



Ottawa, 10 June 2020
SOPF File: 120-725-C1

VIA REGISTERED MAIL & EMAIL

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

RE: F/V FRANÇOISE — 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 FRANÇOISE, which was reported as dragging anchor on 21 September 2017 at Clarenville, Newfoundland and Labrador (the “Incident”).

On 12 September 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 \$381,296.28¹ for costs and expenses related to the Incident. On 5 May 2020, the CCG revised its claimed amount to \$446,196.96. The submission and supplementary documentation provided by the CCG, including a prior claim pertaining to a related incident involving the vessel SIKUK, have been reviewed. Determinations with respect to the amounts sought have been made. This letter advances an offer of compensation to the CCG with respect to the FRANÇOISE 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 \$73,908.57 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.

¹ 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 \$381,296.29.

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THE CLAIM SUBMISSION

The CCG claim submission is comprised of the following:

- Cover letter from the CCG’s Atlantic Region Director of Incident Management;
- 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, invoices, and standing offer call-up in support of claimed contracted services;
- 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 to the owner of the FRANÇOISE dated 22 September 2017;
- CCG Notice with regard to the FRANÇOISE dated 22 September 2017;
- CCG Direction with regard to the FRANÇOISE dated 22 September 2017;
- CCG letter to the owner of the FRANÇOISE dated 28 September 2018;
- CCG Environmental Response Marine Pollution Incident Report dated 14 June 2019;
- National Environmental Emergencies Centre environmental sensitivities report;
- 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 with unknown quantities of pollutants on board were adrift or dragging anchor in Clarenville Harbour. It was determined that these two vessels were the FRANÇOISE and the SIKUK (collectively, the “Vessels”), both fishing vessels placed at anchor by Burry’s Shipyard (“Burry’s”). The CCG contacted Burry’s, which explained that the Vessels had been abandoned by their owners at its facility, and that it had anchored them in Clarenville Harbour approximately three weeks prior. The owners of the Vessels had been informed of this, and neither had attended the Vessels since. Burry’s identified and provided contact information for the owners of the Vessels.

Burry’s reported that high winds over the last 24 hours had moved the Vessels 500 to 600 yards from their original anchorage and that they were now half a nautical mile from shore.

The CCG was concerned that forecasted northwest gale force winds would ground the vessels and cause a pollution incident. The area was a Canada Goose sanctuary. There was also concern that dragging anchors might damage power cables supplying surrounding communities.

The ER Duty Officer attempted to contact the owner of the FRANÇOISE, leaving a verbal Notice under paragraph 180(1)(a) of the *Canada Shipping Act, 2001* (the “CSA”) on his voicemail, advising him of the situation and 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 Vessels on a Fisheries patrol boat. They observed that the Vessels were now 400 metres from shore, to the east. They further observed that the FRANÇOISE was secured to the port side of the SIKUK with three mooring lines. Photographs included in the narrative show the FRANÇOISE listing slightly to port. The SIKUK lacked power, and its two bow anchors were down. Neither of the Vessels was fitted with navigation lights or day marks, making them a navigational hazard and increasing the risk of a pollution incident. Placentia Marine Communications and Traffic Services was contacted and advised to issue a Safety Notice to Shipping in order to alert local traffic to the hazard posed by the Vessels.

The ER personnel boarded the SIKUK, identifying approximately 11,600 litres of pollutants on board. The FRANÇOISE lacked anchors entirely, was poorly secured to the SIKUK, and could not be boarded and properly assessed for pollutants due to safety concerns. It was assumed that pollutants were on board.

The CCG obtained the email address of the owner of the FRANÇOISE and emailed him a Direction under section 180 of the CSA, requesting to be notified of his intentions by 17:00 that evening.

The CCGS HARP was tasked to assess the situation and prevent the Vessels from further dragging anchor.

On 23 September 2017, the HARP arrived at a disused Clarenville dock to monitor and assess the Vessels. Significant chaffing was observed on the lines securing the Vessels together, so personnel from the HARP boarded the Vessels to reinforce and shorten the mooring lines and install anti-chaffing pads. Personnel from the HARP also rigged a towing bridle on each of the Vessels. They further confirmed that the SIKUK lacked the power to raise its anchors, determining that its anchor chains would have to be cut in order to move the Vessels.

As contact had not yet been made with the owner of the FRANÇOISE, the CCG resolved to have the Vessels towed to mitigate any threat of pollution. The HARP was not equipped with the required salvage equipment or with sufficiently experienced personnel to carry out such a tow, so commercial options were considered. The barge that Burry’s had used to tow the Vessels to their anchorage was ruled out as it was uncertified and in poor condition.

The CCG identified the BEVERLY M I, located at Sydney, Nova Scotia, as the nearest suitable and available commercial tug. The ER Superintendent therefore entered into an emergency towage contract with McKeil Marine Ltd. (“McKeil”), the operator of the BEVERLY M I. ER personnel began efforts to find a suitable place of refuge to secure the Vessels. Transport Canada was unable to provide a suitable nearby location, and Burry’s refused to take the Vessels back unless they were under the control of the CCG.

On 24 September 2017, the BEVERLY M I was en route and estimated to arrive at Clarenville 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, 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, 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 at approximately \$5,313.00 per week.

The crew of the HARP took soundings around the Hardwoods dock and purchased supplies necessary to secure the Vessels. ER personnel arrived with 700 feet of rope, shackles, choke straps, and pressure-treated posts. Personnel from the HARP prepared the Hardwoods dock for mooring.

The BEVERLY M I arrived on scene at Clarenville at 04:20 on 25 September 2017. The Vessels were towed and secured at the Hardwoods dock by 10:00 and the BEVERLY M I and the HARP were released from the scene.

The owner of the FRANÇOISE made first contact with the CCG via email at 15:41 the same day. The owner expressed confusion with regard to the whereabouts of the vessel. The CCG responded, explaining recent developments and informing him of his obligations under the CSA. The CCG requested that he provide them with a detailed plan to take possession of the FRANÇOISE and remove it from the Hardwoods dock.

On 26 September 2017, the owner of the FRANÇOISE indicated that he planned to have the vessel dismantled and was seeking a contractor for the job. The CCG reminded him that he had failed to comply with the 22 September 2017 Notice and Direction issued under the CSA and requested that he provide a detailed plan as soon as possible.

On 30 September 2017, ER personnel departed St. John’s to inspect the Vessels’ moorage situation. The CCG followed up with the owner of the FRANÇOISE by email, reiterating that the vessel must be moved and monitored until safely removed from the marine environment. The owner was further reminded that he would not have access to the Hardwoods dock and could only access the vessel from seaward. The owner responded, proposing that the vessel be hauled out of the water next to the Hardwoods dock. The CCG responded that a boatyard with lifting facility was preferred, allowing the vessel to be deconstructed safely out of the marine environment. The owner indicated that he would continue to explore his options.

On 4 October 2017, GardaWorld security personnel reported that an individual had been on site and mentioned scrapping the FRANÇOISE. The CCG sent an email to the owner reminding him that he was only to have access to the vessel from seaward, and under CCG supervision. He was again reminded of the need to remove the vessel as soon as possible. Later the same day, the owner boarded the FRANÇOISE under CCG supervision and removed some equipment from the vessel.

On 9 October 2017, the CCG followed up with the owner, seeking an update. He responded the following day, indicating that he was awaiting a response from Burry's and another contractor. The CCG reminded him of the urgency of the situation and that the Hardwoods dock was only a temporary place of refuge.

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

On 16 October 2017, the owner advised the CCG by email that he had arranged for Burry's to take the FRANÇOISE and for another contractor to deconstruct the vessel. The earliest the work could begin, however, was January 2018. The CCG responded that this was not an agreeable timeline, as the Hardwoods dock was a temporary place of refuge. The vessel would have to be moved before January 2018.

On 18 October 2017, the CCG followed up with the owner of the FRANÇOISE, who proposed that the vessel either be left *in situ* to await deconstruction at Burry's or towed to moorings in Random Sound. The CCG advised that the vessel could not be left at the Hardwoods dock and again requested a detailed plan to tow and secure the vessel.

On 30 October 2017, the CCG followed up with the owner via email. He responded on 1 November 2017, indicating that he was looking into anchorage options for the FRANÇOISE. The CCG responded that this was not acceptable. When he inquired as to the situation with the SIKUK, the CCG informed him that the owner of that vessel too was under similar pressure to remove it.

On 2 November 2017, the CCG contacted Burry's, which indicated that the FRANÇOISE might be accommodated in the coming weeks if its owner was willing to comply with its unspecified terms.

On 14 November 2017, the CCG followed up with the owner via email, informing him that the SIKUK would soon be moved and that the CCG would then move the FRANÇOISE to a new facility at his expense. He responded the following day, indicating that he continued to look for a nearby berth.

On 22 November 2017, the CCG requested an update from the owner. He responded that Burry's was agreeable to taking the FRANÇOISE and would get back to him with details.

The owner advised that the situation was unchanged on 27 November 2017.

On 30 November 2017, the CCG followed up with the owner of the FRANÇOISE via email, reminding him that the SIKUK would be moved imminently. No response was received.

On 14 December 2017, the CCG sent another follow up email to the owner of the FRANÇOISE. The CCG called the owner the following day, who stated that he had heard nothing from Burry's.

On 18 December 2017, the CCG learned that Burry's would soon have capacity, as a vessel being kept there was slated for removal. The owner of the FRANÇOISE was informed of this.

On 27 December 2017, the CCG followed up with the owner, who advised that Burry's still lacked capacity for the FRANÇOISE.

On 2 January 2018, the CCG advised the owner of the FRANÇOISE that the owners of the SIKUK had engaged a tug to remove it from the Hardwoods dock within the week. ER personnel spoke with the owner of the FRANÇOISE the following day. He informed them that Burry's would take the vessel. ER personnel informed him that the estimated arrival time of the tug slated to tow the SIKUK was 06:00 on 4 January 2018, and that the same tug might be available to move the FRANÇOISE as well. The owner was informed that he would bear full responsibility for the security costs associated with the Hardwoods dock once the SIKUK had been removed. The owner replied that he was working on a solution.

On 5 January 2018, Burry's informed the CCG that it might have capacity for the FRANÇOISE within the week.

Between 6 January and 14 February 2018, the owner of the FRANÇOISE and Burry's were engaged in discussions. The CCG continued to regularly remind the owner that costs were mounting, and the vessel could not remain *in situ*.

