 20 photographs of the SIKUK. Appendices B and C contain general information on the SIKUK, including a single page of “General Arrangement” drawings. The survey report describes the vessel as a diesel-powered 44.68-metre fisher of 584 gross tonnage and steel construction, built in 1966. The report indicates that the vessel had at some point in its history been converted for harvesting ice from icebergs.

The LOC survey report describes its scope as follows: “This report details the findings of the survey with respect to overall condition of the vessel, presence of pollutants and offers recommendations regarding vessel towage for disposal. [...] It also offers an estimate of the disposal costs.”

The surveyor found the vessel listing slightly to starboard and slightly down by the stern alongside the Hardwoods dock, noting that the hull appeared to be sound: “No major damage to hull plating was apparent [...] and] Below the waterline only a small amount of marine growth was visible.” An additional observation reads:

With the minimal oversight of the vessel and the depth of water at the site there is a significant risk of the vessel sinking if water ingress goes unnoticed. If the vessel were to sink then the remaining oil on board would likely escape and cause an oil sheen on the water's surface.

*Figure 16: Screen capture from LOC survey report, at p i*

The surveyor opines that, while he had not conducted a formal stability survey and that one should be carried out before moving the vessel, towage of the SIKUK should be viable by a tug with a minimum bollard pull of 10MT. The surveyor further estimates the costs of



towing to and deconstructing the vessel in Nova Scotia would be in the range of \$806,938.00 to \$1,118,563.00. Finally, the possible presence of asbestos on the vessel is noted.

The total volume of pollutants on board the SIKUK is estimated at 16,250 litres. As the vessel was down by the stern, the surveyor assumed that the 8,000-litre aft tank, which was designated for dirty oils and could not be sounded, was full of oils or contaminated water.

The breakdown of estimated pollutants on board the SIKUK is presented as follows:

Item	Description	Volume, litres
Main Engine	Wichmann 5AX. Entrapped fuel oil, lube oil and sump oil	1,000
Main Engine Gearbox / sterntube	Assume that vessel has oil in stern tube	500
Generators	Fwd and aft units	400
Engine bilge	Approx 200mm water with thin layer of oil	1,000
Steering Gear	Single ram hydraulic	200
Winches	Forward winch - hydraulic lines, gear box and hydraulic power pack	500
Grapple unit	Hydraulic power pack and system	600
Diesel Engines	Fwd and aft thruster drive units	250
Lube Oil tank	Ready use lube oil tank	300
Dirty Oil Tank	Aft peak tank designated for dirty oil	8,000
Ship FO tanks	P&S Diesel tanks in engine room and Day tank, assumed empty but have not been cleaned. Allow for residual in both tanks	500
Vessel Piping	Oil product piping – fuel transfer, lube oil transfer and hydraulic	2,000
Loose drums	Numerous full drums around vessel	1,000
<b>Total</b>		<b>16,250</b>

**Table 1: Estimated volume of pollutants**

Figure 17: Screen capture from LOC survey report, at p 11

Finally, the cost of removing and disposing these pollutants is estimated in the LOC report at between \$5,688.00 and \$7,313.00 without contractor costs for “associated mobilisation, travel, and subsistence”.

Email exchange with owner of the SIKUK and CCG letter dated 24 November 2017

The claim submission contains an email exchange with the owner of the SIKUK begun by the CCG at 17:52 on 24 November 2017. The email contains two attachments: (1) a summary of pollutants on the SIKUK from the LOC survey report; and (2) a letter. The letter reads as follows:

Following up on your email to Mr. [REDACTED] dated November 21, 2017, the Canadian Coast Guard has requested on several occasions that you and/or your authorized representative provide a detailed plan for addressing the pollution risk posed by the FV SIKUK. This plan must include:

1. A timeline for the pollutant removal and the towing of the vessel to a suitable dock, including arrangements for securing the vessel and maintaining security watches;
2. All contractual information relating to the plan;
3. Confirmation of Wreck Removal Insurance; and
4. Third Party Review of the Tow Plan by an Underwriter "Approved" Marine Warranty Surveyor.

Please provide the above information by 1000hrs local time **Wednesday, November 29, 2017**.

This plan was first requested in a Direction Order dated September 22, 2017 under the authority of paragraph 180(1)(c) of the *Canada Shipping Act, 2001* (S.C. 2001, c. 26). A second Direction Order was sent September 26, 2017. Your response of October 2, 2017 lacked the level of detail requested, particularly a third-party approved tow plan, proof of wreck removal insurance, and details of the pollutant removal process. You were advised accordingly via email. A further request for compliance was issued November 8, 2017.

Despite the above communications, you have not provided an adequate plan containing the above details.

Please be advised that the Canadian Coast Guard had a Technical Assessment conducted on your vessel, which concluded that there is approximately 16,250 liters of pollutants aboard the vessel.

If you fail to submit a viable plan by the requested date, the Minister of Fisheries and Oceans will be taking measures to repair, remedy, minimize or prevent pollution damage from the vessel FV SIKUK pursuant to paragraph 180(1)(a) of the *Canada Shipping Act, 2001*.

These measures may include the removal or destruction of the vessel and its contents. The Minister may also sell or otherwise dispose of the vessel and its contents.

*Figures 18 and 19: Screen captures of CCG letter to the owner, dated 24 November 2017 (name of CCG contact redacted)*

Also included in the submission is the owner's email response to the CCG's letter. The email was sent on 27 November 2017. It confirms receipt of the letter and indicates that a plan is in the works.

### Summary of security services quotes obtained by the CCG

The final piece of evidence included in the claim submission is a single-page summary of notes on the various quotes obtained by four security contractors. Of the four contractors, GardaWorld charged the highest hourly rate for its personnel, but it had "employees in the area ready to go". In contrast, each of the other three contractors is recorded as having quoted mileage, *per diem*, and/or accommodations costs for its personnel.

## **SUPPLEMENTARY EVIDENCE & CORRESPONDENCE WITH THE CLAIMANT**

### SIKUK and FRANÇOISE claims investigated and assessed together

When the Fund received the CCG's SIKUK claim on 1 March 2019, it became clear that the anticipated FRANÇOISE claim would be closely related, as the Vessels were subjects of the same response and many of the costs of that response were directed at both of them. As such, the Fund notified the CCG on 4 March 2019 that investigation and assessment of the SIKUK claim would remain largely on hold pending receipt of the FRANÇOISE claim. The CCG acknowledged.

### SIKUK and FRANÇOISE claims re-apportioned, reducing the total SIKUK claim

The entire cost of the McKeil towing operation and the cost of purchasing a towing bridle from were originally claimed only against the SIKUK. Given that the McKeil tow involved both of the Vessels and that the towing bridle also appeared to have been intended for both Vessels, the Fund requested that the CCG agree to a re-apportionment of these two expenditures equally as between the two claims. This request was made on 29 April 2020.

The CCG responded to the Fund's request in agreement on 5 May 2020. The results of the re-apportionment are set out on the opening page of this letter and detailed below, in Tables 2 and 3.

### Evidence of value included in the FRANÇOISE claim or arising from the assessment thereof

Some of the evidence included in only the FRANÇOISE claim or produced in the course of its assessment was useful in evaluating the SIKUK claim. As such, this evidence is described below.

#### *Vessels dragging anchor as early as 12 September 2017*

The FRANÇOISE claim narrative indicates that on 16 July 2018, Burry's forwarded to the CCG an email it had sent to the owner of the FRANÇOISE on 12 September 2017, warning that the vessel may have been dragging anchor. The CCG has not provided the original Burry's email mentioned in the narrative.

