

**VIA REGISTERED MAIL**

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

**Re: *M/V Farley Mowat* – Shelburne, NS – DOI: June 28, 2017**

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We have completed our investigation and assessment of the claim for \$1,176,126.41 (the “Claim”) that the Canadian Coast Guard (“CCG”) submitted for costs and expenses incurred in relation to an incident involving the *M/V Farley Mowat*. We find the Claim to be established, in part, in the amount of **\$872,107.92**. Accordingly, we hereby make an Offer of Compensation (the “Offer”) in that amount, plus accrued interest of \$53,271.82, pursuant to sections 105, 106, and 116 of the *Marine Liability Act* (the “MLA”).<sup>1</sup> The amount of the Offer plus interest comes to \$925,379.74.

After careful consideration of the additional CCG submissions dated March 14, 2018, and following the line of reasoning set out in our recent decisions, particularly those on the *King Arthur* and *Laurier II* matters, we find that the *Farley Mowat* continued to pose a residual pollution threat at the time of the summer 2017 CCG response. We reach this determination based on (1) The condition of the deteriorating and already substantially dismantled vessel; (2) Continued flooding and the need for pumping; (3) Local security and safety concerns; (4) The uncooperative behaviour and history of the owner; and (5) The likelihood that quantities of pollutants remained in inaccessible areas on board. These factors suggest an ongoing pollution threat that was bound to worsen if left unaddressed by CCG. In short, CCG has demonstrated a credible and likely risk that, barring either continuing or decisive intervention, the *Farley Mowat* would eventually have sunk and polluted at Shelburne.

We find that: (1) CCG has demonstrated it had the necessary reasonable grounds to believe that the *Farley Mowat* was likely to pollute, giving it the power to proceed with deconstruction under paragraph 180(1)(a) of the *Canada Shipping Act, 2001*; and (2) CCG has demonstrated that deconstruction was a reasonable preventive measure in light of the existing pollution threat, as contemplated under the *MLA*.

Only the amounts claimed by CCG in Schedules 2, 11, and 13 are not established in full, and our reasons for these reductions are set out below. We note that the bulk of the reductions are attributable to the limited evidence before the Administrator of the Ship-source Oil Pollution Fund (the “Administrator”) with respect to contract services performed.

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<sup>1</sup> All references to the *MLA* and the *Canada Shipping Act, 2001* are to the versions of those acts in force prior to their amendment by the passage of Bill C-86.

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### **Schedule 2 – Contract Services**

Under Schedule 2, CCG claimed \$1,005,226.28 for the work performed by two contractors: \$993,738.00 for the deconstruction services of RJ MacIsaac Constructions Ltd (“RJM”), and \$11,488.28 for a stability assessment, environmental assessment, and tow plan prepared by London Offshore Consultants Ltd (“LOC”). We find the RJM services established in the amount of \$691,150.00. Further, we find the LOC costs to be established in full. Accordingly, we grant a total of **\$702,638.28** under Schedule 2.

The RJM deconstruction operation was divided into four “Milestones” with associated billings: (1) Mobilization to Vessel Location, at \$253,000.00; (2) Removal from the Ocean and Transport to Facility, at \$218,638.00; (3) Disposal of Debris and Pollutants, at \$209,300.00; and (4) Vessel Deconstruction, at \$312,800.00. The foregoing amounts include applicable taxes. We are satisfied on our assessment that the work under Milestones 1 and 4 relates entirely to reasonable preventive measures, the associated costs for which are both reasonable and fully established. Our assessment of Milestones 2 and 3 is set out below.

#### **Milestone 2 – Removal from the Ocean and Transportation to Facility**

Based on the Claim “Narrative” and other documentation, it is likely that the bulk of the cost of this Milestone is attributable to the use of two Atlantic Towing Ltd tugs: the 475hp *Whispering Sea* and the 4000hp *Atlantic Larch*. Day-rates for these vessels were not provided in the Claim documentation. The rest of the cost, though we cannot be sure on the face of the record, is likely associated with the tow plan, including towing gear, provision of certificates, and contingencies. There is no supporting documentation to underpin these residual items under this Milestone.