On 15 February 2018, two ER personnel departed St. John's to check on the FRANÇOISE. Old choke straps and shackles were removed, and a stern line was added. The vessel was floating as before. ER personnel met with Burry's and requested that the CCG be copied on any further correspondence with the owner of the FRANÇOISE.

On 1 March 2018, Burry's sent the owner of the FRANÇOISE a quote for transferring the vessel to its facility. The CCG had received no updates from the owner, despite several requests since 14 February 2018.

Between 2 and 9 March 2018, the CCG was copied on additional emails from Burry's to the owner of the FRANÇOISE. According to Burry's, the owner appeared to be looking for the "cheap way out". Despite repeated attempts to call and email the owner between 2 and 14 March 2018, the CCG was unable to make contact. His voicemail was full.

On 15 March 2018, the CCG was informed that Burry's had not heard from the owner of the FRANÇOISE since 9 March 2018. The CCG finally reconnected with the owner, who advised that he took issue with the open-ended contract proposed by Burry's.

On 27 March 2018, two ER personnel departed St. John's to check on the FRANÇOISE. Some chaffing was observed on a stern line, and an additional line was added in support. Because the vessel had been moved slightly by sea ice, the old line could not be removed. The vessel was otherwise unchanged. The ER personnel made arrangements to have the portable toilet at the site pumped.

Between 16 March and 6 April 2018, the CCG was unable to make contact with the owner of the FRANÇOISE. He failed to respond to emails and his voicemail remained full.

On 9 April 2018, the CCG reconnected with the owner of the FRANÇOISE, who advised that he was still waiting on Burry's.

On 10 April 2018, two ER personnel attended at the Hardwoods dock, as they had received reports from GardaWorld personnel that a windstorm had damaged railway tracks on the dock and blown over the portable toilet on site. Adjustments were made to secure the mooring situation of the FRANÇOISE and the portable toilet was righted. A contractor was hired to clean and pump it.

The CCG was unable to connect with the owner of the FRANÇOISE despite attempts to reach him on 13, 16, 19, 24, 25, and 26 April 2018. Burry's emailed the owner on 23 April 2018, informing him that its offer would be open until 16:30 on 26 April 2018.

On 30 April 2018, with no communication from the owner of the FRANÇOISE, the CCG followed up. Despite two or three weekly reminders to the owner, he failed to make contact until 4 June 2018, indicating by text message that he had a plan in the works and would be in contact the following day. Burry's confirmed that it too had heard nothing, though it had capacity for the FRANÇOISE. The owner failed to make contact on 5 June 2018, despite a CCG follow-up.

On 7 June 2018, the ER Deputy Superintendent resolved that without progress from the owner, the CCG would take action with the FRANÇOISE in order to free up resources for another substantial response operation. An attempt to make contact with the owner on 8 June 2018 went unanswered.

On 18 June 2018, two ER personnel travelled to Clarenville to check on the FRANÇOISE. They were unable to board the vessel due to high winds keeping it away from the dock.

On 20 June 2018, two ER personnel returned to the FRANÇOISE. They boarded the vessel and conducted a pollution assessment, identifying 11,600 litres of pollutants on board.

On 3 July 2018, the CCG contracted London Offshore Consultants (Canada) Ltd. ("LOC") to survey the FRANÇOISE to establish its general condition and identify pollutants on board.

On 4 July 2018, an ER specialist en route to Twillingate stopped at Clarenville and replaced a choke strap securing the aft lines on the FRANÇOISE. Other than the chaffing issue that had been remedied by the replaced strap, the vessel's situation was unchanged.

On 9 July 2018, the owner of the FRANÇOISE, who had not been heard from since 4 June 2018, sent the CCG a text message. He explained that he was working with the owner of a 65-foot trawler to arrange for that vessel to tow the FRANÇOISE to South Dildo, where pollutants would be removed from the vessel prior to scrapping. The CCG responded via email, indicating that the 11,600 litres of pollutants on the FRANÇOISE must be removed prior to any towing operation.

On 12 July 2018, two ER personnel arrived on scene to escort an LOC representative onto the FRANÇOISE for assessment.

On 16 July 2018, the CCG contacted the owner seeking an update. The CCG also contacted the South Dildo Harbour Authority, which was unaware of the owner's plans to tow and dismantle the FRANÇOISE there. In any event the Harbour Authority would not allow such an operation in the area. The same day, the owner emailed the CCG, advising that his plan had fallen through. He further advised that he was obtaining quotes and timelines from vacuum truck operators to remove the pollutants from the FRANÇOISE at Clarendville. The CCG reiterated that any work done on the vessel must occur under its supervision and requested a plan for towing and securing the vessel after pollutants had been pumped off.

The same day, Burry's forwarded to the CCG an email it had sent to the owner of the FRANÇOISE on 12 September 2017, warning that his vessel may have been dragging anchor and requesting that he deal with it.

On 6 August 2018, the CCG received the LOC survey report, which identified 17,000 litres of pollutants on board the FRANÇOISE.

At least eleven attempts were made to contact the owner of the FRANÇOISE from 10 August through 28 September 2018. The CCG reiterated that it would take measures at his expense if he failed to act.

On 19 September 2018, the ER Deputy Superintendent resolved to move the FRANÇOISE. A statement of work was prepared by ER personnel for the removing pollutants, towing, and dismantling the vessel and began making inquiries with contractors.

On 28 September 2018, the CCG sent a registered letter to the owner of the FRANÇOISE, outlining the ongoing situation and referencing the prior Notice and Direction under the CSA. The letter reiterated that the CCG would take measures at the owner's expense if he failed to act as directed and set a deadline of 16:00 on 3 October 2018 for the submission of a plan of action.

On 1 October 2018, the owner of the FRANÇOISE responded to the letter, advising that the timeline demanded by the CCG was untenable. The CCG responded the following day, reiterating that the deadline was with respect to the presentation of a detailed plan. The actual removal of the vessel was to take place by 17 October 2018. The owner was informed that the LOC survey had documented 17,000 litres of pollutants on board, to be removed prior to towage. Finally, the CCG indicated that it would deal with the vessel if the owner failed to act as directed.

On 3 October 2018, the owner advised that he had engaged a marine consultant, who would forward a plan as soon as possible.

On 5 October 2018, the CCG obtained an environmental sensitivities report for the area from the National Environmental Emergencies Centre (the “NEEC”), which showed proximate waterfowl, shellfish, water intakes, marine mammals, and commercial fisheries.

The same day, the CCG also spoke with the marine consultant engaged by the owner of the FRANÇOISE, who was unaware of the deadlines set by the CCG and the requirement that the vessel be accessed only by seaward. A plan was presented later on 5 October 2018. It scheduled pollutant removal for 15 through 19 October 2018, and the tow for the week of 29 October through 2 November 2018. Confirmation of all services to be contracted was expected within a week. The CCG sent the marine consultant a copy of the LOC survey report and inquired as to why there was a ten-day delay between proposed removal of pollutants and the tow.

The CCG contacted the owner of the proposed destination facility for the FRANÇOISE. He expressed concerns about capacity and proceeding with any work without payment in advance from the owner of the vessel.

On 11 October 2018, the CCG followed up with the marine consultant engaged by the owner of the FRANÇOISE, who responded with various unspecified “options/proposals”.

On 15 October 2018, the marine consultant informed the CCG that pollutant removal was imminent, and that the FRANÇOISE would go to Mount Carmel for dismantling and disposal. The CCG requested a schedule, as its presence was required during all work on the vessel.

On 17 October 2018, the CCG followed up with the marine consultant.

On 18 October 2018, the owner of the FRANÇOISE contacted the CCG, inquiring as to why the pollutants could not be removed from the vessel at Mount Carmel, as the vessel would need ballast during the tow. The CCG replied that until specific plans for the operation were received, the requirement to remove all pollutants in advance of the tow would stand. Further, a plan for the disposal of any water pumped onto the vessel in advance of the tow was requested.

On 22 October 2018, the CCG emailed the owner and his marine consultant seeking an update.

On 24 October 2018, the CCG again contacted the marine consultant, informing him that a plan was needed for the FRANÇOISE as soon as possible. The marine consultant replied that he had provided the owner of the FRANÇOISE with quotes for various services as was awaiting approval. The CCG learned that the tug chosen for the job would not be available until late November, and a further email was sent to the owner of the FRANÇOISE, urging him to take action.

Meanwhile, the CCG finalized its draft statement of work, begun on 19 September 2018, to be used in the event that the owner of the FRANÇOISE failed to act as desired.

On 25 October 2018, the marine consultant advised the CCG that a facility in Glovertown would accept the FRANÇOISE. The CCG requested further details, but none were forthcoming.

On 26 October 2018, two ER personnel drove to Clarenville to check on the FRANÇOISE. Quotes were beginning to materialize from several contractors in response to the CCG's statement of work. The owner of the FRANÇOISE and his marine consultant were advised that the CCG would take over and likely have the vessel deconstructed at the owner's expense if no plan to act as directed was submitted by 12:00 on 30 October 2018.

On 30 October 2018, the owner's marine consultant submitted the details requested via email for the CCG to review. The following day, the CCG called various entities in Glovertown to "ground truth" the details of the owner's plan. A series of negative responses were received, so the CCG followed up with the owner's marine consultant, who advised that an alternative tug option was being pursued, and that pollutants would be removed from the FRANÇOISE on 2 November 2018.

On 1 November 2018, the CCG advised the GardaWorld personnel on site of the planned operation the following day and reminded the owner's marine consultant that only seaward access to the FRANÇOISE would be permitted.

On 2 November 2018, ER personnel were on scene to monitor the pollutant removal operation. The owner's personnel wanted access to the Hardwoods dock, and this was denied. Approximately 11,000 litres of pollutants, including accessible hydraulics and oily water from engine and generator sumps, were removed from the FRANÇOISE. Residual pollutants remained, but these were largely inaccessible as long as the vessel remained in the water.

On 5 November 2018, two ER personnel drove to Clarenville to check on the FRANÇOISE, as winds had been strong the previous day and the vessel had been repositioned during the pumping operation on 2 November 2018. One line was adjusted, but all else appeared unchanged. A small amount of garbage left over from the pumping operation was removed by the ER personnel and they departed for St John's.

On 6 November 2018, the CCG sent emails to the owner and his marine consultant, seeking an update on the plans to remove the FRANÇOISE. No response was received.