#### *Further details on the CCG's first report of the Incident from Burry's*

The FRANÇOISE claim narrative notes that, as of 21 September 2017: "The [Burry's] personnel stated that due to winds over the last 24 hours the vessels had moved approximately 500-600 yards from where the vessels were originally anchored approximately three (3) weeks prior and were now 0.5nm from shore. Neither owners had attended their vessel since they were moved from [Burry's]. Due to forecasted North West gale force winds, there was a significant concern that the vessels would ground and cause a pollution incident. There was also a concern related to the anchors catching on the power cable crossing the bottom of the bay which supplies power to Random Island and surrounding communities."

#### *Issuance of a Safety Notice to Shipping on 22 September 2017*

The FRANÇOISE claim narrative states that the CCG contacted Placentia Marine Communications and Traffic Services on 22 September 2017, requesting the issuance of a Safety Notice to Shipping in order to alert local marine traffic to the navigation hazard posed by the Vessels.

### *The towage operation and towing bridles*

The FRANÇOISE claim narrative states that, not having made contact with the owners, the CCG resolved to engage a commercial tug to tow the Vessels sometime on 23 September 2017. Earlier the same day, the HARP arrived at the Hardwoods dock, and its personnel assessed the Vessels, rigging “two towing bridles (one on each vessel)”.

### *Details on GardaWorld arrangement provided by the Fund’s own marine surveyor*

The Fund contracted its own marine surveyor, Fulcrum Marine Consultancy Ltd. (“Fulcrum”), to inspect the FRANÇOISE, which remained moored at the Hardwoods dock long after the SIKUK, and to provide an assessment of the vessel’s general condition and any residual oil pollution threat posed. This was done in anticipation of a claim from the CCG.

The CCG was notified of the Fulcrum survey in advance and it was conducted under CCG supervision on 4 December 2018. Fulcrum sent its completed survey report to the Fund on 10 December 2018. The Fund presented the full Fulcrum report to the CCG on 2 January 2019 for comment. No substantive comment was received.

The Fulcrum report describes, *inter alia*, the GardaWorld arrangement, which continued apparently unchanged after the SIKUK was towed away, as follows: “Security on the wharf was provided by one person from a local security services company sitting in a vehicle to prevent personnel access to the wharf only. It was stated that access to the [FRANÇOISE] has not been denied to the current owner however it was conditional that it be carried out from the water side only. CCG thus rely on being contacted by the security person on site should any adverse condition on the vessel be noted (the security person’s reported remit does not involve physically entering the vessel nor traversing the wharf due to it’s [*sic*] poor condition).”

### Requests for further documentation and clarification

During the investigation and assessment process, the claims with respect to the Vessels were the subject of several email exchanges between the Fund and the CCG. These exchanges are summarized below, with any new evidence that added substantively to the CCG’s submissions described in detail.

On 9 July 2019, the Fund requested an explanation of the CCG’s rationale for choosing to engage a commercial tug located in Sydney, Nova Scotia to tow the Vessels, rather than using the HARP, which was on scene from 23 September 2017. In addition, the Fund requested information on the daily charge out rates for the HARP at the time of the Incident.

The CCG responded in part the same day, stating that it avoids using day rates for any of its vessels, because actual costs vary with circumstances. In response, the Fund requested the actual daily and aggregate costs associated with the HARP during its September 2017 assignment at Clarenville.

On 10 July 2019, the CCG responded, in part, to the Fund’s first request, stating that the HARP as equipped at the time was not capable of safely completing the tow, and stressing that the BEVERLY M I was the nearest available commercial tug that was suitable for the job.

On 12 August 2019, the CCG contacted the Fund with regard to its request for the actual daily and aggregate costs of the HARP. The CCG declined to disclose any of the costs associated with the HARP, as no compensation was sought for them. The CCG went on to largely repeat the justifications offered in its 10 July 2019 email to the Fund, stressing the urgency of the Vessels’ situation, the risk to an underwater electrical cable posed by dragging anchors, and the inability of the HARP to safely complete the tow.

On 27 November 2019, specifically in the context of the FRANÇOISE submission, the Fund requested further details on the efforts that the CCG had taken to mitigate security costs.

On 10 December 2019, the CCG replied at length, emphasizing that “Part of the role of CCG ER in pollution threat mitigation is to encourage the owner to act on his own behalf, in order to reduce costs and effort unduly placed against the crown, and thus on the owner.” The response also provides some elaboration on Transport Canada’s efforts to find a place of refuge for the Vessels prior to the tow to the Hardwoods dock. It states, “TC identified a port in Bonavista Bay approximately 110nm distant, which is located in a National Park.”

On 18 December 2019, the Fund sent an email to the CCG requesting the following:

1. Deck log, rough log, radio log, e-mails, steaming log, or the equivalent documentation from the CCGS Harp
  2. Logbooks, tasking messages from the Regional Operations Center
  3. ER Duty Officer’s log or notes, as well as notes/logs from anyone else involved in the response (same dates as above)
  4. Relevant internal emails (ROC or otherwise), specifically anything representing a search for viable tugs in the area (same dates)
5. What specifically did CCG require in terms of equipment and experience that the CCGS Harp could not provide?

*Figures 20 and 21: Screen captures from the Fund’s 18 December 2019 email request of the CCG*

On 2 January 2020, the CCG provided the following in response:

- A partially illegible handwritten list of towage companies, contact names, and telephone numbers;
- A typed partial transcription of the above list, indicating six companies were contacted;
- A CCG internal email dated 22 September 2017, tasking the HARP to Clarenville; and
- A Regional Operations Centre tasking document for the HARP dated 22 September 2017;

In addition, the CCG stated the following in an email, in response to Fund’s fifth request of 18 December 2018 (see Figure 21):

5. The CCGS Harp was not considered for the job, the ship was tasked to monitor the Sikuk and Francoise to ensure the vessels were not dragging anchors and the crew also conducted an assessment of the vessels and dock. The CCGS Harp was not fitted with salvage equipment ( cutting equipment to cut two anchor chains, certified towing bridles and fenders) to tow and dock two vessels that had no crew or power. The officers and crew are trained for SAR they are not trained for salvage operations and the CCGS Harp is not a salvage tug. If the vessels started to drag anchors and go aground causing a pollution incident the most the CCGS Harp could safely do would be placing a line on the vessels and try to stop the vessel from going aground. The CCGS Sir William Alexander (On SAR Stand-By) was requested to move closer to Clarenville if the CCGS Harp reported that the Sikuk and Francoise were dragging anchors then the CCGS Sir William Alexander would be requested to help out. All CCG resources identified for this response, were solely tasked to try and stop the vessels from going aground and creating a pollution incident; they were not requested for towing/salvage and docking two vessel that had no power.

Figure 22: Screen capture from 2 January 2020 email response the Fund's 18 December 2019 request

On 27 January 2020, the CCG provided a Marine Security Operations Centre report apparently dating to 22 September 2017, based on its contents. The report indicates, *inter alia*, that a gale warning was in effect for 22 and 23 September 2017 on the east coast of Newfoundland, north of Cape St. Francis. In addition, the CCG provided a 21 September 2017 Marine Occurrence Report issued by Marine Communications and Traffic Services, Placentia. This document contains no new substantive details.

No documentation or explanation was provided with respect to the Fund's first request of 18 December 2019 (see Figure 20).

## **FINDINGS AND DETERMINATIONS**

### **The CCG submission is eligible as a claim under section 103 of the MLA**

The Incident led to costs and expenses to carry out measures to avoid anticipated oil pollution damage within the territorial seas of Canada. 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, and its claim was submitted within the limitation periods set out under subsection 103(2).

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 of the MLA, and are therefore eligible for compensation.

For the foregoing reasons, it is determined that the submission presents claims that are potentially eligible for compensation under section 103 of the MLA.

### **Most of the facts presented by the CCG are accepted**

Apart from a few exceptions, the facts as set out in the narrative and in the accompanying documentation provided by the CCG—both original and supplementary—are accepted. There are, however, a number of evidentiary gaps, inconsistencies, and inaccuracies with regard to the Incident and the CCG response. To the degree that these evidentiary shortcomings are relevant to the assessment, they are addressed below.

