

VIA REGISTERED MAIL

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

RE: *Sundowner* – Bella Coola, BC – DOI: 23 July 2017

We have completed our investigation and assessment of the claim for \$27,846.02 (the “Claim”) that the Canadian Coast Guard (“CCG”) submitted for costs and expenses incurred in relation to an oil pollution incident involving the ex-fishing vessel *Sundowner* (the “Vessel”). We find the Claim to be established, in part, in the amount of **\$27,761.32**. Accordingly, we hereby make an offer of compensation (the “Offer”) in that amount, plus accrued interest of \$2,017.22, pursuant to sections 105, 106, and 116 of the *Marine Liability Act* (the “MLA”). The amount of the Offer plus interest comes to \$29,778.54.

Applicable Statutory Scheme

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

Incident and Decision Overview

Broadly, we find that the CCG response to the sinking of the Vessel to have been proportional and reasonable in the circumstances. With the exception of Schedule 13, we find all claimed amounts to be established. Our reasons for Schedule 13 are set out under the “Detailed Assessment” portion of this Offer, below. In this portion of our Offer, we provide broader reasons in the context of an overview of the CCG response.

On 23 July 2017, the Bella Coola Harbour Authority (the “HA”) notified CCG that the Vessel had sunk at its moorings and was polluting. The quantity of pollutants on board was unknown. CCG determined that its personnel were needed on scene, as the HA lacked the capacity to recover the Vessel and the owner was absent and apparently uncooperative. In the interim, CCG directed the HA to use a local cache of environmental response equipment, including sorbent boom and pads, to contain the spill.

Later the same day, two CCG personnel flew to Bella Coola by helicopter to assist the HA and arrange for the raising and removal of the Vessel. The roundtrip use of a helicopter generated a substantial cost. Nonetheless, we find it to be reasonable in the circumstances, given the remoteness of the incident, the urgency of the situation, and the limited capacity of the HA. In addition, we note that alternative means of transportation were far from inexpensive and would have resulted in several days of delay.

Once on scene, CCG provided both tactical and practical support to the HA, which continued monitor the Vessel and tend to the sorbent boom around it. CCG also began making contractual arrangements to have the Vessel raised and removed. CCG and the HA raised the Vessel on 25 July 2017, wiping down the interior and removing as much oily debris as possible. The following day, the Vessel was hauled out by a local contractor who used an excavator that CCG had placed on standby on 23 July.

On 26 July 2017, with the Vessel out of the water and the immediate pollution threat abated, CCG engaged a third contractor for the removal of 2,000 litres of oily waste from the Vessel, as well as for the disposal of soiled boom and pads. At a cost of \$4,236.10, this measure represented the most costly contracted service engaged in the course of the response. It was a necessary service, however, and given the remoteness of the incident, the cost was reasonable.

CCG personnel departed the scene by helicopter on 28 July 2017.

Detailed Assessment

Schedule 13 – Administration

CCG claimed \$467.39 in administration costs, representing a rate of 3.09% of the total of the amounts claimed for travel, salaries (excluding the employee benefits plan), and aircraft. The Administrator is currently reviewing CCG submissions on this new, higher rate. Until such time as we find the new rate to be reasonable, we will continue to apply the existing rate of 2.53%, which yields the established amount of \$382.69 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.: Superintendent, Environmental Response, Western Region

Appendix: Summary Assessment Table

| Schedule | Claimed | Established |
|---|----------------|--------------------|
| 2 – Contract Services | \$6,966.10 | \$6,966.10 |
| 3 – Travel | \$2,167.78 | \$2,167.78 |
| 4 – Salaries – Full Time Personnel | \$2,752.20 | \$2,752.20 |
| 5 – Overtime – Full Time Personnel | \$3,996.35 | \$3,996.35 |
| 10 – Aircraft | \$10,664.70 | \$10,664.70 |
| 11 – Pollution Counter-measures Equipment | \$831.50 | \$831.50 |
| 13 – Administration | \$467.39 | \$382.69 |
| Total in Principal | \$27,846.02 | \$27,761.32 |
| Interest | | \$2,017.22 |
| Grand Total | | \$29,778.54 |