On 13 November 2018, the CCG learned that Burry's, which had recently met with the owner's marine consultant, might be able to receive the FRANÇOISE in three weeks. The marine consultant made contact with the CCG and advised that a meeting with Burry's was imminent. Burry's advised that it was in receivership.

On 16 November 2018, the CCG learned that Burry's was no longer an option and informed the owner's marine consultant of this development. The owner contacted the CCG, inquiring about the consequences of noncompliance with CCG directions. He was

informed that the CCG would take action under the CSA at his expense. The same day, two ER personnel travelled to Clarenville to check on the FRANÇOISE. They added and replaced some lines and straps, but otherwise found all in order.

On 19 November 2018, the CCG learned that the proposed shipyard at Glovertown confirmed that it would in fact take the FRANÇOISE and monitor the vessel until it could be removed from the water and dismantled. An alternative tug appeared to be available in two weeks. The CCG informed the owner's marine consultant that this plan lacked detail and the CCG would take action to remedy the situation. The CCG decided to proceed with a request for proposals.

On 20 November 2018, the CCG provided four contractors with its statement of work, updating the owner of the FRANÇOISE and his marine consultant. The owner requested more time. The following day, the CCG informed the owner that it would proceed unless it received a detailed plan prior to finalizing its own arrangements for the vessel.

On 23 November 2018, the CCG was contacted by a marine surveyor contracted by the Fund to assess the FRANÇOISE.

On 26 November 2018, the owner's marine consultant advised the CCG that the proposed facility at Glovertown might be able to take the FRANÇOISE immediately, but it would require payment up front. The marine consultant continued to look for a tug. The CCG advised that the owner needed to make a financial commitment.

On 27 November 2018, ER personnel travelled to Clarenville to escort contractors looking to assess the FRANÇOISE in light of the request for proposals. Adjustments were made to the vessel's moorings.

On 29 November 2018, the owner's marine consultant advised the CCG that the facility in Glovertown had provided a written commitment, but a tug had not yet been secured.

On 30 November 2018, the owner's marine consultant advised the CCG that the owner of the FRANÇOISE had agreed to pay the Glovertown shipyard in installments and that money was already in trust to get things moving. A tug had not yet been secured.

On 3 December 2018, the owner's marine consultant informed the CCG that the owner was hesitant to pay for services up front. The CCG reiterated that the owner needed to make financial commitments and demonstrate his willingness to act appropriately.

On 4 December 2018, ER personnel travelled to Clarenville to escort the Fund's marine surveyor onto the FRANÇOISE for assessment. 250 litres of residual oils were observed in the bilge. The vessel's mooring lines were adjusted.

On 5 December 2018, the CCG received four quotes for the removal and disposal of the FRANÇOISE. The quotes ranged from \$944,000.00 to \$1,263,000.00. The CCG informed the owner's marine consultant, who advised that he had not been able to make contact with the owner.

On 7 December 2018, the CCG learned that the owner had engaged Miller Shipping Ltd. (“Miller”) to tow the FRANÇOISE. All contracts to remove the vessel from Clarenville were in place.

On 17 December 2018, the tow was scheduled for the following day. ER personnel were set to be in Clarenville to monitor the operation, but it was cancelled due to weather. The CCG confirmed with Miller that the towage contract was in place with a deposit paid. Updates would follow, but the tow was expected to be delayed until after the holidays.

On 3 January 2019, the CCG sent an email to the owner’s consultant seeking an update.

On 4 January 2019, Miller indicated that the tug might be available the following week. The Deputy ER Superintendent requested that correspondence be drafted for the companies who replied to the request for proposals.

On 8 January 2019, the CCG spoke with the operator of the Glovertown shipyard, who provided details on the planned dismantling of the FRANÇOISE, advising that the operation would be conducted in May or June. The need for an icebreaker due to shore-fast ice in the harbour was discussed.

On 9 January 2019, two ER personnel drove to Clarenville, checking mooring lines and draft marks and inspecting the deck of the FRANÇOISE for snow accumulation. The vessel’s interior was also checked.

On 10 January 2019, the CCG recognized the need for an icebreaker in Glovertown on the arrival of the FRANÇOISE there. Miller advised that its tug might be available within the week. Though the owner of the FRANÇOISE had submitted a complete plan, the CCG remained ready to undertake its own plan should the owner’s fall through.

On 11 January 2019, the facility in Glovertown advised the CCG that it would monitor the FRANÇOISE until the vessel could be removed from the water for dismantling in May or June.

From 14 to 28 January 2019, the Miller tug was delayed due to weather. ER personnel made trips to Clarenville to check on the FRANÇOISE on 16 and 24 January 2019. Snow was shovelled from the vessel’s deck, its draft marks were verified, and its moorings were adjusted.

On 29 January 2019, Miller advised the CCG that its tug was departing for Clarenville that morning. Miller also advised that ice reported in Glovertown harbour would make it unsuitable for towing.

On 30 January 2019, the CCG discussed engaging icebreaker assistance with Miller and requested regular updates on progress. Miller advised that its tug would be further weather delayed.

On 4 February 2019, Miller informed the CCG that its tug would be departing shortly. The CCG informed Ice Operations and two ER personnel departed for Clarenville. The Miller

tug arrived at 15:45 and the FRANÇOISE was moved toward the end of the Hardwoods dock so that the tug could be secured alongside. The tug crew began preparing the FRANÇOISE for the tow, pumping 80 litres of residual pollutants from its engine room bilge and deploying sorbent pads. Further residual pollutants remained on the vessel. The CCG requested that Miller provide updates on speed, course, and estimated time of arrival at Glovertown every four hours during the tow. The CCG would coordinate with its icebreaker.

The Miller tug departed Clarendville with the FRANÇOISE in tow at 03:34 on 5 February 2019. ER personnel returned to the site later that morning to remove materials and equipment left from its operation, and the contractors that had supplied and serviced the portable toilet was asked to remove it. ER personnel returned keys to Hardwoods and confirmed that the CCG was done with its dock.

At 10:25 on 6 February 2019, Miller advised that the FRANÇOISE was secured at Glovertown.

On 12 February 2019, the CCG paid the final invoices for the portable toilets, toilet cleaning, and security services.

Cost summary

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

INCIDENT:	FV FRANCOISE pt2	PROJECT CODE:	2ER82
INCIDENT DATE:	September 21, 2017	DATE PREPARED:	August 27, 2019
DEPARTMENT:	Canadian Coast Guard	PREPARED BY:	[REDACTED]
			<u>SCH</u>
MATERIALS AND SUPPLIES		\$ 1,230.56	<u>1</u>
CONTRACT SERVICES		\$ 380,806.98	<u>2</u>
TRAVEL		\$ 506.42	<u>3</u>
SALARIES - FULL TIME PERSONNEL		\$ 10,328.60	<u>4</u>
OVERTIME - FULL TIME PERSONNEL		\$ 5,047.42	<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		\$ 2,923.30	<u>12</u>
ADMINISTRATION		\$ 383.56	<u>13</u>
		<hr/>	
TOTAL CCG COST OF INCIDENT		\$ 381,296.28	

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 four receipts and five invoices. The CCG also submitted a summary breakdown of this portion of its claim, which provides some detail on apportionment of costs as between the Vessels:

MATERIALS AND SUPPLIES:	DATE	AMOUNT	HST	TOTAL	REFERENCE
NORTH ATLANTIC MARINE SUPPLIES 3 x Mooring Rope 100ft at \$96.14 each <i>Replacement of mooring equipment used to secure F/V Francoise in Clarenville September 24, 2017</i>	21-Nov-17	\$288.42	\$43.26	\$ 331.68	1-1 <i>Paid by MC</i>
NORTH ATLANTIC MARINE SUPPLIES 4 x Choke Straps small at \$36.20 each <i>Replacement of mooring equipment used to secure F/V Francoise in Clarenville September 24, 2017</i>	16-Feb-18	\$144.80	\$21.72	\$ 166.52	1-2 <i>Paid by MC</i>
CANADIAN TIRE 2 x Ratchet Straps at \$18.89 each 4 x 1/2"x36" steelrod at \$6.79 each <i>Material to secure the Pot-a-Potty in Clarenville April 10, 2018</i>	10-Apr-18	\$ 64.94	\$ 9.74	\$ 74.68	1-3 <i>Paid by MC</i>
NORTH ATLANTIC OFFSHORE INC 1 x Choke Strap at \$28.85 each <i>Replacement choke strap used for securing the aft spring lines on F/V Francoise July 4, 2018</i>	11-Jul-18	\$ 26.85	\$ 4.03	\$ 30.88	1-4 <i>Paid by MC</i>
CANADA POST Registered Mail <i>Letter sent to [REDACTED] owner of the F/V Francoise</i>	28-Sep-18	\$ 10.00	\$ 1.50	\$ 11.50	1-5 <i>Paid by MC</i>
NORTH ATLANTIC MARINE SUPPLIES 300' of 1.25" Porex Mooring Rope <i>Replacement fore and aft spring lines and choke straps on F/V Francoise November 16, 2018</i>	19-Dec-18	\$ 172.00	\$ 25.80	\$ 197.80	1-6 <i>Paid by MC</i>
NORTH ATLANTIC OFFSHORE INC 2 x 20"x6" Choke Strap at \$139.55 each <i>Replacement fore and aft spring lines and choke straps on F/V Francoise November 16, 2018</i>	19-Dec-18	\$ 279.10	\$ 41.87	\$ 320.97	1-7, 1-8 <i>Paid by MC</i>
CANADIAN TIRE AntiFreeze <i>Six (6) jugs of plumbing antifreeze added to the freshwater tank January 9, 2019</i>	9-Jan-19	\$ 83.94	\$ 12.59	\$ 96.53	1-9 <i>Paid by MC</i>

Figure 3: Screen capture of materials and supplies costs summary (name of vessel owner redacted)

Each of the five claimed North Atlantic Offshore Inc. (“North Atlantic”) expenditures is supported by an invoice, one of which is backed up by a receipt showing payment.

The first North Atlantic invoice, for 700 feet of rope, totals \$773.89. It includes a receipt showing payment in full on 21 November 2017. The invoice includes the handwritten notation “Replacement for tie up lines for FV SIKUK + FV FRANCOIS Clarenville”. The portion of this invoice claimed by the CCG against the FRANÇOISE is approximately 43%.