### Note on the owners of the Vessels

It is noted that the individual referred to as the “owner” of the SIKUK throughout the CCG claim documentation appears in fact to be a director of the corporate owner of the vessel, which was registered in Canada until 27 May 2009, and thereafter in St. Vincent and the Grenadines until 27 September 2017. For the sake of consistency and continuity, the remainder of this letter simply refers to the individual named in the CCG documentation as the vessel’s owner.

The CCG similarly refers to the sole director of the corporate owner of the FRANÇOISE as that vessel’s owner. Again, for consistency and continuity, this letter also refers to that individual as the owner of that vessel.

### The Vessels posed an oil pollution threat while at anchor in Clarendville Harbour

In light of all the circumstances presented by the CCG, it is concluded that the Vessels, both together and individually, posed a pollution threat while at anchor in Clarendville Harbour. With specific regard to the SIKUK, this threat was largely mitigated when that vessel was towed and secured at the Hardwoods dock.

ER personnel were able to inspect the SIKUK while it lay at anchor. It is unclear whether they found 11,500 litres of pollutants on board, as noted in the narrative, or 1,500 litres of pollutants, as noted in the Daily Logs. In light of the later findings of the LOC survey report, however, it is likely that the former figure is more accurate, and that the latter may have resulted from a typographical error.

The Vessels were without power and navigation lights, increasing the risk of a collision in darkness or poor weather. Such a collision may have led to oil pollution being discharged into the marine environment. There is no indication that the CCG installed or considered installing temporary, battery-operated navigation lights on the Vessels while they lay at anchor, but the issuance of a Safety Notice to Shipping on 22 September 2017 served to reduce the risk of collision.

The reports that the Vessels had been dragging anchor suggested that the SIKUK’s anchor chains were fouled, and it is possible that the dead weight of the anchorless and listing FRANÇOISE had exacerbated this situation. There was only so much room to drag anchor in Clarendville Harbour without grounding, and such a grounding would likely have resulted in the discharge of oils, necessitating a costly salvage and cleanup operation.

The CCG claim documentation, particularly that presented with the FRANÇOISE claim, asserts in various places that poor weather—perhaps even gale force winds—was expected in the Clarendville area at the time of the Incident. No further evidence on the expected weather conditions is provided in the claim documentation, though the Marine Security Operations Centre report later provided by the CCG does reference a gale warning. Despite a specific request from the Fund, the CCG has not provided copies of the logbook from the HARP, which would have contained the actual weather data that the CCG was working with and relying upon during its response.

In order to better understand the weather situation at Clarenville prior to and during the CCG response, the Fund obtained data from Environment and Climate Change Canada (“ECCC”) showing the recorded wind conditions at the nearby Terra Nova National Park on and prior to 21 September 2017, when the CCG was first notified that the Vessels were dragging anchor. The Fund has also consulted contemporaneous weather forecasts for the area, covering the period from 21 September 2017 through 24 September 2017.

Based on the Daily Logs, it appears that Burry’s towed the Vessels to their Clarenville Harbour anchorage on or about 1 September 2017. The first known report that the Vessels may have been dragging anchor came on 12 September 2017, when Burry’s appears to have reached out to the owner of the FRANÇOISE. This roughly aligns with ECCC data, which show daily high winds over 43 kilometres per hour in the area from 4 through 8 September 2017. In particular, gusts from the southwest reached 54 kilometres per hour on both 7 and 8 September 2017. Later, gusts of 48 kilometres per hour were recorded from the southwest on 20 September 2017. The next day, when Burry’s reported the Incident to the CCG, gusts from the northwest reached 43 kilometres per hour. It therefore appears that westerly gusts over 43 kilometres per hour were sufficient to move the Vessels closer to Random Island, due east of their original anchorage.

By the time the CCG was notified of the Incident, the Vessels had dragged to within just half a nautical mile of Random Island, and further high winds were forecast out of the northwest and southwest. By the afternoon of 23 September 2017, when the McKeil tug was en route, there was a gale warning in effect, with sustained winds from the southwest and northwest expected at over 60 kilometres per hour, gusting to over 80 kilometres per hour. These forecasts, coupled with the recent behaviour of the Vessels in better conditions than those forecasted, support the CCG’s assertion that it believed the Vessels were at risk of grounding on Random Island.

While the CCG had at least one residual concern that went beyond its ER mandate—that the SIKUK’s anchors would catch on underwater cables and thereby interrupt the power supply to Random Island—it is concluded that the concerns around grounding were overriding. Incidentally, while it is acknowledged that anchors snagging on an underwater electrical cable was far from desirable, such an event may have arrested the Vessels’ dragging. In any case, the Incident was chiefly of concern to the CCG from an ER perspective. With high winds in the forecast and fall and winter weather around the corner, the situation was urgent.

#### The McKeil towage operation was a reasonable measure

According to the timeline presented in the claim narrative, the CCG resolved to engage a commercial tug to tow the Vessels by 23 September 2017. In light of the pollution threat posed by the Vessels and the lack of communication from their respective owners, this decision was made with some urgency.

It has been concluded that leaving the Vessels at their anchorage in Clarenville Harbour amounted to an unacceptable risk. The CCG thus had the choice between using its own assets to move the Vessels or engaging a third party to do so.



It is the CCG's position, as set out in its 2 January 2020 email to the Fund (see Figure 22), that the HARP was not capable of safely towing the Vessels. Rather, should the situation have deteriorated, the HARP would have been used to keep the Vessels off the shore until the CCGS SIR WILLIAM ALEXANDER, a much larger vessel that had been ordered to stand by near Clarenville, could assist. These assertions are accepted, though the CCG has declined to provide a contemporaneous record of its decision-making process.

It is further accepted that, in contacting six towing companies, the CCG made reasonable efforts to secure a suitable commercial tug as near to Clarenville as possible. The timing was inopportune: with the fall season beginning, tugs in Newfoundland were likely in short supply on such short notice. That said, when the CCG entered an emergency contract with McKeil, it knew that the BEVERLY M I would cost \$14,500.00 daily, exclusive of fuel, and that the tug would not arrive until the early morning of 25 September 2017 at earliest. According to ECCC weather forecasts, a gale warning was in effect for 23 September 2017. The CCG nonetheless took the risk of delay while also committing to substantial cost.

To determine whether the decision to engage the BEVERLY M I was reasonable in the circumstances, it must be considered first whether the CCG had a more efficient option. Given the SIR WILLIAM ALEXANDER had been placed on standby near Clarenville to assist the HARP if needed, it is concluded that the larger CCG vessel was nearer to Clarenville than the BEVERLY M I. Further, the SIR WILLIAM ALEXANDER, a light icebreaker of 3,727 gross tonnage, powered by over 7,000 horsepower, was capable of towing the Vessels. In fact, like the much smaller BEVERLY M I, which boasted a 71-tonne bollard pull and 4,000 horsepower, the SIR WILLIAM ALEXANDER was far more powerful than necessary to safely tow the Vessels only a few hundred metres to the Hardwoods dock.<sup>3</sup>

Although it was closer to Clarenville and more than capable of completing the required towage operation, it is accepted that the SIR WILLIAM ALEXANDER was not the optimal vessel for the job.

First, the CCG's "Policy and Operational Procedures on Assistance to Disabled Vessels" sets out a clear preference in favour of the use of commercial tugs to resolve all incidents, particularly where no lives are at risk, as was the case here. In particular, the CCG is not to compete with commercial towing interests "unless all efforts to obtain commercial or private assistance have been carried-out and have failed to resolve the situation."<sup>4</sup> In any case, the Assistant Commissioner of the CCG is required to approve the use of a CCG resource to tow any disabled vessel of 33 metres or more in length,<sup>5</sup> a threshold the SIKUK exceeded, though the FRANÇOISE did not. It is clear that internal operating policy did not favour the use of a CCG asset for the job.

