

VIA REGISTERED MAIL

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

RE: *Feelin' Free* – Port Neville, BC – DOI: 30 January 2017

We have completed our investigation and assessment of the claim for \$37,731.13 (“Claim”) that the Canadian Coast Guard (“CCG”) submitted for costs and expenses incurred in relation to an oil pollution incident involving the fishing vessel *Feelin' Free* (“Vessel”). We find the Claim to be established, in part, in the amount of **\$21,224.15**. Accordingly, we hereby make an Offer of Compensation (“Offer”) in that amount, plus accrued interest of \$1,582.70, pursuant to sections 105, 106, and 116 of the *Marine Liability Act* (“MLA”). The amount of the Offer plus interest comes to \$22,806.85.

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

Applicable Statutory Scheme

This Claim is subject to the substantive provisions of the *Canada Shipping Act, 2001* (“CSA”) and the *MLA* as they were at the time of the incident. All references to these statutes refer to them as they were before the changes introduced in Bill C-86 came into force.

Overview of the Decision

We note from the outset that the Administrator considers the documentation of this Claim, including the supplemental submissions made by CCG on 15 February 2019, to be incomplete. These evidentiary deficiencies may have contributed to the reductions set forth below. Notably absent, though specifically requested from CCG by the Office of the Administrator on 5 February, are the following items:

- Search and rescue situation reports, specifically relating to the initial response of CCGS *Cape St James* on 30 January 2019;
- CCG environmental response situation reports, with the exception of the 30 January 2017 Pollution Report (and three short, undated entries collectively titled “00730-ALERT-2017-POL-ROC-KELSEY BAY-UPDATE-5”); and
- Incident-specific documentation pertaining to the engagement and tasking of the Western Canada Marine Response Corporation (“WCMRC”), whether a statement of work,

operational plan, work narrative, contract, formal justification for emergency contracting, or otherwise.

We note further that given the gaps in CCG's contemporaneous record, we have relied to some extent on the narrative put forward by the Vessel's insurer in the course of its correspondence with CCG. This narrative is credible and in places it constitutes the only evidence on record.

In general, though with some exceptions enumerated below, we find that the broad array of resources deployed in response to the burning Vessel was excessive, duplicative, and largely unsupported on the evidence in light of the existing pollution threat. Furthermore, while we agree that the situation demanded a measured response, we see no justification for the apparently open-ended and largely undocumented emergency contract that CCG entered with WCMRC. While the Vessel initially held a large quantity of diesel fuel, it burned intensely for more than 24 hours. As the fuel burnt up, the pollution threat eroded.

The claim documentation makes it clear that on 30 and 31 January 2017 it was too dangerous for the various responders to approach the Vessel. All they could do was watch. Despite this, it appears that as many as three vessels were deployed and generating a cost over these two days: (1) A WCMRC boat towed up from Duncan that remained on standby in Campbell River throughout the response; (2) A "Thunder Jet" boat and crew belonging to the subcontractor Strategic Natural Resource Consultants ("Strategic"); and (3) A CCG PRV II, apparently deployed on 31 January. Individual tasking for each of these boats is unclear, though it seems that the Strategic boat must have deployed boom and sorbents on 1 February. Presumably the CCG PRV II was used in a monitoring capacity only. As for the WCMRC boat, no justification has been provided for its standby presence. If it represented some kind of contingency, evidence to this effect has not been tendered. In addition, it is not clear what WCMRC personnel accomplished on scene without a boat of their own in the water. On the evidence, we are satisfied that only the active services provided by Strategic were necessary and reasonable in the circumstances.

Assessment

As our reductions are limited to Schedule 2 – all other claimed items being found established in full – we limit our reasons to a discussion of that Schedule.

Schedule 2 – Contract Services

CCG claimed \$33,835.38 for the contracted services of WCMRC, which was engaged from 30 January to 2 February 2017. For the reasons set out above, we find only the portion subcontracted to Strategic, which appears to have undertaken the entirety of the active response, to represent reasonable preventive measures with associated reasonable costs. We therefore find the amount of **\$17,328.40** to be established under this Schedule.

We look forward to receiving notification of your acceptance so that payment can be made without delay. In considering this Offer, kindly note that you have 60 days upon receipt to notify the undersigned whether you accept it. Alternatively, you have 60 days upon receiving this Offer

to appeal its adequacy in the Federal Court. The *MLA* provides that if no notification is received at the end of the 60-day period, you will be deemed to have refused the Offer.

If you accept this Offer, the *MLA* provides that the Administrator benefits from a statutory release and subrogation to the extent of the payment made to you in relation to the subject incident.

Yours sincerely,

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

Encl.: Appendix (1)

c.c: Acting Superintendent, Environmental Response, Western

Appendix: Summary Assessment Table

Schedule	Claimed	Established
2 – Contract Services	\$33,835.38	\$17,328.40
3 – Travel	\$76.00	\$76.00
4 – Salaries – Full Time Personnel	\$648.45	\$648.45
5 – Overtime – Full Time Personnel	\$1,554.87	\$1,554.87
11 – Pollution Counter-measures Equipment	\$1,194.20	\$1,194.20
12 – Vehicles	\$406.64	\$406.64
13 – Administration	\$15.59	\$15.59
Total in Principal	\$37,731.13	\$21,224.15
Interest		\$1,582.70
Grand Total		\$22,806.85