The second North Atlantic invoice, for eight polyester web slings (five at 3” x 12’ and three at 6” x 20’, priced at \$36.20 and \$139.55 per unit respectively), totals \$689.60.

The remaining three North Atlantic invoices accord with their respective descriptions included in Figure 3.

The two Canadian Tire expenditures are supported by receipts. Both receipts appear to accord with their respective descriptions included in Figure 3.

The Canada post expenditure is supported by a receipt that accords with the description included in Figure 3.

Summary, invoices, and standing offer call-up in support of claimed contracted services

Claimed costs for contracted services are supported by 108 invoices and a standing offer call-up form. The CCG also submitted a summary breakdown of this portion of its claim, which provides some detail on apportionment of costs as between the Vessels:

CONTRACT SERVICES	AMOUNT	GST	TOTAL	REFERENCE
GERGAR ENTREPRISE LIMITED	\$ 4,825.00	\$ 723.75	\$ 5,548.75	2-1 - 2-16
Spetic pumping of portable toilet				
November - December 2017 (\$862.50); cost divided between F/V Sikuk and F/V Francoise			\$ 431.25	2-1, 2-2
February 2018 - February 2019 (\$4,686.25); F/V Francoise takes sole financial responsibility from January 09, 2018 onward			4,686.25	2-3 - 2-16
				Paid M/C
BATTLEFIELD EQUIPMENT RENTAL	\$ 5,144.20	\$ 771.59	\$ 5,915.79	2-17 - 2-34
Rental of portable toilet				
September 26, 2017 to January 8, 2018 (\$1,288.22); Cost divided between F/V Sikuk and F/V Francoise			\$ 644.11	2-17 - 2-20
January 9 - 16, 2018 (\$90.25); F/V Francoise takes sole financial responsibility from January 09, 2018 onward			\$ 90.25	2-20
Cost from January 16, 2018 to February 6, 2019 (\$4,537.32)			\$ 4,537.32	2-21 - 2-34
				Paid M/C
GARDAWORLD	\$ 333,905.00	\$ 50,085.77	\$ 383,990.77	2-35 - 2-113
24 hour on-site security				
September 26, 2017 to January 8, 2018 (\$81,149.76); Cost divided between F/V Sikuk and F/V Francoise			\$ 40,574.88	2-35 - 2-55
January 9 - 13, 2018 (\$3,795.00); F/V Francoise takes sole financial responsibility from January 09, 2018 onward			\$ 3,795.00	2-53, 2-55
Cost from January 14, 2018 to February 5, 2019 associated to F/V Francoise			\$ 299,046.01	2-56 - 2-113
				Paid M/C
LONDON OFFSHORE CONSULTANT	\$ 6,088.62	\$ 913.29	\$ 7,001.91	2-114 - 2-116
Assessment of the F/V Francoise				Paid Aug 12/18

Figure 4: Screen capture of contract services costs summary

The Gergar Enterprises Limited (“Gergar”) expenditure is supported by 16 invoices. The first totals \$287.50 and is dated 8 November 2017. The second totals \$575.00 and is dated simply “Dec. 2017”. The remaining invoices are dated from 5 February 2018 through 8 February 2019 and total to \$4,686.25, as indicated in Figure 4.

The Battlefield Equipment Rentals (“Battlefield”) expenditure is supported by 18 invoices. The first four invoices each total \$315.88 and are dated 18 October 2017 through 25 January 2018. Each contains handwritten notations explaining apportionment of costs as between the FRANÇOISE and the SIKUK. The first three invoices are divided equally between the Vessels. The fourth 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. The remaining 14 invoices are dated from 14 February 2018 through 8 February 2019. Many of these invoices total \$315.88, but most of the totals are illegible.

The GardaWorld expenditure is supported by 73 invoices, the first 16 of which are 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 equally between the Vessels. The notation on the seventeenth invoice is dated 17 January 2018. It covers the period of 7 through 13 January 2018 and indicates that only \$822.25, representing the first two days of the period covered, have been allocated to the SIKUK, with the remaining \$4,617.25 allocated entirely to the FRANÇOISE. The remaining 56 invoices are dated from 24 January 2018 through 12 February 2019 and total \$299,046.01, as indicated in Figure 4. 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.

Finally, the LOC expenditure is supported by an invoice dated 31 July 2018. The invoice subtotal of \$6,088.62 is broken down into \$5,880.00 for “Professional Fees (Hours)” and \$208.62 for “Reimbursable Expenses”. A detailed breakdown for each cost is attached to the invoice, indicating that an LOC consultant travelled 366 kilometres by vehicle to inspect the FRANÇOISE. Also included as support for the LOC expenditure is a Public Works and Government Services Canada “Call-up Against a Standing Offer” form indicating that the CCG had a standing arrangement with LOC.

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

Claimed travel costs cover two ER personnel and are broadly summarized as totalling \$253.21 for each of two ER personnel. These costs purport to cover a single trip, over 4 and 5 February 2019. Various logs are presented in support of *per diem* costs, and two hotel receipts are presented in support of commercial accommodations costs. Also included in support of claimed travel costs are detailed, identical summaries for each of the two personnel:

Date	Province	Breakfast	Lunch	Dinner	Incidental s	Private Accommodation
4-Feb-19	NL	\$ -	\$ -	\$ 50.00	\$ 17.30	\$ -
5-Feb-19	NL	\$ 20.25	\$ -	\$ -	\$ 17.30	\$ -
Totals:		\$ 20.25	\$ -	\$ 50.00	\$ 34.60	\$ -

Accommodations
Commercial Accommodations: 1 nights at \$129.00 + HST (\$19.36) = \$148.36

Figure 5: Screen capture of one of the two identical travel cost summaries

Summary and logs in support of claimed salary costs

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

	Group & Level	Step	Time (Hours)	Rate (W/EBP)	COST	REFERENCE
<i>September 22 - October 12, 2017</i>						
	GT-05	2	7.50	\$ 44.38	\$ 332.85	4-1
	GT-05	3	7.50	\$ 45.71	\$ 342.83	4-2
	GT-04	1	7.50	\$ 38.37	\$ 287.78	4-3
	GT-04	5	7.50	\$ 43.62	\$ 327.15	4-4
					<u>\$ 1,290.60</u>	
<i>Total cost divided between FV Sikuk and FV Francoise</i>					\$ 645.30	
<i>October 4, 2017</i>						
	GT-05	3	7.5	\$ 45.71	\$ 342.83	4-2
	GT-04	5	7.5	\$ 43.62	\$ 327.15	4-4
					<u>\$ 669.98</u>	
<i>February 15 2018 - February 4, 2019</i>						
	GT-05	4	39.25	\$ 47.08	\$ 1,847.89	4-5
<i>as of September 2018</i>	GT-05	5	41.00	\$ 48.96	\$ 2,007.36	4-6
	GT-05	4	7.50	\$ 45.71	\$ 342.83	4-7
	GT-04	1	13.25	\$ 38.37	\$ 508.40	4-8
<i>as of June 2018</i>	GT-04	2	56.75	\$ 39.55	\$ 2,244.46	4-9, 4-10
	GT-04	1	13.25	\$ 38.37	\$ 508.40	4-11, 4-12
	GT-04	1	11.50	\$ 38.37	\$ 441.26	4-13
	GT-04	1	6.50	\$ 38.37	\$ 249.41	4-14
	GT-04	1	14.50	\$ 38.37	\$ 556.37	4-15
	GT-04	1	8.00	\$ 38.37	\$ 306.96	4-16
					<u>\$ 9,013.33</u>	

Figure 6: Screen capture of salary costs summary (names of nine ER personnel redacted)

Summary and logs in support of claimed overtime costs

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

	Group & Level	Step	1.5 x	2.0 x	Total Overtime Hours	Rate	COST	REFERENCE	
<i>September 22 - October 12, 2017</i>									
	GT-05	2	19.00	13.50	57.50	\$ 36.98	\$ 2,126.35	5-1 - 5-3	
	GT-05	3	6.50	0.00	12.75	\$ 38.09	\$ 485.65	5-4, 5-5	
	GT-03	1		12.5	26.00	\$ 28.38	\$ 737.88	5-7, 5-8	
							\$ 3,349.88		
	<i>Total cost divided between FV Sikuk and FV Francoise</i>							\$ 1,674.94	
<i>October 4, 2017</i>									
	GT-05	3	3.00	0.00	4.50	\$ 38.09	\$ 171.41	5-4, 5-6	
	GT-04	5	3.00	0.00	4.50	\$ 36.35	\$ 163.58	5-9, 5-10	
							\$ 334.98		
<i>February 15, 2018 - February 4, 2019</i>									
	GT-05	4	4.00	0.00	6.00	\$ 39.23	\$ 235.38	5-11 - 5-13	
	GT-05	5	12.50	1.00	20.75	\$ 40.80	\$ 846.60	5-14 - 5-18	
	GT-05	4	7.50	3.00	17.25	\$ 39.23	\$ 676.72	5-19, 5-20	
	GT-04	2	9.50	3.00	20.25	\$ 31.97	\$ 647.39	5-21 - 5-24	
	GT-04	1	3.00	0.00	4.50	\$ 31.97	\$ 143.87	5-25, 5-26	
	GT-04	1	2.00	0.00	3.00	\$ 31.97	\$ 95.91	5-27, 5-28	
	GT-04	1	7.50	0.50	12.25	\$ 31.97	\$ 391.63	5-29, 5-30	
							\$ 3,037.50		

Figure 7: Screen capture of overtime costs summary (names of eight ER personnel redacted)

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

Claimed vehicle usage costs are supported by various 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 - #12-013	726	\$ 0.22	2.00	\$ 67.56	\$ 135.12	12-1, 12-2
Fuel Cost					\$ 172.35	12-3
<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 F450 - #12-013	357	\$ 0.22	1.00	\$ 67.56	\$ 67.56	12-6
Fuel Cost					\$ 122.34	12-7
<i>Travel to Clarendville, NL, October 4, 2017</i>						
FORD EXPEDITION - #16-036	377	\$ 0.22	1.00	\$ 67.56	\$ 150.50	12-8, 12-9
<i>Travel to Clarendville, NL, October 12, 2017</i>						
<i>Cost divided between FV Sikuk and FV Francoise</i>						\$ 75.25