Normally, such evidentiary failings would lead to the entirety of the costs being rejected. Where we cannot understand the scope of the measures taken and their specific associated costs, as with the residual costs of the tow here, we cannot make a finding of reasonableness. With regard to the use of the tugs, however, we were able to determine approximate baseline day-rates in the region for vessels of comparable size and specifications to the ones used by RJM.

Based on our findings, we have determined that reasonable day-rates were \$5,000.00 and \$21,000.00, respectively, for the *Whispering Sea* and the *Atlantic Larch*. We find further, based on the Claim documentation, and taking into account a modest buffer for mobilization and demobilization, that the *Whispering Sea* was engaged for five days, while the *Atlantic Larch* was engaged for four. We therefore grant the amount of \$125,350.00 under Milestone 2, representing our estimated reasonable cost for the use of the tugs, plus applicable taxes.

#### **Milestone 3 – Disposal of Debris and Pollutants**

No supporting documentation for the work done under Milestone 3 was provided by CCG. In addition, it is unclear conceptually why disposal of debris and pollutants would occur before deconstruction and after removal of the vessel. Surely, some measure of debris removal occurred prior to the tow, and the bulk would have occurred during and after deconstruction of the vessel.

Therefore, given the state of the hulk at this stage of the response, noting a lack of rationale or evidence on the matter, and considering that CCG's further submissions offered nothing new in the way of evidence, we find that this Milestone represents at best a duplication of measures that logically fall under Milestones 1 and 4. Accordingly, the entire claimed amount claimed under Milestone 3 is rejected.

**Schedule 11 – Pollution Counter-measures Equipment**

CCG claimed \$52,550.86 under this Schedule for the use of various equipment. With the exception of the rental of porta-tanks for 60 days, which we have reduced by half – or \$1,400.10 – to better conform with the usage timelines for other claimed items, we otherwise find the entire claimed amount established. Accordingly, we grant **\$51,150.76**.

**Schedule 13 – Administration**

Under this schedule, CCG claimed \$3,661.90 in administration, exclusive of the costs for claim preparation. After adjusting for the above reduction under Schedule 11, the established amount totals **\$3,631.51**.

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We look forward to receiving notification of your acceptance so that payment can be made without delay. In considering this Offer, kindly note the following time limits set out in the *Marine Liability Act*. You have 60 days upon receiving this Offer to notify the undersigned whether you accept it, or to file a Notice of Appeal in the Federal Court. 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 and no further Offer will issue.

If you accept this Offer, the *MLA* further 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,

Anne Legars, LL.M., CAE  
Administrator, Ship-source Oil Pollution Fund

Cc: Superintendent, Environmental Response, Atlantic Region

**Appendix: Summary Assessment Table**

<b>Schedule</b>	<b>Claimed</b>	<b>Established</b>
1 – Materials and Supplies	\$8,534.52	\$8,534.52
2 – Contract Services	\$1,005,226.28	\$702,638.28
3 – Travel	\$23,148.74	\$23,148.74
4 – Salaries – Full Time Personnel	\$33,250.78	\$33,250.78
5 – Overtime – Full Time Personnel	\$44,577.43	\$44,577.43
11 – Pollution Counter-measures Equipment	\$52,550.86	\$51,150.76
12 – Vehicles	\$4,796.76	\$4,796.76
13 – Administration	\$3,661.90	\$3,631.51
13a – Administration – Claim Preparation	\$379.14	\$379.14
<b>Total in Principal</b>	\$1,176,126.41	<b>\$872,107.92</b>
<b>Interest</b>		<b>\$53,271.82</b>
<b>Grand Total</b>		<b>\$925,379.74</b>