---

<sup>3</sup> LOC, in its survey report, would later recommend a tug with a minimum bollard pull of 10MT to tow the SIKUK as far as Nova Scotia. The FRANÇOISE was significantly smaller than the SIKUK. Finally, as detailed below, it is assumed that the Vessels would not have been towed simultaneously.

<sup>4</sup> Canadian Coast Guard, "Policy and Operational Procedures on Assistance to Disabled Vessels", s 2.1.2.

<sup>5</sup> *Ibid*, s 2.1.4.

Second, though the SIR WILLIAM ALEXANDER was capable of towing the Vessels, such an operation would have been wrought with logistical difficulties of its own. Soundings would have to be taken to ensure that such a large vessel, with a draught of 19 feet, could safely navigate in the vicinity of the Hardwoods dock. Further, docking the Vessels would command a degree of maneuverability much better suited to a purpose-built and smaller tug with Z-drive propulsion, such as the BEVERLY M I.

Finally, there was a very real risk that the SIR WILLIAM ALEXANDER would suffer damage in the course of towing the Vessels. Any such damage would have severely impaired the CCG's capacity to conduct search and rescue operations in the Atlantic, including the maintenance of its marine aids program. This was an unnecessary risk.

It is thus concluded that while the CCG did indeed have the option of using one of its own resources to tow the Vessels, this option was not a universally superior one. While the commercial option was probably less expeditious in the face of deteriorating weather, and certainly more costly, it was technically preferable. To counter the delay and risks inherent in waiting for a tug to arrive from Nova Scotia, the CCG had two contingencies in place, in the form of the HARP and the SIR WILLIAM ALEXANDER. All things considered, the decision to engage McKeil to tow the Vessels was reasonable.

#### The decision to use the Hardwoods dock as temporary safe refuge was reasonable

The narrative indicates that the CCG secured the use of the Hardwoods dock for the Vessels while the BEVERLY M I was en route to Clarenville, on 24 September 2017. Due in part to the deteriorated condition of the dock, but also because Hardwoods apparently saw the Vessels as prime targets for vandalism, sabotage, or some other form of foul play, it insisted on strict terms. Only CCG personnel would have access to the dock, and the site was to be monitored by security personnel around the clock to mitigate liability concerns. The CCG has not provided any specifics on those liability concerns, nor has it provided any correspondence with Hardwoods, or documentation of its agreement and terms of use. Further, there is no indication that the CCG made any efforts to negotiate more favourable terms than those ultimately imposed by Hardwoods, nor that it considered issuing a third-party Direction to same, which was within its powers under paragraph 180(1)(c) of the CSA.

CCG personnel from the HARP inspected the Hardwoods dock, finding it at least minimally suitable as temporary safe refuge for the Vessels after assessing its condition and conducting soundings. The dock was very proximate to the Vessels, but its deteriorated condition and the strict and costly terms imposed by Hardwoods made it an unattractive option overall.

As discussed at length above, as early as 21 September 2017, the CCG was operating on a tight timeline to find a place of safe refuge for the Vessels. When the BEVERLY M I departed Sydney, its expected 25 September 2017 morning arrival at Clarenville became the effective deadline to secure safe refuge: further delay would not only increase the risk of pollution but also drive up the costs associated with the tug. It therefore appears that the CCG took an unattractive option out of sheer pragmatism. This was reasonable in the

circumstances, particularly given the demonstrated pollution threat posed by the Vessels at anchor, and the CCG's clear intention at the time to use the Hardwoods dock as a *temporary* place of refuge.

It is further accepted that the CCG, assisted by Transport Canada, made efforts to seek out alternatives to the Hardwoods dock. These efforts were evidently unsuccessful, but very little detail on the search has been presented. After submitting its claims, the CCG identified Bonavista Bay in a supplementary submission to the Fund as an alternative location that had been proposed by Transport Canada. The CCG has not presented its reasons for ultimately ruling out this location.

#### The costs of storing the SIKUK for an extended period were not reasonable

Once the SIKUK was secure at the Hardwoods dock, any oil pollution threat that the vessel had posed while at anchor was substantially mitigated. The vessel was no longer able to drag anchor, so grounding had ceased to be a major threat. The only residual concerns the CCG could reasonably have had from an oil pollution perspective were that: (1) The SIKUK would break free of its moorings, whether through their failure or some other failure associated with the deteriorating Hardwoods dock, and drift aground; (2) The SIKUK would spontaneously founder; and (3) The owner of the SIKUK or some third party would interfere with the vessel to the extent that foundering or drifting would result.

In spite of the much-reduced pollution threat posed by the vessel, the storage of the SIKUK alone was costing in excess of \$2,600.00 per week as soon as the vessel was secured alongside. Beyond placing inconsistent pressure on the unreliable owner of the SIKUK, however, the CCG made no demonstrated efforts to mitigate its own rapidly mounting costs. Furthermore, the CCG's apparent reluctance to promptly assess the integrity of the SIKUK's hull or closely monitor it for water ingress suggests that the CCG no longer believed that the vessel posed a significant oil pollution threat at all once it was secured at the Hardwoods dock. The vessel was simply stuck in a persistent and costly limbo during this period for no particularly good reason.

#### *The CCG's pressure on the owner of the SIKUK was inconsistent*

The owner of the SIKUK was unreliable and irresponsible. Based on its 21 September 2017 discussions with Burry's, the CCG ought to have been aware that it was not dealing with a model shipowner. If this was not apparent to the CCG from the outset of its operation, it became so very quickly through the course of the CCG's dealings with the owner.

Despite the verbal Notice of 21 September 2017 and the Notice and Direction of 22 September 2017 instructing the owner to secure the SIKUK, the owner failed to take action or even indicate a willingness to do so. After first contact on 21 September 2017, it appears that the owner failed to contact the CCG at all until 27 September 2017, after the vessel had been towed. The delayed communication ought to have suggested immediately that the owner cared little for the wellbeing of the vessel, let alone the potential that it might discharge pollutants into the marine environment.

Based on the claim documentation, the owner either failed to respond or act entirely, or was deemed to have done so vaguely or inadequately, when requests were made by the CCG on more than nine separate occasions, each of which is detailed above in this letter. For ease of reference, those occasions are summarized as follows:

- 21 September 2017 verbal Notice and requirement to take immediate action;
- 22 September 2017 Notice and request to be informed of intentions;
- 22 September 2017 Direction to immediately secure the SIKUK;
- 26 September 2017 Direction to provide plan to eliminate the pollution threat from the SIKUK, including towage plan, destination, and securing arrangements;
- Several requests for information on the owner’s plan over the two-week period beginning 12 October 2017;
- 8 November 2017 letter containing “final notice” to comply with Direction of 26 September 2017 with requested plan to include timeline, all contractual information, details on pollutant removal, towage, securing, and dismantling arrangements;
- 17 November 2017 email reiterating “final notice” requirements of 8 November 2017;
- 24 November 2017 third “final notice” letter, attaching LOC pollutants assessment; and
- 1 December 2017 email request for clarity and detail on the owner’s proposed plan.

It was not until 13 December 2017 that the owner of the SIKUK had representatives assess the vessel in person at the Hardwoods dock. A final, acceptable plan for pollutant removal and towage began to emerge the following day, and the implementation of that plan was delayed due to poor winter weather. The CCG ought to have contemplated such possible weather delays as the situation dragged through the fall, and all of this was cast against over \$2,600.00 in weekly security costs.