FORD EXPEDITION - #16-03E	4,054	\$	0.22	10.00	\$	67.56	\$	759.42	12-10 - 12-20
Fuel Charge							\$	699.04	12-21 - 12-31
<i>Travel to Clarendville, NL, February 15, 2018 / March 27, 2018 / April 10, 2018 / June 20, 2018 / July 12, 2018 / November 16, 2018 / November 27, 2018 / December 4, 2018 / January 9-24, 2019</i>									
NISSAN ROGUE - #16-036	361	\$	0.22	1.00	\$	67.56	\$	67.56	12-32
Fuel Charge							\$	42.87	12-33
<i>Travel to Clarendville, NL, June 18, 2018</i>									
CHEVROLET 2500 - #08-066	394	\$	0.22	1.00	\$	67.56	\$	67.56	12-34
Fuel Charge							\$	91.89	12-35
<i>Travel to Clarendville, NL, October 26, 2018</i>									
DODGE 3500 - #14-015	721	\$	0.22	3.00	\$	67.56	\$	280.34	12-36
Fuel Charge							\$	163.65	12-37
<i>Travel to Clarendville, NL, November 2-5, 2018</i>									
FORD F350 - #16-034	388	\$	0.22	2.00	\$	67.56	\$	135.12	12-38
Fuel Charge							\$	122.81	12-39
<i>Travel to Clarendville, NL, February 4-5, 2019</i>									

Figures 8 and 9: Screen captures of vehicle costs summary

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

Twenty-four Personnel & Equipment Daily Logs (the “Daily Logs”) give a general overview of the entire ER operation, providing additional information on vehicle and equipment usage, namely mileage data, which roughly accords with that shown in Figures 8 and 9. The Daily Logs are dated as follows: 21, 22, 24, and 30 September 2017; 4 and 12 October 2017; 15 February 2018; 27 March 2018; 10 April 2018; 18 and 20 June 2018; 4 and 12 July 2018; 26 October 2018; 2, 5, 16, and 27 November 2018; 4 December 2018; 9, 16, and 24 January 2019; and 4 and 5 February 2019.

The entry for 22 September 2017 indicates that the FRANÇOISE was listing five degrees to port.

The same entry also 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 22 September 2017 entry concludes with 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 listed in the first two North Atlantic invoices (see Figure 3):

PART E: CONSUMABLES: DESCRIPTION AND USAGE (PER DAY – OPERATIONAL MODE)				
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 10: 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 4 October 2017 contains the following note: “ER personnel departed depot for Clarenville to escort and monitor owner of vessel Francoise. Owner removed electronic equipment from vessel and departed site. ER personnel returned to depot, arriving 1900lt.”

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:		3.09%
	Total Rate		
(ii)	Costs subject to Regional Rate (excl. EBP)		
	Materials and Supplies	\$	1,230.56
	Travel	\$	506.42
	Salaries - Full Time Personnel	\$	8,607.17
	Other Allowances	\$	-
	Salaries - Casual Personnel	\$	-
	Ship O & M Costs	\$	-
	Aircraft O & M Costs	\$	-
	Total Costs subject to Regional Rate	\$	<u>10,344.15</u>
	Regional Administration Cost	\$	<u>319.63</u>
(iii)	Costs subject to Corporate Rate (excl. EBP)		
	Materials and Supplies	\$	1,230.56
	Travel	\$	506.42
	Salaries - Full Time Personnel	\$	8,607.17
	Other Allowances	\$	-
	Salaries - Casual Personnel	\$	-
	Ship O & M Costs	\$	-
	Aircraft O & M Costs	\$	-
	Regional Administration costs	\$	319.63
	Total Costs subject to Corporate Rate	\$	<u>10,663.79</u>
	Corporate Administration Cost	\$	<u>-</u>
	Total Administration costs excl. EBP	\$	<u>319.63</u>
	Total Administration Costs incl. EBP	\$	<u>383.56</u>

Figure 11: Screen capture of administration costs breakdown

Email to the owner of the FRANÇOISE, Notice, and Direction

The claim submission contains an email sent by the CCG to the owner of the FRANÇOISE dated 22 September 2017 at 18:22. The email contains two attachments.

The first attachment is a Notice addressed to the owner of the FRANÇOISE 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 his 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 Francois currently anchored in Clarenville Harbour to mitigate the pollution threat posed by the forecasted weather system.”

CCG letter to the owner of the FRANÇOISE

The claim submission contains a second email sent by the CCG to the owner of the FRANÇOISE. It is dated 28 September 2018 at 15:03. The email contains an attachment entitled “FV Francoise Final Letter 28 September 2018.doc”. The letter is addressed to the owner of the FRANÇOISE and reads, in part, as follows:

The Canadian Coast Guard has requested on numerous occasions that you provide a detailed plan for addressing the pollution risk posed by the FV FRANCOISE. This is your last opportunity to provide this plan, which 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 1600hrs local time **Wednesday, 3 October, 2018**.

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). On three separate occasions, you indicated that you were working on a plan to have your vessel dismantled, but have failed to provide a detailed plan as outlined above.

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

Please be advised that the Canadian Coast Guard had an independent Technical Assessment conducted on your vessel, which concluded that there is approximately 17,000 liters of pollutants aboard the vessel.

If you fail to submit a reasonable and appropriate 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 FRANCOISE pursuant to paragraph 180(1)(a) of the *Canada Shipping Act, 2001*.

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

Figures 12 and 13: Screen captures from the CCG’s 28 September 2018 letter to the owner of the FRANÇOISE

The letter attaches copies of the original Notice and Direction dated 22 September 2017.

London Offshore Consultants Condition Survey and Towage Assessment

The LOC survey report is dated 30 July 2018. It indicates that it is based on a 12 July 2018 inspection of the FRANÇOISE. It is comprised of 63 pages, including a single appendix containing 80 photographs. The survey report describes the vessel as a diesel-powered 26.88-metre fishing trawler of 230.08 gross tonnage and steel construction, built in 1963. The report refers to an historical sinking incident, caused by deteriorated valves and piping in the vessel's stern sea chest. After this historical incident, the FRANÇOISE was raised and water was pumped into its fuel tanks for stability purposes.

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 to port and trimmed by the stern alongside the Hardwoods dock, noting, "There is security stationed at the timber wharf to limit access, however, there is no means of detecting flooding or fire, aside from the security guard on duty visually recognizing an issue." The surveyor further observed: "With the minimal oversight of the vessel, deteriorating condition of both vessel and wharf, and no emergency equipment or plan in place, there is a risk of the vessel sinking again 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."

The Hardwoods dock is described by the surveyor as follows: "The wharf is comprised of creosote treated timbers and is showing its age. It is currently barricaded with a large telephone poll to prevent vehicles from driving on it. [...] The surface decking is getting soft in places with sections missing throughout. The underlying timber structure appears intact but is difficult to see."

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 FRANÇOISE over a short distance should be viable by a tug with a minimum bollard pull of 10MT. The surveyor further estimated the costs of deconstructing the vessel would be in the range of \$548,878.00 to \$769,450.00, based on precedents in Nova Scotia. No such precedents were available for Newfoundland and Labrador.

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

Item	Description	Volume, litres
Hydraulic Tank	Processing deck starboard midships.	20
Puddle	Below hydraulic tank – processing deck starboard midships.	1
Hydraulic/Header tank	Superstructure exterior exhaust compartment	2
FO Tank*	Port Forward. Sounded 2.46m.	5400
FO Tank*	Port Aft. Residuals.	Nil
FO Tank**	Starboard Forward. Sounded 1.95m.	3400
FO Tank**	Starboard Aft. Residuals.	Nil
FO Day Tank or Lube Oil Tank	Located forward starboard side of engine room. Access hatch removed.	Nil
Fresh Water Tank	Located forward, not sounded due to bend in pipe. Contents unknown.	-
Vessel Piping	Oil product piping – fuel transfer, lube oil transfer and hydraulics.	1,000
Loose Containers	Roughly 6 plastic jugs of gear oil, hydraulic oil, bleach and multiple tubes of grease throughout.	40
Batteries	Roughly 4-5 vehicle/marine size batteries throughout.	
Fish Hold	From focsle/bow to engine room bulkhead.	Nil
Total		17,023

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Batteries	Roughly 4-5 vehicle/marine size batteries throughout.	
Fish Hold	From focsle/bow to engine room bulkhead.	Nil
Total		17,023

* Port forward and port aft tanks are assumed separate but are shown on station list as a single unit. Total footprint is estimated as L 2.5m x W 1.75m x H 2.75m. For above calculations it is assumed that the tank is equally divided. A sounding of 2.46m results in approximately 5400 litres.

** Starboard forward and starboard aft tanks are assumed separate but are shown on station list as a single unit. Total footprint is estimated as L 2.0m x W 1.75m x H 2.75m. For above calculations it is assumed that the tank is equally divided. A sounding of 1.95m results in approximately 3400 litres.

Figures 14 and 15: Screen captures from LOC survey report, pollutant volume estimate, at pp 12–13

Finally, the cost of removing and disposing these pollutants is estimated in the LOC report at between \$0.35 and \$0.45 per litre without contractor costs for “mobilisation, travel and subsistence”.

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

FRANÇOISE and SIKUK 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. 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.

FRANÇOISE and SIKUK claims re-apportioned, adding claimed costs to the FRANÇOISE claim

The entire cost of the McKeil towing operation and the cost of purchasing a towing bridle 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 be 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.

The documentation submitted with the SIKUK claim in support of the McKeil expenditure consists of an invoice totalling \$127,064.34 and dated 27 September 2017, a Statement of Work dated 22 September 2017, and a BIMCO International Towage Agreement signed and dated 25 September 2017, but indicating an agreement was reached as of 22 September 2017. All three documents describe towage 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 documentation in support of the towing bridle costs consists of an invoice dated 13 October 2017 from Extreme East Rigging Services Ltd. (“Extreme East”). The invoice totals \$2,737.00 and its description refers to the HARP. It also includes the handwritten notation “FV SIKUK”. The invoice covers just one item: “1 each: 16mm x 20 metres 2 leg bridle”.

Evidence of value included in the SIKUK claim

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

CCG email exchange with the owner of the FRANÇOISE

Included with the SIKUK claim submission is an email exchange between the CCG and the owner of the FRANÇOISE. The exchange begins on 22 September 2017 with the CCG Notice/Direction email detailed above. The second email in the exchange is from the owner of the FRANÇOISE and dated 25 September 2017. In this email, the owner explains that he is unable to find his vessel and asks if the CCG has moved it. The CCG response came within 30 minutes. It details the situation, explaining that the FRANÇOISE has been towed to the Hardwoods dock as a temporary measure. It requests that the owner provide a plan to properly secure the vessel.

In his response, sent only a few minutes later, the owner explains that he has been out of the country and mobile coverage zones for several days. He goes on to state: “[...] the Francoise was recently cleaned and cleared of all possible pollutants and contaminants due to a former Transport Canada/Coast Guard directive.... at my (hefty) personal expense, might I add.” The owner goes on to request further details about the CCG’s response.

The CCG reply, sent the following day, details the CCG’s reasons for acting as it did, noting that when the FRANÇOISE was tied to the SIKUK, its “listing was a safety concern for our crews and they could not board it at that time to assess what pollutants if any remained on board due to safety reasons” The CCG email mentions that there were concerns that the FRANÇOISE would break free of the SIKUK and drift ashore. Finally, the CCG requests a plan for towing and securing the FRANÇOISE, at which point, “access will be granted to remove it.”

CCG email exchange with representative of the Burry Group

The SIKUK 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 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 16: 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 17: 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.

London Offshore Consultants’ SIKUK Survey Report

The CCG arranged to have the SIKUK surveyed by LOC on 16 November 2017, while the vessel was still at the Hardwoods dock. A survey report issued sometime in January 2018. That report found, *inter alia*, that the SIKUK, at 44.68 metres long and 584 gross tonnage, was much larger than the FRANÇOISE. Nonetheless, LOC found that a tug with a minimum bollard pull of 10MT would be sufficient to tow the SIKUK as far as Nova Scotia.

The Fund’s survey of the FRANÇOISE

As indicated in the CCG’s narrative, the Fund contracted its own marine surveyor, Fulcrum Marine Consultancy Ltd. (“Fulcrum”), to inspect the FRANÇOISE while it was moored at

the Hardwoods dock 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, and in particular because the CCG advised that it may yet contract to have the vessel deconstructed. Prior to conducting its survey, Fulcrum obtained a partially redacted copy of the LOC report from the CCG.

The CCG was notified of the Fulcrum survey in advance and it was conducted under CCG supervision on 4 December 2018, roughly a month after the owner of the FRANÇOISE removed approximately 11,000 litres pollutants from the vessel at the request of the CCG. Fulcrum sent its completed survey report to the Fund on 10 December 2018. The Fund shared the full Fulcrum report with the CCG on 2 January 2019 for comment. No substantive comment on the report was received.

The Fulcrum report describes its scope, in part, as follows: “to establish the vessel's current physical condition by conducting a detailed risk assessment of her onboard watertight and weathertight arrangements respectively. [...] We have therefore carried out thorough inspections of those areas, arrangements and/or fittings on board identified as being at risk of serious deterioration and/or failure if left unattended.”

Like the LOC report, the Fulcrum report begins with a reference to prior incident which caused the FRANÇOISE to sink. Fulcrum places the sinking in 2017 but provides no further details.

The report observes that the FRANÇOISE was “trim by the stern [...] 1.4 m, with forward and aft drafts recorded as 3.6 m aft and 2.2 m forward respectively as per the side shell markings. There was no significant angle of heel noted on the vessel.”

The report notes that at least 300 litres of residual lubricant oils were present on board the FRANÇOISE. Weather proofing on the vessel's deck is considered to be poor, allowing for rainwater and snowmelt ingress. Furthermore, many of the vessel's interior seals are described as no longer capable of being made watertight.

The report describes the GardaWorld security arrangement 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 vessel 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 its [*sic*] poor condition).”

The Fulcrum report concludes: “We expressed our concerns to both the attending officers from CCG and the regional manager about the ongoing deterioration of the vessel and the fact that there was no significant (meaningful) monitoring of it's [*sic*] condition, despite CCG's Emergency Response officers carrying out occasional visits to the site (these are considered inadequate). The condition of the vessel's underwater hull and fittings is unknown, in particular the ‘through-hull’ fittings such as sea water cooling lines; the de-

watering status of the cooling pipes with their respective valves was emphasised to them in discussions as likely being the most high-risk elements of the vessel's arrangements, with the risk of catastrophic failure existing in the piping or valves causing flooding of the Engine Room should one of the sea water cooling valves and/or piping crack/leak due to the (likely) build-up of ice in the piping [...]. Cracking due to low ambient temperatures of sea water lines and/or valves has been demonstrated as being one of the most likely scenarios to occur on abandoned vessels during winter months when low temperature induced cracking can cause fractures which result in leakage(s) and/or flooding.”

With regard to the effects of possible flooding in the FRANÇOISE's engine room, the report notes that it “would likely cause the vessel to sink due to down flooding of water throughout the vessel; the bilge piping system is effectively open from the forward compartment above the Fore Peak Tank to the after tank which houses the rudder trunk and permanent ballast.”

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 substantively added 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, given 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, providing the same justifications that it later put forward in the FRANÇOISE narrative 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, summarizing its position as follows:

As a summary there was only two options to address the vessel.

1. The owner take the necessary actions to address the vessel.
2. CCG take over response to vessel and take required actions.

As we were on a private de-commissioned facility and CCG assumed all the liability with the dock and the initial stipulation placed upon the CCG was that no access other than CCG personnel were to be permitted on the facility. To accomplish this 24 hr security was required to monitor both land and sea access. We could see no other option to prevent access then to have security in place.

Although the security was in place for quite sometime it eventually was the least costly option. If CCG had to take over the response much earlier we would have had to pay security up to that point and in excess of 900k (lowest quote) to address the vessel. By holding/working with the vessel owner to provide the necessary response the overall cost to the was much lower.

Figure 18: Screen capture from 10 December 2019 email response the Fund's 27 November 2019 request

In addition to the summary contained in Figure 18, the CCG attached to its email response a typed document of roughly 3,300 words that it described as outlining “the actions ER took to try and get the owner to address concerns of his vessel.”

The document opens by stressing 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 document goes on to restate much of the FRANÇOISE claim narrative. For this reason, it need not be discussed or reproduced at length in this letter. It is noteworthy, however, that the document 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.” No detail is offered on the reasons for ruling out this potential refuge.

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 19 and 20: 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 the Fund's fifth request of 18 December 2018 (see Figure 20):

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 21: 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 19).

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 FRANÇOISE throughout the CCG claim documentation appears in fact to be the sole director of the corporate registered owner of the vessel. For the sake of consistency and continuity, the remainder of this letter simply refers to this individual as the vessel’s owner.

The CCG similarly refers to a director of the corporate owner of the SIKUK 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 Clarenville 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 Clarenville Harbour. With regard to the FRANÇOISE specifically, 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, and they found a substantial volume of pollutants on board. While the FRANÇOISE could not be safely boarded at the time, it was reasonable for the CCG to assume that it had at least some pollutants on board, including heavier lubricants. Furthermore, the FRANÇOISE was poorly secured to the SIKUK, leading to legitimate concerns that the smaller vessel might break free under continued stress. Evidently, personnel from the HARP took appropriate measures to address chaffing issues on 23 September 2017, but some reasonable concerns that the Vessels might part would nonetheless have remained.

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-powered 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 exacerbated the situation. There was only so much room to drag anchor in Clarenville 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 Clarenville 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 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 narrative and 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 CCG engaged the McKeil tug, 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 is far from desirable, this may have arrested the Vessels’ dragging. In any case, however, 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 the 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 21), 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 on 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 diesel engines totalling 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.²

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.

² LOC, in its survey report, would later recommend a tug with a minimum bollard pull of 10MT to tow the FRANÇOISE as far as Nova Scotia. Though the SIKUK was larger, LOC found in its survey of that vessel that a similar tug would have sufficed. Finally, it is assumed that the Vessels would not have been towed simultaneously.

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.”³ 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,⁴ 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.

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 in light of all the circumstances.

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 Clarendville, 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, nor that it considered issuing a third-party Direction to Hardwoods, which was within its powers under paragraph 180(1)(c) of the CSA.

³ Canadian Coast Guard, “Policy and Operational Procedures on Assistance to Disabled Vessels”, s 2.1.2.

⁴ *Ibid*, s 2.1.4.

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 Clarendville 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 provided its reasons for ultimately ruling out this location.

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

Once the FRANÇOISE was secure at the Hardwoods dock—even though the vessel had evidently not yet been the subject of a detailed condition or pollutants assessment—any oil pollution threat that the vessel had posed while at anchor was substantially mitigated. The vessel was no longer able to drag or drift, 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 FRANÇOISE 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 FRANÇOISE would spontaneously founder; and (3) The owner of the FRANÇOISE 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 FRANÇOISE 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 deeply unreliable owner of the FRANÇOISE, however, the CCG made no demonstrated efforts to mitigate its own rapidly mounting costs. Furthermore, the CCG's apparent reluctance to promptly assess the quantity and type of pollutants on board the FRANÇOISE, to determine the integrity of its hull, or to closely monitor the vessel 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 FRANÇOISE was inconsistent

The owner of the FRANÇOISE was unreliable, untruthful, 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 FRANÇOISE, the owner failed to take action or even so much as contact the CCG until 25 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 lied, failed to respond or act entirely, or was deemed to have done so vaguely or inadequately, when requests were made by the CCG on countless separate occasions over a more than 14-month period, each of which is detailed above in this letter. In his first contact with the CCG, he falsely claimed that the FRANÇOISE had previously been cleaned of potential pollutants, and in many cases he was silent for over a month despite repeated CCG attempts to re-establish contact. For ease of reference, the 14 documented occasions of noncompliance that occurred in 2017 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 FRANÇOISE;
- 25 September 2017 reiteration of Direction of 22 September 2017;
- 26 September 2017 second reiteration of Direction of 22 September 2017;
- 30 September 2017 reiteration that the FRANÇOISE must be moved urgently;
- 4 October 2017 email requiring urgent removal of the FRANÇOISE;
- 10 October 2017 reminder that refuge at the Hardwoods dock is a temporary remedy, and requirement that the FRANÇOISE be moved urgently;
- 16 October 2017 reminder that refuge at the Hardwoods dock is a temporary remedy, and requirement that the FRANÇOISE be moved before January 2018;
- 18 October 2017 reminder that the FRANÇOISE cannot remain at the Hardwoods dock and reiteration of 22 September 2017 Direction;
- 1 November 2017 reminder that anchoring the FRANÇOISE in Clarendville Harbour is not an option and reiteration of 22 September 2017 Direction;
- 14 November 2017 reminder that the FRANÇOISE must be moved and notification that the SIKUK would soon be moved;
- 30 November 2017 reminder that the FRANÇOISE will not be allowed to remain at the Hardwoods dock after the SIKUK is moved; and
- 14 December 2017 update on SIKUK situation and reminder of need to move the FRANÇOISE.