Given the urgency of the original anchor dragging situation, and the fact that the owner had failed to respond at all to, let alone comply with, the 22 September 2017 Direction—a statutory order backed by severe monetary penalty and the threat of imprisonment—the CCG ought to have been ready to apply firmer, clearer pressure and perhaps even take its own steps to cut costs where the SIKUK’s owner failed to do so.

Instead, the 26 September 2017 Direction was flawed. It was remarkably vague and brief, in particular in its request for a plan “to eliminate the threat of pollution” from the SIKUK. The owner’s plan, submitted just minutes before the CCG’s deadline on 2 October 2017, mirrored the vagueness of the Direction to which it responded. In part because it lacked detail on pollutant removal, the CCG rejected the plan. This was a somewhat arbitrary tack on the CCG’s part, given that no such detail was explicitly required by the 26 September 2017 Direction. Furthermore, there is no indication that the CCG communicated to the SIKUK’s owner its own early estimate of the volume of pollutants on board the vessel, which would at least have hinted at an underlying requirement for specific action.

By the time it issued its 8 November 2017 “final notice” letter with a compliance deadline of 14 November 2017, the CCG was including more detail in its demands of the SIKUK’s owner, but over six weeks had elapsed by this point, and security costs alone had already surpassed \$15,000.00. When the CCG emailed its 17 and 24 November 2017 reiterations of “final notice”, the owner of the vessel might conceivably have begun to question the CCG’s understanding of finality.

*The CCG failed to take reasonable measures to mitigate its mounting and questionable costs*

To recover its costs and expenses, a claimant must establish that they were reasonably incurred. This includes a duty to mitigate costs and expenses, meaning that spending must be minimized to the extent reasonably possible.

In putting pressure on the owner of the SIKUK to act, the CCG did take some measures in an attempt minimize the mounting costs associated with keeping the vessel at the Hardwoods dock. However, these measures were largely ineffective and sometimes materially flawed.

The CCG felt itself under legitimate pressure to act quickly when Hardwoods first proposed its strict terms for use of the dock. After the SIKUK was secured at the dock, however, the pressure of an oil pollution threat was supplanted by pressure of a primarily financial character. The CCG had on its hands a large, decaying steel vessel full of pollutants that apparently could not operate under its own power, and it appeared to see just two escape routes. The first was to motivate the owner to responsibly retake possession; the second, based on the CCG’s instructions to LOC, was to have the SIKUK dismantled at its own considerable expense. In reality, however, the CCG had more than two options.

Had the CCG undertaken a cost-benefit analysis of its developing situation, this may have motivated it to seek out these alternatives. Evidently, no such analysis was done. The Hardwoods dock was probably both higher risk and more costly than virtually any other moorage situation in the province, but nothing in the claim documentation suggests that alternatives were sought or considered. As has been noted, the Bonavista Bay moorage suggested by Transport Canada does not appear to have been seriously considered.

Furthermore, other than blind compliance with the terms imposed by Hardwoods, it ought to be questioned exactly what value the GardaWorld arrangement brought at such a substantial weekly cost. The CCG provided no specifics on the security measures taken, though it appears that a single security guard sat a twelve-hour shift inside a vehicle at the entrance to the dock before being relieved by a colleague who simply repeated this vigil. Nothing in the documentation submitted by the CCG—neither a contract nor a statement of work was provided—suggests that the GardaWorld personnel so much as made regular rounds of the site on foot, let alone inspected mooring lines or the Vessels’ draught marks. Indeed, it appears that the security guards were under explicit instructions not to set foot on the Hardwoods dock. Finally, without any apparent marine expertise, it is unlikely that the GardaWorld personnel were capable of identifying (and therefore promptly reporting)

a problem with the Vessels beyond the most obvious: fire, foundering, and drifting. Evidently, they failed to notice and report the open forecastle door on the SIKUK.

The CCG was free to renegotiate its terms with Hardwoods once the Vessels were secured. Particularly as it appears to have resolved against moving the Vessels to new moorage on its own initiative, the possibility of renegotiated terms ought to have presented itself as an attractive cost mitigating measure to the CCG. General liability insurance cover could have been proposed, for example. This proposal could have been bolstered by the installation of barbwire-topped fencing with a locking gate, which would have blocked access to the Vessels from land while admittedly posing no barrier from seaward. That said, it is unlikely that the presence of a single security guard sitting in a vehicle posed a significant barrier to access by sea either.

As noted, a more aggressive cost mitigation measure would have involved the issuance of a Direction under paragraph 180(1)(c) of the CSA to Hardwoods, requiring it to temporarily surrender control of its disused and derelict dock. The CCG would have been obligated to pay presumably modest compensation to Hardwoods for the trouble under subsection 180(1) of the CSA, and Hardwoods would have benefitted from broad civil and criminal immunity via subsection 181(1).

Finally, it must be remembered that Burry's, a party that can hardly be held blameless with respect to the Incident, had failed to comply with the CCG's Direction of 22 September 2017. After receiving the second Burry's email of 22 September 2017, it appears that the CCG abandoned its strategy of attempting to force the shipyard into action to remedy the situation that it had itself fostered. Even more so than Hardwoods, Burry's would thus have been a prime target for a (second) Direction under subsection 180(1) of the CSA, or at minimum a negotiated arrangement. Unlike the owners of the Vessels, Burry's was conducting an active business and maintaining a reputation, which would have made it far more susceptible to compliance pressures and the threat of strict statutory penalties.

With the pollution threat from the SIKUK largely reduced once the vessel was secured but significant costs continuing to run, the CCG ought to have turned its efforts to damage control. Instead, it relied solely on pressure on the owner that was consistent only in its ineffectiveness.

*The CCG no longer considered the SIKUK an oil pollution threat once it was secured*

Most importantly, once the SIKUK was secured alongside the Hardwoods dock, the CCG continued a costly yet largely hands-off response that even it considered to fall largely outside its oil pollution prevention mandate.

As identified above, the CCG ought to have had three residual concerns from an oil pollution perspective beginning on 25 September 2017, when the SIKUK was secured to the Hardwoods dock. It appears on the evidence that the CCG took some measures, including monthly site visits by ER personnel to check on the moorings, to ensure that the vessel would not break free from the dock. The presence of a security guard at the site was at least a visible deterrence to unauthorized boarding. With regard to the potential that the

SIKUK might spontaneously founder while alongside the dock and discharge both known and unknown pollutants, however, few if any meaningful steps were taken.

The CCG knew the SIKUK to be aging and neglected from the moment ER personnel sighted and boarded the vessel on 22 September 2017, when they also discovered a significant quantity of pollutants on board. Once the vessel was secured, however, there is no indication that any serious efforts were made to check the integrity of its hull, and thus the residual threat posed by onboard pollutants, until the LOC survey of 16 November 2017.

It must be noted here, however, that the full report from the LOC survey does not appear to have been delivered until 28 January 2018, over two weeks after the CCG considered its SIKUK response closed. That said, LOC appears to have delivered its estimate of pollutants on board the SIKUK to the CCG on or about 22 November 2017, when the LOC billing documentation shows completion of that portion of the report. The CCG forwarded this single-page document, which was later included in the full survey report, to the SIKUK's owner on 24 November 2017.

There is no indication that the rest of the LOC survey report, or any other portion thereof, was in the CCG's hands until 4 January 2018 at the absolute earliest—when LOC billing documentation shows it was completed—and perhaps not even until 28 January 2018, the date that appears on the report itself.

The evidence therefore suggests that the CCG lacked a comprehensive understanding of the quantity, type, and location of pollutants on board the SIKUK until 22 November 2017 at the earliest. As for the condition assessment of the vessel itself, and the estimated costs associated with pollution removal, towage, and dismantling, these do not appear to have been in the CCG's hands until January 2018. These delays demonstrate that the CCG placed little to no urgency on understanding its worst-case financial exposure, let alone obtaining and benefitting from the full value of its costly LOC services.