On 4 January 2018, the SIKUK was towed away, causing the CCG's costs associated with storing the FRANÇOISE at the Hardwoods dock to double to over \$5,200.00 weekly. Despite rapidly mounting costs, the CCG's approach to the situation, and the owner's inaction, remained largely unchanged until 2 November 2019, when the owner finally had onboard pollutants removed from the FRANÇOISE. Even from this point, over a year since the vessel had dragged in Clarenville Harbour and after more than \$300,000.00 in GardaWorld costs had piled up, the owner's further delays in engaging a tug to remove the FRANÇOISE from the Hardwoods dock cost the CCG in excess of \$30,000.00.

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 FRANÇOISE's owner failed to do so.

Instead, what unfolded was a relentless and predictable exchange that lasted well over a year, steadily driving up costs all the while. In a telling episode of the CCG's apparent reluctance to be heavy handed with the owner of the FRANÇOISE, it appears that two ER personnel were deployed to Clarenville on 4 October 2017 to oversee the owner board the vessel and remove electronic equipment from same. There is no indication that the owner undertook at the time to address or even assess the current state of the vessel or its oil pollutant contents, and the visit came after the owner had to be turned away from the Hardwoods dock by GardaWorld personnel, after which the CCG issued an email reminder that access to the vessel must be from seaward. Furthermore, the CCG had originally informed the owner that he would not be given access to the vessel until he presented an acceptable plan for its removal. No such plan was close to materializing at this early stage.

After receiving countless reiterations of CCG demands in the weeks following the Incident but witnessing no real action on the part of the CCG, the owner of the FRANÇOISE might conceivably have begun to question whether an embrace of the *status quo* would result in any real consequences. After all, the owner had only to field (or ignore) occasional nagging telephone calls and emails from the CCG in order to postpone indefinitely his costly plans to have the vessel deconstructed.

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 FRANÇOISE to act, the CCG did take some measures in an attempt to minimize the mounting costs associated with keeping the vessel at the Hardwoods dock. However, these measures were largely ineffective and they were sometimes undercut by CCG actions.

The CCG felt itself under legitimate pressure to act quickly when Hardwoods first proposed its strict terms for use of the dock. After the FRANÇOISE 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 that was potentially full of pollutants and 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 decision to pursue a request for proposals and its instructions to LOC, was to have the FRANÇOISE 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.

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.

At the very least, the CCG ought to have explored its options with Burry's from a contractual standpoint. Particularly in early 2018, when there appears to have been storage capacity at the Burry's facility and the CCG was warning the owner of the FRANÇOISE that it would move the vessel to a new facility on its own initiative, the CCG ought to have explored whether it might secure more favourable storage terms with Burry's than those available at the Hardwoods dock. There is no evidence that this was contemplated by the CCG at any stage of its response.

With the pollution threat from the FRANÇOISE 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 FRANÇOISE an oil pollution threat once it was secured

Most importantly, once the FRANÇOISE 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 FRANÇOISE 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 FRANÇOISE might spontaneously founder while alongside the dock and discharge pollutants, however, few if any meaningful steps were taken.

First and foremost, the CCG appears to have done nothing to understand the residual pollution threat posed by the FRANÇOISE once it was secured. The CCG knew the vessel to be aging and neglected from the moment ER personnel sighted it on 22 September 2017, when they also observed that it was listing. They also presumably knew about the sinking event in its then-recent past. CCG personnel had reasonably assumed the presence of *some* pollutants on board the vessel. Once the FRANÇOISE was secured, however, there is no indication that any serious efforts were made to check the integrity of its hull, or to quantify or assess the pollutants on board—let alone to consider removing them pre-emptively—

though ER personnel did conduct a basic assessment on the latter item less than three weeks before the LOC survey of 12 July 2018. In the absence of any evidence, it is not clear what—if anything—the CCG knew of the vessel or its contents before the summer of 2018. The CCG arranged for an LOC surveyor to be at the Hardwoods dock to inspect the SIKUK in November 2017. Oddly, this surveyor was not asked to assess the FRANÇOISE, of which very little appears to have been known at the time.

It is therefore concluded that the CCG had no full understanding of the potential threats posed by the FRANÇOISE until 30 July 2018, the date on the LOC report, or over ten months after the vessel was secured. This utter lack of urgency suggests that the CCG did not truly believe that the vessel remained a pollution threat once it was secured at the Hardwoods dock. Based on the narrative and the survey report's own description of its scope, it appears that the survey was intended primarily to provide a likely range of costs for deconstructing the vessel, suggesting that the CCG placed undue emphasis on understanding its worst-case financial exposure while giving little to no attention to its ongoing and significant storage costs. Deconstruction at CCG's hands should the owner continue to delay ought not to have been a foregone conclusion: the CCG's apparent fixation on deconstruction costs distracted it from a far more immediate issue.

That the CCG did not believe the FRANÇOISE posed a significant pollution threat at the Hardwoods dock is further evidenced by its apparent inaction on the explicit warning contained in its own expert report. To paraphrase, the LOC report warns that the vessel could sink again and pollute, observing that general monitoring—and for water ingress more specifically—was insufficient, and that no plan or emergency equipment for this possibility appeared to be in place. Similar warnings are contained in the Fulcrum report, which set out the specific threat of a catastrophic failure that would result in the vessel sinking. Fulcrum shared these findings verbally with CCG personnel at the time of the inspection, and the Fulcrum report was in the CCG's hands by early 2019. Despite two distinct and explicit expert warnings, one of which came from its own expert, the CCG was not motivated to take any further precautionary steps, or to consider having the vessel moved to a location where it could be more completely (and more cheaply) monitored.

To the contrary, the longer the FRANÇOISE remained at the Hardwoods dock, the more inconsistent CCG monitoring of the vessel became, even before the majority of the pollutants were removed. Initially, site visits by ER personnel were made on an approximate monthly basis. A gap of over two months occurred between 10 April 2018 and 18 June 2018, however. Worse, after 12 July 2018, no ER personnel attended the FRANÇOISE until 26 October 2018, a period of over three months.

Given that the CCG appears to have believed that it was no longer dealing with a significant oil pollution threat from the FRANÇOISE, 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 FRANÇOISE 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 FRANÇOISE

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 FRANÇOISE, including the Gergar, Battlefield, Canadian Tire, North Atlantic, 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 FRANÇOISE 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 FRANÇOISE 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 well over a year. Instead of devoting even modest internal resources to identifying alternative methods of mitigating costs, the CCG simply put all of its faith in the FRANÇOISE's owner, who, even by early October 2017, had demonstrated utter unreliability by failing to comply with three 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 FRANÇOISE response. As illustrated in Figure 7, 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 6 and 7, ER personnel tended to both the FRANÇOISE and the SIKUK 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 FRANÇOISE 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
2017-10-04	2	15.00	\$669.98	6.00	\$334.98
2017-10-12*	2	7.50	\$307.46	–	–
2018-02-15	2	12.50	\$534.06	–	–
2018-03-27	2	13.50	\$576.78	–	–
2018-04-10	2	14.00	\$598.15	–	–
2018-06-18	2	11.00	\$476.46	–	–
2018-06-20	2	15.00	\$649.72	2.00	\$117.69
2018-07-04	1	–	–	–	–
2018-07-12	2	12.50	\$541.44	4.00	\$213.60
2018-10-26	2	12.00	\$531.06	–	–
2018-11-02	2	15.00	\$639.45	21.00	\$1,228.20
2018-11-05	2	9.00	\$350.64	–	–
2018-11-16	2	13.00	\$567.65	6.00	\$327.47
2018-11-27	2	13.00	\$506.48	–	–
2018-12-04	2	15.00	\$654.97	4.00	\$218.31
2019-01-09	2	15.00	\$663.83	–	–
2019-01-16	2	14.00	\$537.18	–	–
2019-01-24	2	11.00	\$486.81	–	–
2019-02-04	2	8.00	\$349.32	16.50	\$932.23
2019-02-05	2	8.00	\$349.32	–	–
Totals		211.50	\$10,328.60	85.25	\$4,939.11

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

It is noteworthy that the CCG summary of overtime costs reproduced in Figure 7 contains apparent errors with regard to the “Total Overtime Hours” figures, and thus the claimed cost of overtime worked, for 21, 22, 24, and 30 September 2017. For each date, the “Total Overtime Hours” figure is slightly inflated as against the result that the “1.5 x” and “2.0 x” entries should yield. For example, the entry for the second individual (GT 05) listed in Figure 7 indicates that 6.5 hours were worked at the 1.5 x rate. Therefore, the “Total Overtime Hours” figure should read 9.75 rather than 12.75. The entries for the first and third ER personnel (GT 05 and GT 03, respectively) listed in Figure 7 contain similar errors. No explanation is offered in the claim documentation to support these inflated figures, which add \$108.31 in unsubstantiated costs to the CCG’s claim for overtime costs.

The overtime hours and cost figures included in Table 1 have therefore been adjusted to reflect the more accurately recorded overtime hours in the overtime logs and the Daily Logs. The adjusted figures also match the overtime hours and costs presented in the SIKUK

claim, which is appropriate given the overtime costs for the dates in question were incurred in respect of both of the Vessels and the CCG appears to have intended to apportion them equally.

Established salary and overtime costs

It is noted from the outset that no more than two ER personnel were deployed to Clarendville 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 actual personnel costs associated with the initial response to the Incident, on 21, 22, and 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 actual 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. The personnel costs actually incurred for the five days addressed above total \$645.30 for salaries and \$1,566.63 for overtime. Both of these amounts are accepted in full.

Although it fell before the cut-off date of 24 October 2017, the site visit by two ER personnel on 4 October 2017 is not accepted as a reasonable deployment of resources within the CCG's pollution prevention mandate. According to the narrative and Daily Logs, the owner of the FRANÇOISE attended on scene that day, wanting to board his vessel. He appears to have been turned away by GardaWorld personnel, and the CCG had to remind him by email that he was not permitted to board the vessel via the Hardwoods dock. Ultimately, however, two ER personnel traveled from St. John's to Clarendville to oversee the owner's access to the FRANÇOISE by sea, which allowed him to remove electronic equipment from the vessel. This CCG deployment appears to have been a favour to an owner who had been utterly uncooperative, even untruthful, up to that date. There is no indication that purpose of the owner's presence that day had anything to do with compliance with CCG directives. Rather, the owner's visit appears to have been purely out of self-interest, in support of which the CCG appears to have voluntarily incurred personnel costs. Furthermore, the CCG had been on site just days earlier to check on the Vessels' moorage, meaning that the trip clearly did not fall within the CCG's monitoring plan. As a result, the salary and overtime costs incurred on this date are rejected.

For the reasons set out above with regard to the establishment of a cut-off date of 24 October 2017, most of the site visits occurring after that date are not accepted as representing reasonable oil pollution mitigation measures. This broad rejection of post cut-off personnel costs includes those incurred on 12 July 2018, on which date ER personnel escorted an LOC surveyor at the Hardwoods dock. This rejection is applied for the same reasons set out for rejecting the claimed LOC costs, which reasons are discussed in detail below, under the Offer Breakdown heading of this letter. Also rejected are the costs incurred on 4 December 2018, on which date ER personnel escorted the Fund's Fulcrum surveyor at the Hardwoods dock. While the Fund is generally willing to compensate the

CCG for any reasonable costs it may incur as a direct result of inspections the Fund conducts during a CCG response, such costs are more appropriately negotiated and settled at the time the costs are incurred and outside of the claims process, as they cannot be properly construed as compensable damages under Part 7 of the MLA.

The costs associated with three days of site visits that fell after the cut-off date are accepted as exceptions to the rule noted above. First, on 2 November 2018, two ER personnel travelled to Clarendville to oversee the owner's efforts to remove accessible pollutants from the FRANÇOISE. The monitoring work done on this day by ER personnel directly contributed to the meaningful goal of minimizing any pollution threat from the vessel before allowing it to be towed away from the Hardwoods dock. Similarly, on 4 and 5 February 2019, the owner of the FRANÇOISE removed additional pollutants from the vessel and ultimately towed it away, all under CCG supervision. This too was a reasonable deployment, and it would have been necessary even if the CCG had intervened much earlier and taken steps to resolve the Hardwoods situation. Together, these exceptions account for a total of \$1,338.09 in salary costs and \$2,160.43 in overtime costs. Both of these amounts are accepted in full.

To summarize and tally the above findings, claimed salary and overtime costs are established in the total amounts of \$1,983.39 and \$3,727.06 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 nine separate expenditures, spread across four different suppliers, as summarized below in Table 2. The total amount claimed under this schedule, after re-apportionment, is \$2,599.06.

Extreme East

The Extreme East towing bridle expenditure is one of the items that has been equally re-apportioned between the FRANÇOISE and the SIKUK claims. It did not originally appear as part of the FRANÇOISE claim. 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, as set out above. 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 (\$331.68 is claimed against the FRANÇOISE and \$442.24 is claimed against the SIKUK, totalling \$773.92). As such, this portion of the CCG's claim is reduced by just \$0.01 and accepted at \$331.67.

The second North Atlantic invoice covers four small choke straps. 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 \$166.52.

Remaining expenditures, which occurred after 24 October 2017

The remaining claimed expenditures under Schedule 1 were all incurred long after the 24 October 2017 cut-off date (see Figure 3), and solely as a result of the extended and unjustified moorage of the FRANÇOISE at the Hardwoods dock. For this reason, none of these expenditures are accepted.

Summary of claimed and established amounts under Schedule 1

The amounts claimed in Schedule 1 are allowed, in part, in the amount of \$498.19.

Provider	Description	Claim	Established
Extreme East	Towing bridle	*\$1,368.50	\$0.00
North Atlantic	400 feet mooring rope	\$331.68	\$331.67
North Atlantic	4 x small choke straps	\$166.52	\$166.52
Canadian Tire	Ratchet straps and steel rod to secure portable toilet	\$74.68	\$0.00
North Atlantic	1 x small choke strap	\$30.88	\$0.00
Canada Post	Registered letter to owner of the FRANÇOISE	\$11.50	\$0.00
North Atlantic	300 feet mooring rope	\$197.80	\$0.00
North Atlantic	2 x large choke straps	\$320.97	\$0.00
Canadian Tire	6 x jugs of antifreeze	\$96.53	\$0.00
Totals		\$2,599.06	\$498.19

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 \$424,339.15.

McKeil

The McKeil expenditure is one of the items that has been equally re-apportioned between the FRANÇOISE and the SIKUK 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 Clarendville 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 (though also noting that the tug reportedly arrived at Clarendville 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 Clarendville 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 Vessels were secured at the Hardwoods dock by 10:00 on 25 September 2017, with the BEVERLY M I released from the scene thereafter. 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 FRANÇOISE claim, the result is an established amount of \$55,194.67 for this portion of the claim.

GardaWorld

The CCG claimed \$343,415.89 for security services at the Hardwoods dock, as provided by GardaWorld. The first \$40,574.88 of that amount represents half the total cost of the period from 26 September 2017 through 8 January 2018, when the SIKUK was towed away. The remaining \$302,841.01 covers the period from 9 January 2018 through 5 February 2019, during which the FRANÇOISE remained at the Hardwoods dock alone.

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 \$10,768.31.

Battlefield

Claimed Battlefield costs total \$5,271.68 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 \$5,117.50 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

The CCG claimed \$7,001.91 for the cost of the LOC survey, conducted on 12 July 2018, and for the report that flowed therefrom. As noted above, the CCG appears to have kept itself in the dark for almost nine months with regard to the condition and contents of the FRANÇOISE, until it engaged LOC's services.

During this period, it does not even appear that CCG resources were deployed to assess onboard pollutants until 20 June 2018. From a pollution threat assessment perspective, this was an utterly unreasonable delay. Furthermore, the CCG failed to acknowledge or act upon the LOC report's warning with regard to insufficient monitoring of the vessel for water ingress. Based on these circumstances, and on the narrative and the tasking of LOC presented in the survey report, it is concluded that the CCG commissioned the survey primarily for the purpose of gauging its potential financial exposure in the event that it should proceed with deconstructing the vessel. While this purpose might loosely fit the description of a cost mitigating measure, the measure was misplaced and misdirected. Deconstruction of the FRANÇOISE at the hands of the CCG was hardly a foregone conclusion, even in the summer of 2018, though this imagined eventuality appears to have been the CCG's sole preoccupation with regard to the vessel. All the while, effectively nothing was being done to mitigate the very real and mounting costs of continued storage at the Hardwoods dock.

The survey report came far too late to reasonably serve the potentially compensable purpose of assessing a pollution threat, and its warnings with regard to a tangible threat

posed by the FRANÇOISE were apparently overlooked or ignored. For these reasons in particular, the LOC costs are rejected in their entirety.

Summary of Schedule 2 claimed and established amounts

The amounts claimed in Schedule 2 are allowed in, part, in the amount of \$66,322.17.

Provider	Description	Claim	Established
McKeil	Towing and securing the FRANÇOISE	*\$63,532.17	\$55,194.67
GardaWorld	24-hour onsite security	\$343,415.89	\$10,768.31
Battlefield	Rental of portable toilet	\$5,271.68	\$215.44
Gergar	Septic pumping of portable toilet	\$5,117.50	\$143.75
LOC	Survey and report	\$7,001.91	\$0.00
Totals		\$424,339.15	\$66,322.17

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 \$506.42. It is comprised of *per diem* and accommodation costs for the two ER personnel who travelled to Clarendville on 4 and 5 February 2019 to oversee the owner of the FRANÇOISE remove remaining accessible pollutants from the vessel before towing 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 \$10,328.60 under this schedule. This portion of the claim is allowed, in part, in the amount of \$1,983.39.

Schedule 5: Overtime – Full Time Personnel

The CCG claimed \$5,047.42 under this schedule. This portion of the claim is allowed, in part, in the amount of \$3,727.06.

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 \$2,923.30 for vehicle usage costs, as summarized in Figures 8 and 9.

Though the vehicle claim summary shown in Figures 8 and 9 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 generally appear to be 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 findings with regard to this schedule align exactly with those made under Schedules 4 and 5, so little detail is provided here on the reasons for those findings. In short, vehicle costs associated with the following dates are accepted: 22, 24, and 30 September 2017; 12 October 2017; 2 November 2018; and 4 and 5 February 2019.

The claimed costs with regard to the September and October 2017 dates set out above are accepted in full in the total amount of \$303.14. Likewise, the February 2019 dates are accepted at their full claimed cost of \$257.93.

The claimed vehicle costs associated with 2 November 2017, however, require some manipulation. Because no fuel receipt has been provided in support of costs incurred on this date, the 368 kilometres traveled, as recorded in the Daily Log entry for that date, have been multiplied by the default fuel rate of \$0.22 per kilometre, to yield a fuel cost of \$80.96. Adding this amount to the standard vehicle day rate of \$67.56 yields an accepted total of \$148.52 for this date.

To summarize and tally the above findings, this portion of the claim is allowed, in part, in the amount of \$709.56.

Schedule 13: Administration

This portion of the CCG's claim totals \$383.56 and appears to represent a percentage of the claimed amounts under Schedules 1, 3, and 4 (see Figure 11). 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 \$2,988.00, a reasonable administration cost has been calculated using that amount and the multiplier of 3.09%, which appears in Figure 11, and which the Fund has recently accepted as broadly reasonable in separate correspondence with the CCG. Accordingly, this portion of the claim is allowed, in part, in the amount of \$92.33.

OFFER SUMMARY

Schedule	Claim	Offer
1 – Materials and Supplies	*\$2,599.06	\$498.19
2 – Contract Services	*\$424,339.15	\$66,322.17
3 – Travel	\$506.42	\$506.42
4 – Salaries – Full Time Personnel	\$10,328.60	\$1,983.39
5 – Overtime – Full Time Personnel	\$5,047.42	\$3,727.06
11 – Pollution Counter-measures Equipment	\$69.45	\$69.45
12 – Vehicles	\$2,923.30	\$709.56
13 – Administration	\$383.56	\$92.33
Totals	\$446,196.96	\$73,908.57

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

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