Whether or not the CCG was aware of LOC's warning with regard to monitoring the SIKUK for water ingress, the inherent risks of minimal monitoring of this kind ought to have been apparent to the CCG from the outset. Whether or not these risks were considered by the CCG, little or no action was taken to address them. Finally, the CCG waited until 2 October 2017 to clearly express its concerns about the pollutants on the SIKUK to the vessel's owner. If the CCG believed these pollutants represented a serious, continued threat, it would have arranged for their removal on its own initiative, early in the response.

Given that the CCG appears to have believed that it was no longer dealing with a significant oil pollution threat from the SIKUK, it ought to have been particularly vigilant in its efforts to minimize mounting costs. The evidence discloses that this was not the case.

*The costs associated with continued use of the Hardwoods dock were unreasonable*

While it is accepted that the initial, temporary placement of the SIKUK at the Hardwoods dock was a reasonable measure taken to prevent the vessel from grounding and discharging pollutants, the continued storage of the vessel generated a cost that was vastly

disproportionate to its benefit, and therefore unreasonable. Furthermore, it ought to have been clear that the owner was unlikely to act promptly. In spite of all this, the CCG failed to make reasonable efforts to minimize its storage costs by actively exploring alternatives.

#### Establishing 24 October 2017 as the cut-off date for storage costs associated with the SIKUK

In light of the findings detailed above, it is necessary to determine a cut-off date, at which point the costs associated with the extended storage of the SIKUK, including the Gergar, Battlefield, and GardaWorld expenses, as well as those incurred as a result of site visits by ER personnel to check on the Vessels' moorage situation, ceased to be reasonable in the circumstances. For the reasons set out below, this cut-off date is fixed at 24 October 2017, exactly one month after the Vessels were secured at the Hardwoods dock.

Given that the CCG's initial decision to use the Hardwoods dock as temporary refuge has been deemed reasonable, fixing a cut-off date of 24 October 2017 for the storage of the SIKUK there implies a further finding that the CCG—had it taken reasonably available measures to mitigate its costs—ought to have and most probably could have made alternative and less costly arrangements for the vessel by that date.

Once the SIKUK was secured at the Hardwoods dock, the CCG appeared to be satisfied that the vessel no longer represented a significant pollution threat. In emphasizing the temporary nature of the storage arrangements at the Hardwoods dock from their outset, the CCG was not only attempting to spur the owner to action, but also acknowledging that the *status quo* was not reasonably tenable. It nonetheless continued for several months, despite approaching winter weather that brought with it the promise of inevitable delay even under the best of circumstances. Instead of devoting even modest internal resources to identifying alternative methods of mitigating costs, the CCG simply put all of its faith in the SIKUK's owner, who, even by early October 2017, had demonstrated utter unreliability by failing to comply with no fewer than four statutory Directions and Notices.

With no indication that the CCG gave any thought whatsoever to alternative cost mitigation measures, the cut-off timeline, and by extension the longest reasonable interpretation of "temporary" given the circumstances and the scale of mounting storage costs, is fixed at one month.

#### Findings on personnel effort allocation and associated costs

##### *Establishing a daily breakdown of effort allocation, including salary and overtime costs incurred*

The Daily Logs and the various salary and overtime logs submitted by the CCG can be used to break down the ER personnel costs and effort allocation associated with the SIKUK response. As illustrated in Figure 10, overtime hours were paid at either 1.5 or 2.0 times ordinary salaried hourly rates, exclusive of employee benefits plan costs. As indicated in Figures 9 and 10, ER personnel tended to both the SIKUK and the FRANÇOISE on 21, 22, 24, and 30 September 2017, as well as 12 October 2017, so the hours and costs for those days (marked with asterisks) were divided between the two claims. The hours shown



below for these days represent half the total hours worked, or the hours allocated to the SIKUK response. The breakdown yielded through the method described above is as follows:

Date	Personnel	Salaried Hours	Salary Cost	Overtime Hours	Overtime Cost
2017-09-21*	1	–	–	2.50	\$138.68
2017-09-22*	2	7.50	\$337.84	4.50	\$263.48
2017-09-24*	2	–	–	12.25	\$798.51
2017-09-30*	2	–	–	6.50	\$365.96
2017-10-12*	2	7.50	\$307.46	–	–
2017-11-16	2	15.00	\$620.63	5.50	\$305.09
2017-12-13	2	15.00	\$620.63	–	–
2018-01-04	2	15.00	\$630.61	17.00	\$910.78
2018-01-05	2	15.00	\$630.61	10.00	\$525.45
2018-01-06	2	–	–	23.00	\$1,348.66
2018-01-07	2	–	–	11.00	\$770.66
2018-01-08	2	15.00	\$630.61	13.00	\$683.08
2018-01-09	2	7.00	\$294.24	–	–
<b>Totals</b>		<b>97.00</b>	<b>\$4,072.63</b>	<b>105.25</b>	<b>\$6,110.35</b>

*Table 1: Summary of ER personnel daily effort allocation, salary costs, and overtime costs*

*Established salary and overtime costs*

It is noted from the outset that no more than two ER personnel were deployed to Clarenville on any single day of the response. Given that tasking on each of these days would have involved boarding either or both of the decaying Vessels, as well as venturing onto the dilapidated Hardwoods dock, the decision to deploy two personnel is accepted in all cases as reasonable.

All of the personnel costs associated with the initial response to the Incident, from 21 through 24 September 2017, are accepted as reasonable, as these costs contributed to mitigating the demonstrated pollution threat posed by the Vessels at anchor. Further, the personnel costs associated with 30 September and 12 October 2017 are also accepted, as the deployment of ER personnel to the Hardwoods dock on these dates was reasonably necessary to ensure that the Vessels’ new moorage arrangements were sound.

For the reasons set out above with regard to the establishment of a cut-off date of 24 October 2017, as well as for the reasons set out below for rejecting the cost of the LOC survey and report, the costs associated with the site visit on 16 November 2017, during which ER personnel escorted an LOC surveyor at the Hardwoods dock, are rejected.

On 13 December 2017, two ER personnel travelled to Clarenville to escort representatives of the SIKUK’s owner onto the vessel. This allowed for the owner’s representatives to conduct a pollutant assessment. Though this occurred after the cut-off date of 24 October 2017, the supervisory work done on this day by ER personnel directly contributed to the CCG’s goal of having the pollutants removed from the vessel and having it removed from the site thereafter. For these reasons, the personnel costs incurred on 13 December 2017

are accepted as reasonable. Similarly, the personnel costs associated with 4 through 9 January 2018, during which the owner removed pollutants from the SIKUK and ultimately towed the vessel away, all under CCG supervision, are also accepted.

In summary, the only reductions made to claimed personnel costs are with respect to those incurred on 16 November 2017, totalling \$620.63 in salaries and \$305.09 in overtime. As a result, claimed salary and overtime costs are established in the amounts of \$3,452.00 and \$5,805.26 respectively.

### **OFFER BREAKDOWN**

The CCG presented its claimed costs and expenses across eight schedules. Each of these schedules is briefly outlined below, along with relevant determinations not already set forth in this letter.

#### **Schedule 1: Materials and Supplies**

This portion of the claim is comprised of four separate expenditures, spread across three different suppliers, as summarized below in Table 2. The total amount claimed under this schedule, after re-apportionment, is \$2,356.69.

##### *Canada Post*

The Canada Post expenditure of \$22.87, representing the cost of sending a registered letter to the owner of the SIKUK on 8 November 2017, is rejected, in part because it was incurred after the established cut-off date of 24 November 2017. It is further noted that the CCG had established regular email communications with the owner of the SIKUK by this point.

##### *Extreme East*

The Extreme East towing bridle expenditure is one of the items that has been equally re-apportioned between the SIKUK and the FRANÇOISE claims, at \$1,368.50 each. There is no evidence that this item was actually used in the CCG response, and the narrative suggests that it was purchased as a precaution and stop gap, and only for use by CCG vessels, should they have been needed to take the Vessels under tow. Surely the BEVERLY M I, a dedicated commercial tug, was outfitted with all necessary towing gear. While these details alone are not necessarily disqualifying, there are other factors that, when taken together, are.

First, it is not clear when the CCG actually obtained the towing bridle, which appears to have been purchased in St. John's, nor is it clear when or how the bridle arrived at Clarenville. Problematically, the invoice is dated 13 October 2017, long after the bridle might have been needed, and none of the Daily Logs contain any reference to it.

Second, the FRANÇOISE narrative indicates that *two* bridles were purchased and installed on each of the Vessels on 23 September 2017, but there is no contemporaneous evidence

in support of any of this, whether in the Daily Logs or otherwise. This detail casts further confusion on the procurement and usage of the towing bridles in the CCG’s response.

Third, it is unlikely that a towing bridle would have been needed for the kind of emergency towage arrangement contemplated by the CCG with regard to either the HARP or the SIR WILLIAM ALEXANDER. Given the close quarters of Clarenville Harbour and the Hardwoods dock, maneuvering the Vessels to moorage there would likely have involved towing them individually, alongside the towing vessel. No evidence has been presented on this point, but this is the likely arrangement ultimately used by the BEVERLY M I. On the other hand, if the HARP was to be used to keep the Vessels off a lee shore, a towing bridle would not have been a necessary piece of equipment for such an *ad hoc* operation.

Finally, a towing bridle is a capital item that would have been re-used many times after the CCG response. Even if the purchase of such an item were found reasonable in the circumstances, its established cost would represent only the small number of days it was justifiably kept on standby.

In light of all of the foregoing, and in particular given the lack of evidence showing that a towing bridle was an appropriate piece of equipment for either of the towage or holding arrangements likely to have been contemplated by the CCG, the claimed cost of this item is rejected in full.

*North Atlantic*

The first North Atlantic invoice covers mooring rope, the necessary use of which is detailed in the Daily Logs. The apportionment of the associated cost as between the two Vessels appears to be slightly off, however, with the combined claimed amounts between the two claims exceeding the total on the invoice, \$773.89, by \$0.03, presumably as a result of rounding (\$442.24 is claimed against the SIKUK and \$331.68 is claimed against the FRANÇOISE, totalling \$773.92). As such, this portion of the CCG’s claim is reduced by just \$0.02 and accepted at \$442.22.

The second North Atlantic invoice covers choke straps of two sizes. While the very late date of 20 February 2018 that appears on the invoice is problematic at first glance, the Daily Logs provide contemporaneous evidence that choke straps of the same number and description were used to prepare the Vessels’ mooring arrangements on or about 24 September 2017. Further, the apportionment of costs as between the two Vessels appears to be appropriate. As such, this portion of the CCG’s claim is accepted in full as a reasonable expenditure, at \$523.08.

*Summary of claimed and established amounts under Schedule 1*

The amounts claimed in Schedule 1 are allowed, in part, in the amount of \$965.30.

<b>Provider</b>	<b>Description</b>	<b>Claim</b>	<b>Established</b>
Canada Post	Registered letter to owner of the SIKUK	\$22.87	\$0.00
Extreme East	Towing bridle	*\$1,368.50	\$0.00
North Atlantic	400 feet mooring rope	\$442.24	\$442.22

North Atlantic	3 x large choke straps, 1 x small choke strap	\$523.08	\$523.08
<b>Totals</b>		<b>\$2,356.69</b>	<b>\$965.30</b>

*Table 2: Breakdown of Schedule 1 claimed and established costs (amounts resulting from re-apportionment marked with asterisk)*

## Schedule 2: Contract Services

This portion of the claim is comprised of five separate expenditures, spread across five different providers, as described in detail above and summarized below in Table 3. The total amount claimed under this schedule, after re-apportionment, is \$114,145.58.

### *McKeil*

The McKeil expenditure is one of the items that has been equally re-apportioned between the SIKUK and the FRANÇOISE claims, at \$63,532.17 each. The decision to engage McKeil to tow the Vessels is considered reasonable in the circumstances. While substantial given the very short distance the Vessels were ultimately towed from their anchorage to the Hardwoods dock, the claimed daily and fuel costs with respect to the McKeil services are also accepted as reasonable.

It is not accepted on the evidence presented, however, that the tug was actually in use on CCG tasking for more than five days (120 hours), as opposed to the six days (144 hours) charged on the McKeil invoice. Both claim narratives submitted by the CCG suggest that an emergency contract with McKeil was entered on 23 September 2017. Curiously, McKeil billing for the tug began on 22 September 2017. The CCG-authored statement of work is also dated 22 September 2017, and the Daily Log entries suggest that ER personnel began contacting towing companies that evening, producing notes on their findings at 22:20 for the ER Superintendent, who ultimately did the contracting with McKeil. It is conceivable, then—though contrary to the narratives—that the ER Superintendent could have entered a verbal contract with McKeil shortly before midnight on 22 September 2017.

In light of the above uncertainty, it is necessary to consider the transit time required by the BEVERLY M I to reach Clarenville from Sydney, a distance by sea of between 450 and 500 nautical miles. The latter figure has been used to produce a conservative estimate. According to the McKeil website, the cruising speed of the BEVERLY M I is 11.75 knots. In an abundance of caution, and to account for weather and other delays BEVERLY M I (though also noting that the tug reportedly arrived at Clarenville nearly two hours ahead of schedule), an average cruising speed of 10 knots is assumed, producing a conservative transit time estimate of 50 hours. The CCG narrative indicates an arrival time of 04:20 at Clarenville on 25 September 2017, suggesting that the tug departed Sydney at about 02:20 on 23 September 2017. If it is assumed, as detailed above, that the verbal contract with McKeil could have been entered as early as 22:20 on 22 September 2017, this produces a four-hour pre-departure mobilization for the crew of the BEVERLY M I, which is conceivable.

According to the narrative, the SIKUK was secured at the Hardwoods dock by 10:00 on 25 September 2017, with the BEVERLY M I released from the scene thereafter. Given the

FRANÇOISE lacked anchors, that vessel would have been towed first, meaning that the BEVERLY M I had finished its tasking at Clarendville by 10:00 that morning, when it finished with the SIKUK. If the tug lingered until noon and its return journey took 50 hours, it would have reached Sydney at 14:00 on 27 September 2017. If two hours for demobilization are assumed, the BEVERLY M I would have completed its CCG tasking in approximately 116 hours, or four hours short of the five-day mark. It therefore cannot be accepted that the tug was in use for the six days charged to the CCG, and this renders the costs associated with the sixth day unreasonable.

Accordingly, the total amount claimed for the McKeil contract is reduced by \$14,500.00 plus taxes, or \$16,675.00, representing the single-day overcharge for the tug. With half of this amount applied against the SIKUK claim, the result is an established amount of \$55,194.67 for this portion of the claim.

#### *GardaWorld*

The CCG claimed \$40,574.88 for security services at the Hardwoods dock, as provided by GardaWorld. The amount claimed against the SIKUK represents half the total cost of the period from 26 September 2017 through 8 January 2018, with the remaining half claimed against the FRANÇOISE.

It is noted that while the hourly rate quoted by GardaWorld was the highest among the four bidders, this rate was all-inclusive, and GardaWorld personnel were ready to deploy immediately. In light of these details, GardaWorld was a reasonable choice for the job.

For the reasons detailed above with regard to fixing a cut-off date of 24 October 2017 for the costs associated with the storage of the Vessels at the Hardwoods dock, the GardaWorld costs after that date are rejected. Because it has been accepted that the initial arrangement for temporary use of the Hardwoods dock was reasonable, the GardaWorld costs up to and including 24 October 2017 are accepted. With reference to the invoices provided by the CCG, these costs have been assessed at \$10,768.32.

#### *Battlefield*

Claimed Battlefield costs total \$644.11 and pertain to the rental of a portable toilet that was installed at the Hardwoods dock for use by GardaWorld personnel. Without a portable toilet, GardaWorld personnel would have been forced to leave the site periodically, presumably in breach of the terms of the CCG's agreement with Hardwoods. As such, the portable toilet was a necessary element for compliance with the agreement, which has been deemed reasonable to a cut-off date of 24 October 2017. Accordingly, claimed Battlefield costs are accepted in the amount of \$215.44, representing the portable toilet rental costs up to and including that date, as determined from the invoices submitted by the CCG.

#### *Gergar*

The claimed Gergar expenditures of \$431.25 relate to the septic pumping of the portable toilet kept at the Hardwoods dock. Although the first Gergar services appear to have been rendered on 7 November 2017, after the cut-off date of 24 October 2017, it is accepted that

these services would have been necessary even if the CCG had arranged for the Vessels to be moved or renegotiated its terms with Hardwoods within the first month after securing the Vessels. Accordingly, the amount claimed with respect to the first Gergar invoice, or \$143.75, is accepted in full.

### *LOC*

Based on the Daily Log entry for 16 November 2017, LOC personnel indicated to the CCG that a written survey report would be submitted within ten days. This was not the case, though at least one page of it was delivered on or about 22 November 2017. In fact, the LOC billing documentation shows that the report—dated 28 January 2018—was not complete until 4 January 2018. In either case, it would have been effectively useless to the CCG by January 2018. Whether or not the ten-day turnaround was a term of the contractual agreement between the CCG and LOC cannot be known. What is known is that a quick turnaround *should* have been a term given the CCG’s apparent lack of understanding of the condition of the vessel. The LOC work was not only costly, but also inexplicably delayed well beyond the point of usefulness.

Though the CCG apparently did obtain the LOC estimate of onboard pollutants in a timely fashion, the costs associated with this portion of the LOC expenditure are difficult to isolate and cannot be accepted, particularly considering that the inspecting LOC consultant travelled from Nova Scotia to conduct the assessment. Furthermore, the CCG had ER personnel and the entire crew of the HARP at its disposal on scene at Clarenville for more than two days in September 2017, during which time the SIKUK was safe to board. Inexplicably, it neglected to take this opportunity to conduct a thorough inspection and assessment of the vessel.

Accordingly, the claimed amount of \$8,963.17, representing the cost of the LOC survey and the report that flowed therefrom, is rejected in full.

### *Summary of Schedule 2 claimed and established amounts*

The amounts claimed in Schedule 2 are allowed, in part, in the amount of \$66,322.18.

<b>Provider</b>	<b>Description</b>	<b>Claim</b>	<b>Established</b>
McKeil	Towing and securing the SIKUK	*\$63,532.17	\$55,194.67
GardaWorld	24-hour onsite security	\$40,574.88	\$10,768.32
Battlefield	Rental of portable toilet	\$644.11	\$215.44
Gergar	Septic pumping of portable toilet	\$431.25	\$143.75
LOC	Survey and report	\$8,963.17	\$0.00
<b>Totals</b>		<b>\$114,145.58</b>	<b>\$66,322.18</b>

*Table 3: Breakdown of Schedule 2 claimed and established costs (amounts resulting from re-apportionment marked with asterisk)*

### Schedule 3: Travel

This portion of the claim totals \$2,014.02. It is comprised of *per diem* and accommodation costs for the two ER personnel who travelled to Clarenville on 4 January 2018, departing

five days later, to oversee the owner of the SIKUK remove accessible pollutants from the vessel and tow it away from the Hardwoods dock.

For the same reasons set out above for accepting the direct personnel costs for these days, and noting that all claimed travel expenditures appear to be in accordance with the National Joint Council Travel Directive rates in place at the time they were incurred, this portion of the claim is established in full.

#### Schedule 4: Salaries – Full Time Personnel

The CCG claimed \$4,072.63 under this schedule. This portion of the claim is allowed, in part, in the amount of \$3,452.00.

#### Schedule 5: Overtime – Full Time Personnel

The CCG claimed \$6,110.35 under this schedule. This portion of the claim is allowed, in part, in the amount of \$5,805.26.

#### Schedule 11: Pollution Counter-measures Equipment

The claimed cost under this schedule totals \$69.45. According to the Daily Logs, a Response Trailer was used on 24 September 2017, when ER and HARP personnel prepared the Vessels and the Hardwoods dock for mooring. This was a reasonable measure. The Pollution Counter-measures Equipment summary shows that the day rate for the Response Trailer is equally divided between the two claims, which represents an appropriate allocation of a reasonable cost. The full amount claimed under this schedule is therefore established.

#### Schedule 12: Vehicles

The CCG claimed a total of \$1,183.96 for vehicle usage costs, as summarized in Figure 11.

Though the vehicle claim summary shown in Figure 11 suggests that the CCG used a rate of \$0.22 per kilometre for all of its fuel cost claims, this is not always the case. Where fuel receipts are provided, a slightly higher effective rate is sometimes claimed. In other cases, whether or not fuel receipts have been provided, the default rate of \$0.22 per kilometre has been used. Both methods are acceptable, as they produce a reasonable cost per kilometre travelled. The mileage figures presented by the CCG appear accurate and reasonable, and they are supported by (and generally accord with) contemporaneous vehicle logs and the Daily Logs. Finally, in all cases, a day rate of \$67.56 has been claimed for all CCG vehicles used in the response. This amount is reasonable.

The only reduction applied to this Schedule is \$148.74, representing the entire amount claimed with respect to vehicle and fuel usage on 16 November 2017, the day of the LOC survey. This aligns with the reductions made under Schedules 4 and 5 and is applied for the same reasons, which are set out in more detail above.

This portion of the claim is allowed, in part, in the amount of \$1,035.22.

Schedule 13: Administration

This portion of the CCG’s claim totals \$255.66 and appears to represent a percentage of the claimed amounts under Schedules 1, 3, and 4 (see Figure 13). On closer review, however, the ultimate claimed amount for administration costs does not flow mathematically from the numbers presented by the CCG. As a result, it is not at all clear how this amount was calculated.

Given that the claims under Schedules 1, 3, and 4 have been established, in part, in the total amount of \$6,431.32, a reasonable administration cost has been calculated using that amount and the multiplier of 2.53%, which has been previously accepted as reasonable. Accordingly, this portion of the claim is allowed, in part, in the amount of \$162.71.

**OFFER SUMMARY**

Schedule	Claim	Offer
1 – Materials and Supplies	*\$2,356.69	\$965.30
2 – Contract Services	*\$114,145.58	\$66,322.18
3 – Travel	\$2,014.02	\$2,014.02
4 – Salaries – Full Time Personnel	\$4,072.63	\$3,452.00
5 – Overtime – Full Time Personnel	\$6,110.35	\$5,805.26
11 – Pollution Counter-measures Equipment	\$69.45	\$69.45
12 – Vehicles	\$1,183.96	\$1,035.22
13 – Administration	\$255.66	\$162.71
<b>Totals:</b>	<b>\$130,208.34</b>	<b>\$79,826.14</b>

*Table 4: Summary of claimed amounts and the Offer (amounts resulting from re-apportionment marked with asterisk)*

\*\*\*

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, together with interest accrued pursuant to section 116 of the MLA.

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 of the Ship-source Oil Pollution Fund, 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 efforts to pursue subrogation.

Yours sincerely,

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

c.c.: Regional Director, Incident Management, Atlantic Region (CCG)  
Superintendent, Environmental Response, Atlantic Region (CCG)  
Manager, Operational Service Delivery (CCG)